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27 September 2015

Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir/Madam

Re Inquiries into possible changes to duration of terms for the Queensland Parliament

I wish to provide the following submission for the Committee to consider during its inquiry into possible changes to the duration of Queensland's parliamentary terms.

It is noted that the Terms of Reference for the Committee's inquiry is that the Committee should consider, but is not limited to only considering, the following matters:¹

- A comparison of three- and four-year parliamentary terms, including advantages and disadvantages;
- A comparison of parliamentary terms in other Australian jurisdictions;
- Mechanisms for determining the referendum question that will be put to the Queensland public; and
- The possible starting date for any new arrangements, if adopted.

It is also noted that the Opposition recently introduced two Bills into the Parliament for changing Queensland's current maximum three-year parliamentary term to a fixed four-year term. A motion was passed for the Committee to consider the Opposition's Bills as part of its overall inquiry into this matter.²

Consistent with the Terms of Reference for its inquiry, I would like to suggest that it is necessary for the Committee to also consider the rationale for why Queensland has its current maximum three-year term arrangements and the relevance of this rationale in consideration of any potential change to four-year terms.

As well as considering the origin of, and underpinning rationale for, the current arrangements in Queensland, this submission will assess the merits or otherwise of various arguments that are often posited in favour of a change to four-year parliamentary terms. The submission will also briefly consider the proposition around whether General Elections in Queensland should be held at a prescribed fixed time. Although the Committee's Terms of Reference does not expressly require it to consider this issue, it is noted that both the Government³ and the Opposition⁴ have indicated support for a fixed term approach.

¹ Queensland Parliamentary Hansard, 15 September 2015, p. 1707

² Queensland Parliamentary Hansard, 17 September 2015, p. 1986

³ For example, in 2012 the then Queensland Opposition Leader, Annastacia Palaszczuk MP, reportedly stated that "*... we do support four-year fixed terms.*" (<http://www.theaustralian.com.au/national-affairs/state-politics/fixed-four-year-terms-on-horizon-in-the-sunshine-state/story-e6frgcx-1226312900250>)

⁴ Queensland Parliamentary Hansard, 17 September 2015, Statement by Ian Walker MP, Shadow Attorney-General and Shadow Minister for Justice, Industrial Relations and Arts, p. 1984;

The origin of, and rationale for, Queensland's current parliamentary term arrangements

Prior to 1890 parliamentary terms in Queensland were for a maximum of five years, although it appears that soon after Queensland became a separate colony from New South Wales, calls were made for parliamentary terms to be of a shorter duration.⁵ In fact, Bills for triennial parliaments were introduced in 1864, 1865, 1868, 1881, 1882 and 1884 although none were enacted.⁶ Finally, in 1890 the *Constitution Act Amendment Act 1890* was enacted to reduce the length of the parliamentary term to a maximum of three years.⁷ The parliamentary debates relating to this legislation indicate that the primary reason for the reform was to make Members of Parliament more accountable and responsive to their electors.⁸ Indeed, the introduction of maximum three-year terms was seen as a much needed democratising initiative.⁹

The change to a maximum three-year parliamentary term was made at a time when the presence of organised party discipline was not so apparent in the Parliament, meaning that members could generally exercise more independent thought and action than has subsequently been the case. Nevertheless, the change was consistent with the general move across all Australian Parliaments during that period to reduce the length of parliamentary terms.¹⁰ This move was particularly influenced by the nineteenth century Chartist Movement which had as two of its principal aims the introduction of annual parliaments and the payment of elected representatives.¹¹ The Hansard records reveal that members of the Queensland Parliament were aware that during the seventeenth century triennial parliamentary terms had existed in England to keep tighter control of the executive but that this had changed in 1716 in order to allow for seven-year terms.¹² They were also aware that during the eighteenth century unease about the lengthy duration of parliamentary terms had seen a number of (unsuccessful) attempts to reduce their length.¹³

However, it is noted that not all members of the Queensland Parliament supported the 1890 Bill to reduce the length of the parliamentary term and one of the arguments they used to oppose the proposal has a distinctly modern tone. Nowadays it is suggested that the current three-year term is too short because governments spend the first year of office settling in, the second making

Explanatory Notes to the *Constitution (Fixed Term Parliament) Amendment Bill 2015*, Introduced by Ian Walker MP, Shadow Attorney-General and Shadow Minister for Justice, Industrial Relations and Arts (https://www.legislation.qld.gov.au/Bills/55PDF/2015/ConsFixedTermPAB15_PE.pdf)

⁵ Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 17 July 1890, p. 274

⁶ Bernays, C.A. 1919, *Queensland Politics during Sixty (1859-1919) Years*, Government Printer, Brisbane, pp. 29, 31, 51, 90, 103

⁷ Although the reform did not actually commence until the election of 1893.

⁸ Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 17 July 1890, pp. 274-286;

Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 31 July 1890, pp. 434-438;

Queensland Parliamentary Hansard (Legislative Council), *Constitution Act Amendment Bill*, 16 September 1890, pp. 79-81

⁹ Bernays 1919, pp. 29, 123, 285, 296

¹⁰ At that time "... shorter rather than longer parliamentary terms were regarded as the democratic desideratum" (Sawer, M. (Ed) 2001, *Elections Full, Free & Fair*, The Federation Press, Sydney, p. 24). Members who supported the 1890 Bill were particularly impressed by the arguments of the drafters of the American Constitution who favoured shorter parliamentary terms. In this regard the Americans considered that representatives elected for longer periods would more likely be inclined to eventually disregard the wishes of their constituents. Frequent elections were considered to ensure that this did not occur (Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 17 July 1890, p. 276).

¹¹ Sawer 2001, p. 36. Also, the relevant Hansard records from the time indicate that Chartist principles were a consideration for many of the members of Parliament who supported the 1890 Bill (Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 17 July 1890, p. 281). Notably, a Bill for the payment of Queensland members of Parliament had been enacted the year before, in 1889 (Bernays 1919, p. 295).

¹² While the reform relating to seven-year terms was ostensibly to reduce election expenses, it had the practical effect of favouring one particular side of politics over the other (https://en.wikipedia.org/wiki/Septennial_Act_1716).

¹³ Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 17 July 1890, p. 281. The duration of terms for the British House of Commons was finally reduced to five years in 1911.

decisions, and the third planning for the next election.¹⁴ This is almost the same argument that was used during the debate to oppose the 1890 Bill. Indeed the Premier of the time, the Honourable B D Morehead, said, “*The first year [members] are learning, the next year they are doing, and the third year they are electioneering.*”¹⁵ It is ironic that one of the arguments now used to justify the extension of the parliamentary term from three to four years is essentially no different from that used in 1890 to resist the change from five to three years.

Queensland’s Legislative Council, which was a nominated (unelected) body, was abolished in 1922 partly on the condition that the system of maximum three-year parliamentary terms would remain in place for the Legislative Assembly. The then Labor Premier, the Honourable E G Theodore, expressly indicated that the continuation of maximum three-year parliamentary terms would allay any concern that the introduction of unicameralism could have detrimental effects as a consequence of governments exercising power without being subject to bicameral checks and balances. In 1921, Theodore wrote in the following terms to the Queensland Governor:

*The Labor Party have been pledged for many years to secure the abolition of the Council, believing in a Parliament based on a system of one Chamber only; and, so long as we have a free and unfettered franchise and Parliaments that do not extend beyond a three-year period, there can be in that system no danger to the interests of the people.*¹⁶

In subsequently introducing the Bill to abolish the Legislative Council to Parliament, Theodore said:

*What we want in a democratic community is a system which will give a ready, free and direct expression of the will of the people. That can only be got by having frequent appeals to the people, the appeals not less frequent than once in three years at the most.*¹⁷

Moves were subsequently made, during the tenure of the conservative Moore Government (1929-1932), to reintroduce five-year parliamentary terms as well as the Legislative Council. Upon the Labor Party’s return to office, Premier William Forgan Smith introduced the *Constitution Act Amendment Bill 1934* to constitutionally entrench both maximum three-year terms and unicameralism.¹⁸ Forgan Smith’s purpose was to ensure that control of the Constitution remained in “*the hands of the people*” so that no move could be made to extend the length of parliamentary terms or to re-establish the Legislative Council without the approval of the people in a referendum.¹⁹

It is noted that one of the Bills recently introduced by the Queensland Opposition seeks to amend the *Constitution Act Amendment Act 1934* by omitting the requirement for electors to first approve any proposed extension to the length of the parliamentary term.²⁰ The implications and consequences of this proposal are far reaching. If the Opposition’s Bills were to ever be enacted not only would electors be removed from having the ultimate say over whether parliamentary terms

¹⁴ Legal, Constitutional and Administrative Review Committee, *Four Year Parliamentary Terms*, Background Paper, April 2000, p. 4 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/2000/four-year-parl-terms/IP-000411.pdf>); Queensland Constitutional Review Commission, Report, 2000, pp. 39, 40

¹⁵ Queensland Parliamentary Hansard (Legislative Assembly), *Constitution Act Amendment Bill*, 17 July 1890, p. 278

¹⁶ Cited in Fitzgerald, R. 1984, *From 1915 to the Early 1980s – A History of Queensland*, UQP, Brisbane, pp. 26-27

¹⁷ Cited in Murphy, D., Joyce, R. & Cribb, M. (Eds) 1990, *The Premiers of Queensland*, UQP, Brisbane, p. 322.

¹⁸ The former Legal, Constitutional and Administrative Review Committee has noted, “*The Constitution Act Amendment Act 1934 (Qld)*, s 4 prevents the term of the Legislative Assembly being extended without the approval of a referendum and referendum entrenches itself” (LCARC Report No 41, n.55, p. 10 [<https://www.parliament.qld.gov.au/documents/committees/LJSC/2000/qld-const-entrenchment/Report-41.pdf>]). The double entrenchment protection is provided under section 4(6): “*The provisions of this section shall extend to any Bill for the repeal or amendment of this section.*”

¹⁹ Queensland Constitutional Review Commission, Report, 2000, pp. 68-69

²⁰ See *Constitution (Fixed Term Parliament) Amendment Bill 2015*, cl. 10

should be extended but it would also mean that any future extension to the length of the parliamentary term (such as to five years or longer) could be achieved simply by means of an ordinary Act of Parliament. The passing of any such Act would never be in doubt given the dominance of the Parliament by the executive courtesy of organised party discipline. It would have been useful had the Explanatory Notes or the Introduction Speech for the Opposition's Bill provided elucidation on these points but unfortunately neither specifically identified nor addressed such matters.²¹ It is noted that the Opposition's approach in this regard appears to be contra to that taken elsewhere in Australia where four-year terms have been adopted. For example, despite having fixed four-year terms for its Legislative Assembly, New South Wales still has in place a requirement to ensure that a referendum is held on any proposal to reduce or increase the length of the parliamentary term.²²

The preceding historical overview highlights that Queensland's system of maximum three-year parliamentary terms and its unicameral parliamentary arrangements are inextricably linked. The clear intent was that the former would underpin the latter. Even before any other argument in favour of four-year parliamentary terms is addressed, consideration needs to be given to the following.

First, any proposal to extend the current length of the parliamentary term would need to satisfactorily explain to the Queensland community why it is no longer necessary for the nexus between Queensland's maximum three-year parliamentary term and its unicameral parliamentary arrangements to be maintained. One argument that might be made is that Queensland now has greater accountability mechanisms and safeguards to restrain excessive executive action compared to what existed when the (unelected) Legislative Council was abolished in 1922. For instance, it might be said that Queensland now has a well-established parliamentary committee system. Experience in Queensland has shown however, that the reality of organised party discipline in the Parliament is such that this particular accountability mechanism can be subject to interference by the executive.²³ Furthermore, as the 1998 experience in Victoria showed when the independence of that State's Auditor-General was under threat from the changes that were introduced by the then Kennett State Government,²⁴ such accountability mechanisms are also susceptible to the political whims of the government of the day. Such would especially be the case under a unicameral parliamentary system where a government, in control of the single House of Parliament, can act without the usual bicameral checks and balances. On the other hand, Queensland's system of maximum three-year parliamentary terms is currently constitutionally entrenched, and has been since 1934, which makes it more resistant to executive manipulation.

Second, since three-year parliamentary terms were specifically introduced to facilitate greater member responsiveness and accountability, it would need to be satisfactorily explained to the Queensland community how increasing the length of the parliamentary term would serve to

²¹ The Explanatory Notes to the *Constitution (Fixed Term Parliament) Amendment Bill 2015* only state as follows: "Clause 10 omits section 4 of the *Constitution Act Amendment Act 1934* dealing with the duration of the Legislative Assembly." (https://www.legislation.qld.gov.au/Bills/55PDF/2015/ConsFixedTermPAB15_PE.pdf)

²² See *Constitution Act 1902* (NSW), s. 7B(1)(b)

²³ For example, in 2013 the former Government used its numbers in the Legislative Assembly to discharge the entire membership of the then Parliamentary Crime and Misconduct Committee (Queensland Parliamentary Hansard, 21 November 2013, pp. 4263-4273). Subsequently, the chairperson of the committee, the former independent member for Gladstone, Liz Cunningham, reportedly said that "... the move called into question the independence of the committee system. 'I think that's the core issue here that a committee that has progressed a matter contrary to the way the government may have liked it to have progressed has been dismissed and I think in the community's mind the question could be how independent will committees be allowed to be'."

(<http://www.couriermail.com.au/news/queensland/newman-government-axes-pcmc-critical-of-cmc-boss-ken-levy-supporting-bikie-laws/story-fnihsrf2-1226765680229>)

²⁴ Funnell, W. 2001, *Government by Fiat*, UNSW Ltd, Sydney, pp. 158-165

enhance the responsiveness and accountability of members to their electors. There has long been concern that increasing the length of parliamentary terms contributes to a reduction of government accountability to the Parliament and ultimately the people. For example, the dissenting view of the 1929 Royal Commission on the Constitution was that “... *the greater the control of Parliament by the electors the better for the people, and the lengthening of the term of Parliament tends to weaken this control.*”²⁵ Accountability of Parliament to the people is an especially important consideration given Queensland’s unicameral parliamentary arrangements.

Furthermore, it would need to be explained to the Queensland community how the holding of elections less frequently than at present would facilitate public participation in the democratic process and ultimately, democracy itself. On this point the renowned constitutional scholar A V Dicey held that the citizens are the true political sovereigns of the state.²⁶ The most tangible way for citizens to express their sovereignty is through the ballot box. Yet, an increase in the length of the current parliamentary term would of necessity decrease the number of opportunities for the Queensland people to exercise their sovereignty, thereby diminishing their ability to cast their judgement on the performance of their elected representatives and that of the government of the day.²⁷ Not only that, but historian Geoffrey Blainey has suggested that longer parliamentary terms “... *reduce the right of the Australian electorate to dismiss an incompetent or underperforming government at the earliest possible opportunity.*”²⁸ On this point even some Industry figures appear to agree. For instance, in 2003 Pat McKendry of the National Retail Association reportedly advised caution with respect to any proposal to increase the length of parliamentary terms because “... *longer terms would mean it would take longer to throw out an incompetent government ... introducing four-year terms because of the cost of elections was superficial and wrongly put a price on democracy.*”²⁹ The former Legal, Constitutional and Administrative Review Committee of the Queensland Parliament also noted the argument that extending the parliamentary term to four years would mean that the electorate must wait longer to register its approval or disapproval of the Government of the day.³⁰ Undoubtedly, the longer the time between elections the less the voters will have the opportunity to exercise their sovereignty and cast their judgement on the performance of their elected representatives, and indirectly the government, at the ballot box.

²⁵ Cited in “Should the three-year maximum term be retained?”, Parliament of Australia Library Research Paper 2 2003-04, *Four-year Terms for the House of Representatives?* (September 2003)

(http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0304/04rp02)

²⁶ Cited in Funnell, 2001, p. 2

Similarly, the former Legal, Constitutional and Administrative Review Committee recognised that the people of Queensland are “*the actual font of sovereign power in this State*” (LCARC Report No 31, October 2001, p. 7

[<http://www.parliament.qld.gov.au/documents/committees/LJSC/2001/Report-31.pdf>]). The High Court of Australia has also recognised that ultimate sovereignty rests with the people: *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 at para 17 per Deane and Toohey JJ; *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at para 37 per Mason CJ; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at para 13 per Deane J.

²⁷ As Steve Wardill, State Political Editor for the Courier Mail recently expressed it, “*Queenslanders could soon head to the ballot box to decide whether they should head to the ballot box less often.*”

(<http://www.couriermail.com.au/news/queensland/premier-annastacia-palaszczuk-to-consider-a-vote-on-changing-queensland-mp-terms-from-three-years-to-four/story-fntuy59x-1227529234516>). In its final report on the issue of four-year terms for Queensland the former Legal, Constitutional and Administrative Review Committee also recognised that longer parliamentary terms would in practice mean fewer elections (LCARC Report No 27, July 2000, pp. 16-17 [<https://www.parliament.qld.gov.au/documents/committees/LJSC/2000/four-year-parl-terms/Report-27.pdf>]).

²⁸ Joint Standing Committee on Electoral Matters, *Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, October 2005, Chapter 7, p. 169

(http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/elect04/report.htm)

²⁹ The Courier Mail, *Business supports term vote*, 15 October 2003, p. 13

³⁰ Legal, Constitutional and Administrative Review Committee, Queensland Legislative Assembly, *Four Year Parliamentary Terms*, Background Paper, April 2000, p. 4 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/2000/four-year-parl-terms/IP-000411.pdf>)

As to the impact which extending the length of parliamentary terms could have on public participation in the political process, it is noted that concerns have often been expressed about the increasing political apathy and disengagement which is evident across the Australian community.³¹ Any move to increase the length of Queensland's parliamentary terms, the natural corollary of which would be a reduction in the opportunities for the people to directly engage in the formal political process through the ballot box, could risk further distancing and alienating electors from that process.

It should be noted that while other Australian jurisdictions may already have four-year parliamentary terms this does not in any way negate the validity, or counteract the merits, of the above observations. This is because electors in those jurisdictions also have to wait longer before they can pass judgement on the performance of their elected representatives at the ballot box. Similarly, increased public participation and engagement in the political process of those jurisdictions is not automatically encouraged or fostered as a result of them having longer parliamentary terms.

Analysis of various arguments in favour of four- year parliamentary terms

Statements have been made at various times about the purported benefits of four-year parliamentary terms. For example, when recently introducing the Opposition's Bills for fixed four-year parliamentary terms in Queensland the Shadow Attorney-General and Shadow Minister for Justice, Industrial Relations and Arts, Ian Walker MP, said:

*... there are a number of significant advantages in having fixed four-year terms of government. First, it provides for better government and better public policy making because decisions can be made in the interests of outcomes and better services for Queenslanders, rather than short-term political gain or what may be in the news that day or that week. Secondly, it removes the constant speculation from the political process and provides fairness to all political parties, rather than what is in the interests of the government of the day. Thirdly, it provides confidence and certainty in government from the public and also from the business community, which drives investment, economic confidence and job creation.*³²

Elsewhere, Mr Walker reportedly said that, *"A fixed four-year term gives people certainty, gives governments certainty and they can work within that time — as they have for a long time for example in local government — to an agreed and established and understood election date."*³³

The Premier, Annastacia Palaszczuk MP, has been reported to say that, *"I've got an open mind to this. It happens at a council level at this state, it happens in New South Wales, it happens in Victoria*

³¹ E.g., Legal, Constitutional and Administrative Review Committee, *Hands on Parliament - A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes*, Report No 42, September 2003 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/2002/hands-on-parliament/Report-42.pdf>);

Legal, Constitutional and Administrative Review Committee, *Voices and Votes - A Parliamentary Committee Inquiry into Young People Engaging with Democracy*, Report No 55, August 2006 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/2005/voices-and-votes/Report-55.pdf>);

Joint Standing Committee on Electoral Matters, *Civics and Electoral Education*, May 2007

(http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/education/report.htm)

³² Queensland Parliamentary Hansard, 17 September 2015, *Constitution (Fixed Term Parliament) Amendment Bill 2015*, Introduction Speech, Ian Walker MP, p. 1984

³³ <http://www.abc.net.au/news/2015-09-15/queensland-government-flags-four-year-parliamentary-terms/6776736?section=qld>

and we need to have a mature discussion about it.”³⁴ In Parliament the Premier recently said, “The length of parliamentary terms in Queensland has long been a subject of debate. It is something our business community require certainty about. Indeed, it is something that all Queenslanders require certainty about.”³⁵

The Speaker of the Queensland Parliament, Peter Wellington MP, has been reported as saying that “... a regular electoral cycle would provide certainty in Queensland.”³⁶

The former Premier, Campbell Newman, reportedly said that “... four-year fixed terms would ‘give more certainty to Queensland.’”³⁷ Although, paradoxically, the former Premier called the recent 2015 State election ahead of time³⁸ on the grounds that “... an early election was needed to provide certainty to business and the economy.”³⁹

It is notable that claims about the purported benefits of longer parliamentary terms are often expressed as fact without any substantiating evidence being provided or cited in support. Perhaps this is not surprising since actual evidence in support of such claims is either meagre or non-existent. As has been observed, “... One difficulty with moving from the three-year term is the lack of evidence that such a change would actually bring the benefits that are claimed... although there is a lot of sentiment in favour of the four-year term, it is all based on speculation rather than hard evidence...”⁴⁰

Four-year terms and certainty

As noted above, claims have been made that longer (and fixed) parliamentary terms in Queensland will facilitate greater certainty for business and the community. However, it is legitimate to query whether a longer (and fixed) parliamentary term will of necessity provide the certainty for business and the community that is claimed. The answer is, not necessarily. While the date of the election may be known this does not entirely eliminate the uncertainty factor since the outcome of the election is still very much an unknown. Not only that, but if opinion polls leading up to Election Day are tight then business may become reluctant to invest and consumers may pull back on their spending while all await the outcome of “the poll that matters”. In such circumstances, having a longer (and fixed) parliamentary term will have been of no advantage or benefit. Not only that, but as to whether three-year parliamentary terms really have the adverse impact on business and the economy that is often claimed it has also been noted that “... as far as can be ascertained there is no methodologically sound study that establishes, without doubt, that economic performance has been materially affected by a legislative term.”⁴¹

Another point is that even though under fixed parliamentary terms the date for an election is certain, the prolonged electioneering and campaigning that precedes Election Day can be exhausting

³⁴ <http://www.brisbanetimes.com.au/queensland/bring-on-fixed-fouryear-terms-for-queensland-20150712-giag6h.html>

³⁵ Queensland Parliamentary Hansard, 15 September 2015, Statement by the Premier, p. 1701

³⁶ <http://www.abc.net.au/news/2015-07-10/speaker-peter-wellington-pushes-four-year-fixed-term-elections/6611736?section=qld>

³⁷ <http://www.abc.net.au/news/2015-01-07/campbell-newman-calls-for-fixed-terms-for-state-parliament/6004142?section=qld>

³⁸ The last possible date on which the 2015 State election could have been held was 20 June 2015 but the former Premier chose instead to call the election for 31 January 2015.

³⁹ <http://www.abc.net.au/news/2015-01-07/campbell-newman-calls-for-fixed-terms-for-state-parliament/6004142?section=qld>

⁴⁰ “Should the three-year maximum term be retained?”, Parliament of Australia Library Research Paper 2 2003-04, *Four-year Terms for the House of Representatives?* (September 2003)

(http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0304/04rp02)

⁴¹ Ibid

which brings its own difficulties. This has been the experience in the United States and other countries where fixed four-year terms operate. Having four-year fixed terms does not in any way eliminate, or mitigate the impact of, such lengthy campaign activities. Even in Australia where maximum three-year terms operate at the Federal level, when the date of the 2013 Federal Election was announced by then Prime Minister, Julia Gillard, some eight months ahead of the actual event – and so enable “... *individuals and business, investors and consumers to plan their year*”⁴² – one member of the then Queensland Government saw it not so much as an attempt to provide certainty for business and the community but as a “... *drawn-out nine-month election campaign which seems to be having a negative ripple effect that is being felt far and wide.*”⁴³

What is currently being explored by the Committee is an extension of one year to the current maximum three-year term (with the possibility of any such longer term being fixed). However, the difference between three- and four-year terms as to the benefits that may actually ensue from the extra year has been found to be “... *quite marginal*”.⁴⁴ Furthermore, any strength in the argument that longer parliamentary terms are necessary to ensure greater certainty for business was considerably blunted by the experience of the recent 2015 State election which was called earlier than it could have been on the basis that “... *an early election was needed to provide certainty to business and the economy.*”⁴⁵ Accordingly, the argument that longer (and fixed) parliamentary terms are essential to provide greater certainty for business and the community is demonstrably lacking in substance.

Four-year terms and government decision-making

As noted above, claims have been made that longer parliamentary terms in Queensland will facilitate better government decision-making. However, it is legitimate to query whether longer terms will necessarily produce better government decision-making. In this regard the following is provided for consideration.

First, extending the parliamentary term from three to four years is, in reality, not so much of an increase that governments would be empowered to undertake the long-term planning that is often suggested.⁴⁶ Even with a four-year parliamentary term a government will still most likely be looking forward to securing its next term in office and to act accordingly.

Second, regardless of the length of the parliamentary term all governments and their agencies have to deal with the reality and impact of rapidly changing circumstances on policy development and planning. As has been observed, “... *the contingent nature of policy delivery and the changing characteristics of the policy environment can often unhinge the most ‘rational’ of objectives.*”⁴⁷ Therefore, irrespective of whether the parliamentary term is for three or four years, government policy-making and planning will need to be sufficiently flexible and responsive to the complexities and challenges arising from changing circumstances. The purpose of the requirement for the operational plans of Queensland Government agencies to cover a period of not more than one year,

⁴² <http://www.abc.net.au/news/2013-01-30/julia-gillard-calls-september-14-federal-election/4491118>

⁴³ Queensland Parliamentary Hansard, 20 March 2013, Statement by Seath Holswhich MP, p. 789

⁴⁴ “Should the three-year maximum term be retained?”, Parliament of Australia Library Research Paper 2 2003-04, *Four-year Terms for the House of Representatives?* (September 2003)

(http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0304/04rp02)

⁴⁵ <http://www.abc.net.au/news/2015-01-07/campbell-newman-calls-for-fixed-terms-for-state-parliament/6004142?section=qld>

⁴⁶ As noted previously, the actual difference between three and four year terms in terms of benefits has been suggested to be “... *quite marginal.*” (See “Should the three-year maximum term be retained?”, Parliament of Australia Library Research Paper 2 2003-04, *Four-year Terms for the House of Representatives?* (September 2003)

(http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0304/04rp02))

⁴⁷ Davis, G., Wanna, J., Warhurst, J. & Weller, P., 1992, *Public Policy in Australia*, 2nd edn., Allen & Unwin, p. 186

for example, is so that agencies will ensure their plans are continually being updated and adapting to the changes in their operating environments.⁴⁸

Third, whether the parliamentary term is three or four years is effectively immaterial given the ramifications of Queensland's participation in the global economy. While it is now an accepted economic reality, globalisation has a recognised downside as to its influence on a government's ability to predict the impact of, and implement, its economic and social policy agenda.⁴⁹

Finally, the impact of Australia's federal system on Queensland will remain unchanged regardless of the length of its parliamentary term. Queensland will still be affected by the budgetary and planning decisions of the Commonwealth (which operates on the basis of three-year parliamentary cycles) as well as by any exercise of its significant constitutional and financial powers and influence in relation to the State.

Overall, therefore, the claim that better government decision-making will be a necessary corollary of longer parliamentary terms is questionable. As has been observed:

*... A second problem relates to the contention that the existing [three-year] term has a deleterious impact upon the legislative performance. Critics point to the rush to legislate before the end of a parliament, but seem not to consider the possibility that the shorter term acts as a strong motivating instrument to get planning under way and legislation passed promptly. In addition, extending the House term to four years will not necessarily see the improved pursuit of medium- and long-term planning strategies. In many cases lengthy periods may be required after the passage of legislation before policies are seen to be producing results. The required lead-time may be far longer than four years and the difference between three and four year terms may therefore be quite marginal.*⁵⁰

As well, the former Legal, Constitutional and Administrative Review Committee of the Queensland Parliament noted the argument that extending the parliamentary term to four years brings with it "... the possibility that a Government may become complacent and less responsive to the interests of the electorate. This could result in worse policy formulation and decision making."⁵¹

Four-year terms and local government

As noted above, the suggestion has been made that the Queensland Parliament should have four-year terms because local governments in Queensland have four-year terms. However, in assessing the merits of this suggestion as an argument for why four-year terms should be introduced for the Queensland Parliament the following is provided for consideration.

Queensland's local governments have operated on fixed four-year terms only since March 2000. Prior to that time, local government elections were held on a fixed day every three years. This was in accordance with the decision by the then State Labor Government in 1921.⁵² Under this decision triennial elections replaced the previous practice of annual elections for local governments:

⁴⁸ See *Financial and Performance Management Standard 2009* (Qld), s. 9

⁴⁹ Argy, F. 1998, *Australia at the Crossroads*, Allen & Unwin, pp. 11, 130, 134, 216, 220

⁵⁰ "Should the three-year maximum term be retained?", Parliament of Australia Library Research Paper 2 2003-04, *Four-year Terms for the House of Representatives?* (September 2003)

(http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0304/04rp02)

⁵¹ Legal, Constitutional and Administrative Review Committee, Queensland Legislative Assembly, *Four Year Parliamentary Terms*, Background Paper, April 2000, p. 4 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/2000/four-year-parl-terms/IP-000411.pdf>)

⁵² Greenwood, G. & Laverty, J. 1959, *Brisbane 1859-1959 – A History of Local Government*, G. Greenwood (ed), Produced by Oswald L. Ziegler for the Council of the City of Brisbane, Qld, Australia, pp. 213, 218, 291

*The various local government Acts as a general rule stipulated that one-third of the members of a council should retire each year but, where areas were divided, one member from each division or ward was required to retire annually. This meant that, where each division or ward returned only two members, as was the case in Brisbane, the tenure of aldermanic office was two instead of three years; the staggering of elections was designed to secure some continuity of policy and to facilitate long-term planning. The Local Authorities Acts Amendment Act of 1920 completely changed the procedure by providing for triennial elections with the retirement of the whole council at each election.*⁵³

In replacing annual elections with three-year terms it was considered that:

*... there was no great need for continuity of policy in local government because it was concerned with things of no great moment [and] in any case triennial elections were preferable to the existing annual rotational ones.*⁵⁴

The adoption of three-year terms for local government also aligned with the maximum three-year parliamentary terms at the State level.

The change in 2000 from three-year to four-year terms for local government was achieved under an ordinary Act of Parliament, the *Local Government and Other Legislation Amendment Act (No 2) 1999*. According to the Explanatory Notes for the Bill:

*Community consultation was undertaken by Queensland councils and Members of Parliament (MPs). A Local Government Association of Queensland (LGAQ) sponsored survey was also conducted on community attitudes to four year terms for councillors. The survey showed that 57% of respondents supported four year terms for councillors. A majority of the councils that considered the issue were supportive of the change.*⁵⁵

At the time the then Minister for Local Government advised that 52 local governments had responded in favour of four-year terms for Local Government; 18 local governments had responded that they were not in favour of four-year terms for Local Government; and 46 local governments had not advised their position on the matter.⁵⁶

In addition, the Minister advised that nine local governments had indicated they did not have an opinion either for or against the proposal. Several of these stated this was because their communities were equally divided on the question and as such, no clear position could be determined. During parliamentary debate on the Bill, it was highlighted that the proposal did not have the support of the majority of councils.⁵⁷

A characteristic of local government is that, unlike the Queensland Legislative Assembly, local government terms of office can be changed simply by an ordinary Act of Parliament, such as

⁵³ Ibid, pp. 291-292

⁵⁴ Comments of then Home Secretary William McCormack MLA, cited in *ibid*, p. 292n3

⁵⁵ Explanatory Notes to the *Local Government and Other Legislation Amendment Bill (No 2) 1999*, p. 2

⁵⁶ Queensland Parliamentary Hansard, 26 October 1999, Response dated 20 September 1999 by the Minister for Local Government to Question on Notice 1093 "Local Government, Four-year Terms" dated 19 August 1999, p. 4205 (<http://www.parliament.qld.gov.au/documents/TableOffice/questionsAnswers/1999/991026QN.PDF#xml=http://www.parliament.qld.gov.au/internetsearch/isisquery/89964455-39f0-4843-a8e8-d62109a14b0f/1/hilite/>)

⁵⁷ Queensland Parliamentary Hansard, 23 November 1999, pp. 5159-5161, 5172, 5181

occurred in 1999, rather than being entrenched constitutionally with an associated requirement for a referendum.⁵⁸

It is not a strong argument to say that the Queensland Parliament should have longer terms just because Queensland local governments now have longer terms. The same response that was made earlier is applicable in the case of local government four-year terms: it now takes longer before electors can exercise their sovereignty and cast their judgement on the performance of their elected councillors and councils. In the case of any underperforming councils, this arrangement can prove to be very frustrating for local residents.

Should Queensland adopt fixed parliamentary terms?

As noted earlier, the Committee has not been expressly asked to consider as part of its inquiry whether four-year parliamentary terms for Queensland should include fixed election dates. However, given that a fixed term approach has been supported in recent times by the Government and the Opposition the following discussion is provided for consideration.

While there is certainly some popular appeal and attraction to the concept of fixed parliamentary terms, notably because it would involve the removal of the ability of the premier of the day to be able to select an election date to suit party political purposes, a number of disadvantages have also been identified. These include the following.⁵⁹

- they may detract from frequent opportunities for accountability to voters;
- longer, more expensive election campaigns may result;
- an early election can solve a political crisis if a government loses its majority in the Lower House;
- trust in the inherent wisdom of voters is only relevant once every three or four years (whichever is the case);
- members of parliament obtain a greater security than normal;
- the public may have to endure a longer period of a government that may have lost popular support;
- does not change the promotion and manipulation of candidates in the period before the election;
- instability may be prolonged where the government is reliant on crossbenches for support;
- a government with a small majority facing competing demands does not have recourse to an election to establish a clear mandate; and
- a fixed date may prove to be inconvenient due to unforeseen circumstances.

The UK Parliament now has in place fixed five-year parliamentary terms, although not with unanimous support.⁶⁰ During the preceding deliberations on whether this approach should be adopted, the UK parliamentary committee tasked with reviewing this matter identified a number of advantages and disadvantages with the proposal.⁶¹ In its final analysis the committee observed:

⁵⁸ This point was acknowledged by the then Minister for Local Government during the 1999 debate on the Bill to extend the length of local government terms from three to four years (Queensland Parliamentary Hansard, 23 November 1999, p. 5182).

⁵⁹ Sawyer, M. & Kelly, N. 2005, *Parliamentary Terms*, Democratic Audit of Australia (http://democratic.audit.anu.edu.au/papers/20050702_sawer_kelly_parl_terms.pdf) (cited with minor adaptation)

⁶⁰ https://en.wikipedia.org/wiki/Fixed-term_Parliaments_Act_2011;

<https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/150.pdf>;

<http://www.bbc.com/news/uk-politics-31917502>;

<http://www.irishtimes.com/news/world/uk/constitutional-flaw-in-british-fixed-term-parliaments-bill-1.2153433>

⁶¹ <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldconst/69/6904.htm> (see paragraphs 26-43)

The fundamental question is whether the principle of fixed-term Parliaments achieves the Government's stated aim of reducing the power of the executive whilst making the legislature more accountable to the people. The arguments are finely balanced ... There is not a straight choice between fixed and flexible parliamentary terms. As we have seen, there is a spectrum between a fully fixed and a fully flexible system and the Bill would establish a semi-fixed arrangement. There is a trade-off between the potential gain in democratic accountability that would result from limiting the Prime Minister's power and the potential loss in democratic accountability that could result from an overly rigid fixed-term arrangement. The changes introduced by the Bill need to be considered in these terms.

We recognise that, in promoting this Bill, the Prime Minister is prepared to relinquish an important prerogative power. This is a significant aspect of the Government's stated aim of reducing executive power. However, the balance of the evidence we heard does not convince most of us that a strong enough case has yet been made for overturning an established constitutional practice and moving to fixed-term Parliaments.⁶²

It is also noted that the former Legal, Constitutional and Administrative Review Committee of the Queensland Parliament identified a range of arguments against fixed election dates regardless of whether or not it was for three- or four-year parliamentary terms.⁶³

With Queensland's current unicameral parliamentary system, concern could arise within the community about the current maximum three-year arrangements being changed to a fixed four-year term without ensuring that appropriate and effective checks and balances are in place which cannot be circumvented or manipulated by the executive of the day. It is noted that there are now moves to consider whether Queensland should adopt a Human Rights Act.⁶⁴ While this would be a worthy undertaking, particularly in light of concerns around the potential for unrestrained and excessive executive action under a unicameral parliamentary system, it is noted that when this issue was last considered in 1998 it was opposed by the former Legal, Constitutional and Administrative Review Committee.⁶⁵ It remains to be seen whether the reservations expressed by the committee at that time could be allayed by any contemporary inquiry into the matter.

Therefore, in any consideration of whether Queensland should adopt fixed parliamentary terms, the Committee would be encouraged to consider the findings and experience of those elsewhere who have also grappled with this issue. For the maintenance of public confidence, at a minimum it would be essential to ensure that if fixed terms were ever to be adopted in Queensland that important democratic principles such as accountability and responsivity would not be compromised in any way.

I trust the above comments and observations will assist the Committee during its deliberations on this issue.

Yours faithfully

Don Willis

⁶² Ibid (see paragraphs 44-46)

⁶³ Legal, Constitutional and Administrative Review Committee, Queensland Legislative Assembly, *Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms*, Report No 27, July 2000, pp. 22, 38-39 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/2000/four-year-parl-terms/Report-27.pdf>)

⁶⁴ <http://www.brisbanetimes.com.au/queensland/parliamentary-inquiry-in-to-human-rights-act-for-queensland-20150915-gjng8k.html>

⁶⁵ Legal, Constitutional and Administrative Review Committee, Queensland Legislative Assembly, *The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?*, Report No 12, November 1998 (<https://www.parliament.qld.gov.au/documents/committees/LJSC/1997/bill-of-rights/Report-12.pdf>)