

Not Relevant

305 AGO0097/06CS

Attorney-General's Item (Michael Atkinson)
DEFERRED

Not Relevant

305

LOCKED AGO0097/06CS

CABINET COVER SHEET

1. **TITLE:** Referendum for the Abolition of the Legislative Council

2. **MINISTER:** **MICHAEL ATKINSON M.P.
ATTORNEY-GENERAL**

3. **PURPOSE:** To seek Cabinet approval to:
 - 3.1 introduce to Parliament a Bill ("the Abolition Bill") to amend the *Constitution Act 1934* to abolish the Legislative Council and to make amendments consequential upon that, in accordance with the attached Bill (A);
 - 3.2 Introduce to Parliament a Bill ("the Abolition Referendum Bill") to establish the process by which the Abolition Bill will be put to a referendum at the next general election, following the requirements of the *Constitution Act*, in accordance with the attached Bill (B);
 - 3.3 approve the drafting of a Bill ("the Consequential Amendments Bill"), at a time closer to the holding of the referendum, to amend those statutes that make reference to the Legislative Council and to reflect its abolition, noting the indicative list of Acts that will require amendment set out in Annexure (C), but that the list will change over the term of the Government.

4. **IDENTIFY THE RELEVANT GOVERNMENT POLICY OR TARGET IN SOUTH AUSTRALIA'S STRATEGIC PLAN OR BOTH** Fulfils the Premier's pledge on 24 November, 2005 to seek the electorate's views on the abolition of the Legislative Council

5. **RESOURCES REQUIRED FOR IMPLEMENTATION:**

No resources required for introduction of the Bills. Resources will be required for the holding of a referendum if the Bills pass both Houses. These costs will be calculated in advance of the 2008/2009 budget process. Net savings brought about by the reform or abolition of the Legislative Council will be calculated in general terms in advance of the 2008/2009 budget process.

6. **PUBLIC AND ENVIRONMENTAL IMPACT**

No environmental impact

7. **RISKS**

There are risks that the substantive Bill will not pass through both Houses with an absolute majority. There is a further risk that, if passed, the electorate will reject the proposal, and that the Government will be criticised for the expenditure on the referendum.

8. **CONSULTATION**

The Crown Solicitor, Solicitor-General and Parliamentary Counsel have been involved in working up the proposal. Note that other agencies, including the Electoral Commissioner, Treasury and Finance, and the Parliamentary Superannuation Fund have not been consulted at this stage.

9. **COMMUNICATION STRATEGY**

The proposal was announced on 24 November, 2005. A detailed strategy will be prepared in advance of the referendum if the substantive Bill passes both Houses.

10. **URGENCY**

10-day rule

11. **RECOMMENDATION**

To seek Cabinet approval for

4.1 the introduction to Parliament of a Bill to amend the *Constitution Act 1934* to abolish the Legislative Council and to make amendments consequential upon that, in accordance with the attached Bill (A);


4.2 the introduction to Parliament of a Bill to establish the process by which the Abolition Bill will be put to a

referendum at the next general election, following the requirements of the *Constitution Act*, in accordance with the attached Bill (B);

- 4.3 the drafting of a Bill at a time closer to the holding of the referendum, to amend those statutes that make reference to the Legislative Council, to reflect its abolition, noting the indicative list of Acts that will require amendments set out in Annexure (C), but that the list will change over the term of the Government.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

**MICHAEL ATKINSON M.P.
PORTFOLIO:
DATE:**

(signature) 
ATTORNEY-GENERAL
23 August, 2007

Contact officer
D. M. Gray
Phone 8207 2099

to THE HON. PREMIER FOR CABINET

about REFERENDUM FOR THE ABOLITION OF THE LEGISLATIVE COUNCIL

1. PROPOSAL

- 1.1. That Cabinet approve the introduction to Parliament of a Bill ("the Abolition Bill") to amend the *Constitution Act 1934* to abolish the Legislative Council and to make amendments consequential upon that, in accordance with the attached Bill (A);
- 1.2. That Cabinet approve the introduction to Parliament of a Bill ("the Abolition Referendum Bill") to establish the process by which the Abolition Bill will be put to a referendum at the next general election, following the requirements of the *Constitution Act*, in accordance with the attached Bill (B);
- 1.3. That Cabinet approve the drafting of a Bill ("the Consequential Amendments Bill"), at a time closer to the holding of the referendum, to amend those statutes that make reference to the Legislative Council and to reflect its abolition, noting the indicative list of Acts that will require amendment set out in Annexure (C), but that the list will change over the term of the Government.

2. BACKGROUND

- 2.1. Labor policy platform before the 2006 election includes these principles:
 - Support for the bicameral system [principle 25]
 - The role of the upper house as a house of review [principle 25]
 - Investigating the potential involvement of upper house members in the estimates process [principle 29]
 - To investigate four-year terms for the Legislative Council following a full review of the Victorian model [principle 34]
 - To investigate simultaneous Legislative Council and House of Assembly elections [principle 34]
 - To entrench proportional representation for the Legislative Council in the constitution [principle 34]
 - To reform the Constitution to ensure that the Legislative Council may not block a money bill for more than two months and that there be a more effective deadlock provision [principle 37].

- 2.2. However, in a Ministerial Statement to Parliament on 24 November 2005, the Premier announced the Government's intention to seek the views of the South Australian public, through a referendum, about the abolition or reform of the Legislative Council.
- 2.3. The scope of the announcement pledged the Government to enabling the South Australian public to decide whether it wished to abolish or reform the Legislative Council or maintain the *status quo*. The reform option was described as effecting a reduction to the tenure of Legislative Council members to four years, a reduction in the number of members "from 22 to 16 or some other number"¹ and limiting the ability of the Council to delay legislation that has passed the House of Assembly. The reform options were not described as alternatives or as a package. In reality, a reduction in members' length of tenure without a reduction in the number of members is an unacceptable outcome because of the reduced quota for election.
- 2.4. The pledge was that the public would have four years to consider the proposal. Thus, notwithstanding recent suggestions from some non-Government Members of Parliament that a referendum should be held mid-term, the current pledge is for a referendum at the next election. By holding a referendum on polling day, the cost is reduced.
- 2.5. In June, 2006 I submitted to Cabinet a submission for approval to introduce to Parliament the Abolition Bill and also a Bill reflecting the reform proposals announced by the Premier and a Referendum Bill for each. No decision was made by Cabinet on that submission.
- 2.6. In this submission I seek approval to introduce only the Abolition Bill and its accompanying Referendum Bill. I will put to Cabinet by a separate submission some possible measures for reform of the Legislative Council, including some that were not included in the June, 2006 submission.

3. DISCUSSION

3.1. *Existing constitution of the Legislative Council*

- 3.1.1. The Legislative Council consists of 22 members elected by all the State's voters.
- 3.1.2. The whole of the State constitutes a single Legislative Council electoral district.
- 3.1.3. Each four years, half of the 22 seats in the Legislative Council are vacated and those seats are the subject of election in accordance with sections 14 and 15 of the *Constitution Act*.

¹ The number of Legislative Councillors has previously been as follows: 18 (1857-1881); 24 (1881-1901); 18 (1901-1913); 20 (1913-1973); 22 (1973 to date).

3.2. *Framework for how the Constitution Act may be changed*

- 3.2.1. The *Constitution Act* is committed to the Attorney-General.
- 3.2.2. Some provisions of the Constitution are entrenched, that is, they cannot be amended without a referendum. The referendum must be on a Bill that has been passed by both Houses.
- 3.2.3. A Bill which seeks to abolish the Legislative Council cannot be presented to the Governor for assent unless the Bill has passed both Houses and has been approved by the electors in a referendum.
- 3.2.4. The referendum is required because a proposal for the abolition of the Legislative Council invokes section 10A(1)(b) of the *Constitution Act*, which entrenches the existence of the Legislative Council.

3.3. *Abolition - what it would entail*

- 3.3.1. Attached Bill A is the Bill for the abolition of the Legislative Council by amendment of the *Constitution Act*.
- 3.3.2. Section 4 of the *Constitution Act* establishes the Legislative Council and would be replaced with a provision that provides that the Parliament will be constituted solely by the House of Assembly.
- 3.3.3. Part 2, Division 2 of the *Constitution Act*, containing the provisions relating to the Legislative Council, would be repealed.
- 3.3.4. The deadlock resolution provision (section 41) would be redundant and repealed.
- 3.3.5. Currently the system of local government is protected by a requirement that any Bill to abolish the system requires the approval of a majority of both Houses. This would be changed to require the approval of two thirds of the members House of Assembly. See clause 32 of the Bill.
- 3.3.6. Currently the Governor may remove a Judge of the Supreme Court upon the address of both Houses. This would be changed to require the approval of two thirds of the members of the House of Assembly. See clause 33 of the Bill.
- 3.3.7. Other consequential amendments require the removal of references to the Council and to "both Houses".

- 3.3.8. Committees or bodies made up of a membership that includes one or more member of the Legislative Council will continue with remaining (non-Legislative Council) members and quorums for such committees or bodies will be altered so that 50% + 1 of the remaining members constitutes a quorum.
- 3.3.9. Subject to paragraphs 3.3.5 and 3.3.6 above concerning local government and removal of judges, a provision in an Act requiring a resolution of both Houses of Parliament will be taken to have been met upon a resolution of the House of Assembly.
- 3.3.10. A list of the Acts requiring amendment consequential upon the abolition of the Legislative Council is contained in Annexure C. This list will change throughout the term of this government and, accordingly, the consequential amendments Bill will not be drafted until closer to referendum.
- 3.3.11. Schedule 1 of the Bill contains the provisions for the outgoing members of the Legislative Council. Members' terms and their entitlement to remuneration (incumbent and newly elected) will cease immediately. Members will be deemed to have retired involuntarily (equivalent to having been defeated or dis-endorsed) for the purposes of the *Parliamentary Superannuation Act 1974*.
- 3.3.12. There will be implications for the staff of the Council. The offices of Clerk, Deputy Clerk, some table officers and some staff of the Joint Parliamentary Services Committee will be terminated. I propose that, should the Abolition Bill pass, but before it is put to a referendum, further examination of these staffing implications take place.
- 3.3.13. The employment of staff of non-Ministerial Members of the Legislative Council who lose their positions as a result of the abolition will be terminated in accordance with their contracts of employment. I propose that, should the Abolition Bill pass both Houses, but before it is put to a referendum, further examination of these staffing implications take place.
- 3.3.14. The current Parliamentary committee structure will be affected by the abolition in that some committees will cease to exist and committees with membership from both Houses will be depleted.
- 3.3.15. It is proposed that, should the Abolition Bill pass, but before it is put to a referendum, further examination of the implications for Parliamentary committees occur.

3.4. *The Referendum Bill*

- 3.4.1. The Commonwealth regulates referendums through the *Referendum (Machinery Provisions) Act 1984*. Several other states have similar legislation. There is no such equivalent for South Australian referendums. In accordance with section 10A(3) of the *Constitution Act*, the regulation of the referendum in South Australia must be determined by a new Act that addresses the particular referendum in question. The Bill that precedes this Act is referred to in this submission as "the Referendum Bill". The substantive Bill requires a Referendum Bill. The Referendum Bill must pass both Houses before it can be enacted.
- 3.4.2. The referendum Bill can be found in Annexure B to this submission.
- 3.4.3. The steps for proceeding with the proposal is therefore as follows:
 - 3.4.3.1. Introduce the Abolition Bill and a referendum Bill;
 - 3.4.3.2. Pass both Bills through both Houses;
 - 3.4.3.3. Bring the Referendum Bill into force before the referendum, by obtaining the Governor's assent to the Referendum Bill;
 - 3.4.3.4. Proclaim a day for the referendum (the day of the general election in 2010);
 - 3.4.3.5. Put the Abolition Bill to the voters at a referendum, with a question asking whether the voter approves the Bill;
 - 3.4.3.6. If the Abolition Bill is approved by a majority, the Abolition Bill is presented to the Governor for assent.
- 3.4.4. The matters that the referendum Bill addresses include:
 - 3.4.4.1. That the State Electoral Commissioner will administer the referendum and the plebiscite;
 - 3.4.4.2. The specific question that will be put to the voters;
 - 3.4.4.3. That assent to the substantive Bill is contingent upon approval of the voters in the referendum;
 - 3.4.4.4. That a political party registered under the *Electoral Act 1985* may, by notice in a form approved by the Electoral Commissioner, appoint scrutineers;

- 3.4.4.5. That the *Electoral Act* applies to the referendum with adaptations, exclusions and modifications prescribed by regulation as if the referendum were a general election of members of the House of Assembly;
 - 3.4.4.6. That the State Electoral Commissioner must notify the outcome of the referendum result by notice in the *Gazette*;
 - 3.4.4.7. That the Governor be authorised to make regulations.
- 3.4.5. When this proposal was previously before Cabinet, members enquired whether it was an option to hold the referendum by postal vote. I have since been advised that this could be achieved only with a substantial amendment to the *Electoral Act*, which assumes that voting will be undertaken generally by personal attendance at a polling place.

3.5. Other implications and Impacts

3.5.1. Economic, Financial and Budget Implications

- 3.5.1.1. There are no economic, financial or budget implications for the passage of the Bills. There will be economic, financial and budget implications if the Abolition Bill becomes law.
- 3.5.1.2. There will be once-off expenditure requirements for the holding of the referendum.
 - 3.5.1.2.1. The estimated cost of holding the referendum will be determined in consultation with the State Electoral Commissioner.
- 3.5.1.3. There will be continuing savings of the salaries of members and their staff whose offices are abolished, if the Abolition Bill becomes law. No assessment has been done of the amount, but see paragraphs 3.3.11 to 3.3.13 above in which I propose that further assessment of staffing implications be made if the Bills pass both Houses of Parliament.
 - 3.5.1.3.1. Members' salaries are governed by the *Parliamentary Remuneration Act 1990* and paid from consolidated account.

3.5.1.3.2. Members' superannuation entitlements are governed by the *Parliamentary Superannuation Act 1974* and paid from the Parliamentary Superannuation Fund. The Fund is made up of members' contributions and employer (Crown) contributions. Members' entitlements vary significantly depending on the length of their tenure.

3.5.1.4. These will be addressed (in general terms) in a Cabinet Submission before the commencement of the 2008/2009 budget process.

3.5.1.4.1. The projected savings to the State on Legislative Council Members' salaries will be calculated (in general terms).

3.5.1.4.2. The projected savings to the State on Parliamentary Committee costs (for committees that are abolished), and for salaried Parliamentary staff associated with the Legislative Council, will be calculated.

3.5.1.4.3. The Legislative Council Chamber could be made available for other parliamentary uses, if the Legislative Council is abolished.

3.5.2. Required Resources

3.5.2.1. These will be addressed in a Cabinet Submission before the commencement of the 2008/2009 budget process.

3.5.2.1.1. Once-off resources for the State Electoral Office may be required for the holding of the referendum in March 2010.

3.5.2.1.2. Once-off resources for the Department of the Premier and Cabinet for the oversight and administration of the abolition may be required in the lead-up to, and, assuming the abolition is approved, after the 2010 election.

3.5.3. Staffing Implications

3.5.3.1. Implications for staff of Legislative Councillors and of Parliament

3.5.3.1.1. see paragraphs 3.3.11 - 3.3.16 above.

3.5.3.2. Implications for staffing for the State Electorate Commission and the Department of Premier and Cabinet

3.5.3.2.1. see paragraphs 3.5.2.1.1. and 3.5.2.1.2 above.

3.6. Effects on the public (including family, small business, regional and regulatory impacts) and the environment

3.6.1. Good effect for the State if the Abolition Bill becomes law, arising out of the greater certainty that will be afforded to Government in passing legislation.

3.6.2. Reduced questioning of the Government, its policies and its conduct.

3.7. Risk Management Strategy

3.7.1. There is a risk that the proposal will not succeed and the Government will be criticised for the cost of holding the referendum. The cost will be minimised by holding the referendum in conjunction with an election.

3.8. Consultation

3.8.1. Crown Solicitor's office

3.8.2. Solicitor-General

3.8.3. Parliamentary Counsel

3.8.4. Note that further consultation is proposed once the Bills are introduced, to enable the Government to further examine the implications of abolition on the administration of the Parliament.

3.9. Implementation Plan

Outlined above in paragraph 3.4.3.

3.10. Communication Strategy

A communication strategy will be required before the referendum to inform the debate. This will be the subject of a further Cabinet submission in consultation with the Office of the Premier.

3.11. Executive Council

Not required

4. RECOMMENDATION

I recommend that Cabinet:

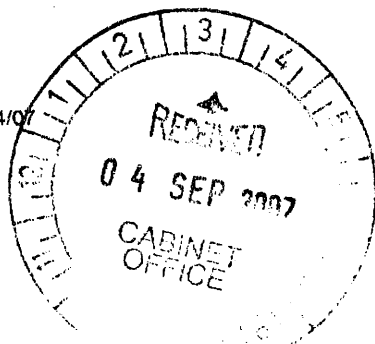
- 4.1. Approve the introduction to Parliament of a Bill to amend the *Constitution Act 1934* to abolish the Legislative Council and to make amendments consequential upon that, in accordance with the attached Bill (A);
- 4.2. Approve the introduction to Parliament of a Bill to establish the process by which the Abolition Bill will be put to a referendum at the next general election, following the requirements of the *Constitution Act*, in accordance with the attached Bill (B);
- 4.3. Approve the drafting of a Bill at a time closer to the holding of the referendum, to amend those statutes that make reference to the Legislative Council, to reflect its abolition, noting the indicative list of Acts that will require amendment set out in Annexure (C), but that the list will change over the term of the Government.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

MICHAEL ATKINSON M.P.
ATTORNEY-GENERAL

23 August, 2007

AGO 0034/07



Bills drafted by Parliamentary Counsel

22 pages removed

Exempt clause 10(1) – legal professional privilege