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 20<sup>th</sup> October 2015

Chair and Members, Finance and Administration Committee  
 Queensland Parliament

## **Re: Duration of Parliamentary Terms**

Honourable Members, I have two short answers to the questions posed in your issues paper. Should parliamentary terms be fixed, subject to the qualifications suggested in Mr Walker's Bill? Answer – yes. Should the term (now to be a fixed term, not a mere maximum) be extended to four years? Answer – NO! Let me elaborate just a little.

### **Fixed terms**

This is a thoroughly good idea, for all of the reasons offered in the “Arguments in favour” column on page 4 of your Issues Paper. To pick the eyes out of your list, fixed terms provide “political and economic certainty for the public and business community, provide a more stable political environment in which policies are more coherently devised and implemented, and in which other participants in government and politics—parliamentary committees, public servants, parliamentary staff and the like—can concentrate on their normal duties” – except for the period, predictable in advance, in which a campaign for the next election will be conducted.

An argument that I have often heard advanced against fixed terms is that it, *somehow* (though the “how” is never explained), reduces our chance to get rid of an unpopular government. In fact when a government knows that it is unpopular it is least likely to ask for an early dissolution – just look at how Ms Bligh left 3 years and 3 days between elections, and Mr Newman cut his term short by just 2 months, fearing that things would get even worse if he left the election until March! The only time a Premier will call a significantly early election is when he/she is confident of winning – this creates an unfair bias in favour of those already holding power. The matter is made worse by the fact that the nineteenth-century tradition that Cabinet as a whole made the decision as to election dates has been usurped by the Prime Minister or Premier – see page 85 of my textbook (*Constitutional Law*, Palgrave Macmillan, 2013). This gives the PM or Premier an unjustifiable power over possible dissent or revolt within the Cabinet or party – Owen Hood Phillips has claimed that the combination of variable terms and the Prime Minister's power to dissolve the House at whim gives the PM a power over his own backbench which is “the greatest blot on the English Constitution” (*Reform of the Constitution*, 1970).

As to the need for exceptional early dissolutions, I think Mr Walker's Bill gets it about right. I have long believed that the rules for dissolution and formation of government should be partly codified but in the end some discretion needs to be left in the hands of the Governor. I have always thought that Governor-General Sir

Ronald Munro-Ferguson took the right approach in 1918, which he described as “seeking information from representatives of all sections of the House with a view to determining where the majority lay, and what prospects there were of forming an alternative Government” (see my text at p 90). I think Mr Walker’s amendment will rightly leave the way free for a Governor to do the same when necessary. His choice of the election date is sound too – have the election in March, and get the new government installed in time to formulate a budget for the coming financial year.

### **Length of the Term**

I remain utterly unconvinced by the arguments for a longer term. I am surprised that opinion polls are reporting a majority in favour of it; I would have thought that after 3 years of blundering incompetence by Ms Bligh’s Ministers (she was ok herself, but some of the Ministers were utter duds!), and 3 years of arrogant disregard of the people’s wishes by Mr Campbell, people would rejoice that they had been able to vote them out after 3 years, and may have wanted a *shorter* term! Perhaps the respondents to the polls are mostly loyal party members?

But arguments based on recent experience aside, I still find the arguments of general principle unpersuasive. I would find them unpersuasive even if Queensland had a house of review, but they are even less persuasive in a State with a unicameral Parliament. I note that the reason why the 3-year term was entrenched in 1934 was as a trade-off for the entrenchment of the unicameral state of the Parliament – if we were to be stuck with one chamber, with its potential for dictatorial behaviour by government, at least we were to have a chance to throw out the dictator and bring in a different one at reasonably frequent intervals.

The arguments for the longer term mostly seem to focus on stability and the claim that “the business community will be better able to plan and manage its affairs, in an environment of greater certainty about the policy settings of government.” I must have missed the part of the Politics I course (Adelaide Uni, 1964, taught by Hetherington and Reid) that said that the most important principle of government is to keep the business community happy – I thought I had heard something about being responsible to the people! Unless threatened with things like nationalisation, businesses are supposed to *cope* with changing conditions – they are supposed to have something called *enterprise*. Even if there is some merit in the “stable policy settings” argument, most laws affecting business these days are Commonwealth laws; having longer terms for our State Parliament will not increase the stability of general business conditions. It may give governments “a longer period to implement policy, particularly in areas of planning and of delivery of major infrastructure” but if parties came to government with plans already worked out, 3 years would be enough.

I note that the only item of the People’s Charter of 1838 that is not now law is the call for *annual* elections. I would not suggest that you go to that extreme, but I also note that the laws of the Commonwealth and Queensland impose re-election at Annual General Meetings for the boards of corporations, clubs and societies. I don’t hear calls for longer terms coming from the Institute of Directors – why should they come from Government Ministers? If company directors can face re-election every year, politicians should be able to cope with one every third year, and anyway if they get things right they will be re-elected, just as company directors usually are – and the 3

will extend to 6, 9, maybe 12. (Which is about where governments that have started well generally go stale and *really* need throwing out, to give the other side a chance and let the stale ones renew themselves.)

The really farcical argument is the one, borrowed from the former LCARC, that a minority government might be left “in limbo”. The argument is better explained, in the fixed terms part of your IP, as a fear that a situation could arise where “a minority government is supported on matters of confidence and supply, but on no or little proposed legislation”. *When* have we ever had a minority government with such feeble powers of persuasion and negotiation? Mr Bracks is on record as saying that he thought the Victorian Parliament worked better in his first term, as leader of a minority government, than it did in his later terms. The Gillard government managed to get a large legislative workload through Parliament although it had to negotiate with cross-benchers in *both* Houses. Minority governments tend to work surprisingly well, though they may make life difficult for those who expect unquestioning obedience (incidentally this is an argument for proportional representation, but I know that is not the current issue).

Since you do not need a referendum to establish a fixed term, I suggest that you should split Mr Walker’s Bill into two – one to establish the fixed term and one, needing a referendum, to extend the term to four years (and to entrench the fixed term and generally tidy up the mess created by the separate existence of the 1934 Act, as his Bill proposes). I would applaud the former and campaign vociferously against the latter.

Sincerely

John Pyke

Former QUT lecturer in Constitutional Law (now retired).