



Queensland Parliamentary Service

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Ms Deb Jeffrey
Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Jeffrey

Inquiry into four year terms

I would like to thank the Committee for allowing me an extension to make a submission to the Committee's inquiry into four year terms.

Four year terms

I conditionally support four year fixed terms for the Queensland Parliament. I am a reluctant convert to four year terms.

My slow conversion is based upon over two decades of observation that three year terms are insufficient to allow governments to develop policies, plan and implement them without the distraction of the election cycle.

My reticence to date has been for one reason – lack of effective, entrenched accountability mechanisms. In particular, the absence of an Upper House means that the Queensland Parliament has had no 'House of Review' since 1922.

The Legislative Assembly and the parliamentary committee system is the only avenue for review of bills, finances and actions of the government. This is inherently problematic, because as the government of the day is formed from the majority party within the Assembly, and historically they have comfortable or large majorities in Queensland due to single member constituencies. Usually, the government has practically unfettered power to pass legislation and financial measures, despite objections from the Opposition, Cross Bench (if any) and the public generally. The only historical safeguard has been the fear of the public reaction at the next election.

The introduction of the estimates committee process in 1996 and the introduction of the portfolio committee system in 2011 have gone a long way to assisting the Legislative Assembly scrutinise bills and finances – and in some way perform the review functions often seen in other jurisdictions with Upper Houses. If the portfolio committee system is used correctly, it enables legislation to be properly scrutinised, allows external review and formal consultation with stakeholders.

However, I caution the committee that these enhanced accountability mechanisms are not a complete panacea to an Upper House for a number of reasons:

1. The portfolio committees are not entrenched. The portfolio committee system can be disposed of by way of a simple Act of Parliament (amending the *Parliament of Queensland Act 2001*) without the need for a referendum, or effectively neutered by amendments to Standing Orders which limit the matters referred to those committees. It must be emphasised that from 1922 to 1988 governments of both persuasions saw fit to govern without a high degree of parliamentary oversight and there was virtually no committee system in Queensland.
2. Processes such as estimates are established by Standing Orders and can be abolished, set aside or amended by simple resolution of the House. (For example, the system was modified in 2014 by resolution against the will of the Opposition and Cross Bench.)
3. Existing provisions within Standing Orders allow the government of the day to declare a bill 'urgent' and thus bypass whichever requirement for time, review or debate is in force at the time,¹ including portfolio committee review. Alternatively, committee review can be so truncated in time as to be less than effective.
4. The ability for governments to remove their members from committees, act as a powerful incentive to 'toe the party line' on committees. (For example, government appointed members of the Parliamentary Crime and Misconduct Committee were removed in 2013.)

Entrenchment or statutory enhancement of committee review of bills

In my view if Members of Parliament wish to propose four year terms to the Queensland public, they need to go to the public with 'clean hands' – indicating that they are willing to trade off four year terms against an entrenched review of bills process (including financial bills). That is, along with the increase in term accountability will be enhanced and safeguarded.

As other submissions have noted, the entrenchment of three year terms was undertaken at the same time that the continued absence of an Upper House was also entrenched, and three year terms was in essence argued to be the public's safeguard from a despotic parliament. It therefore appears justifiable, reasonable and only correct that an extension to four year terms be accompanied by other safeguards. The primary safeguard must be to ensure that bills (including financial bills) are appropriately reviewed and that urgency procedures are not misused.

The proposed enhancement of committee review of bills could be achieved in two ways:

1. Constitutional entrenchment - Manner and form provisions entrench certain legislative provisions so as to prevent their amendment or repeal by an Act of Parliament enacted in the ordinary course, that is, passed by a simple majority of the Legislative Assembly and assented to by the Governor as the Queen's representative. As in the current matter before the Committee, the most common manner and form provision imposes a referendum requirement. I propose that in the Bill to be placed before the Queensland public for a referendum to enable fixed four year terms, a provision be included, that provides:
 - a) That every Parliament established after the approval of the bill must establish at least seven portfolio committees the role of which will include the review of bills (including financial bills) introduced into the Assembly
 - b) That every Bill introduced into the Legislative Assembly must be referred to and reviewed by a portfolio committee, for a period of not less than 6 weeks, unless a special majority of the Assembly agrees to the bill not being referred to a portfolio committee or being referred for a period less than 6 weeks
 - c) A special majority to be defined as at least 65% of the members of the Assembly (currently 58 members), including at least one member who is not a member of the party or parties constituting the government

¹ For example prior to 2011, Bills had to lay on the table for at least 13 calendar days, but even this requirement was not adhered to and bills were often passed with shorter time on the table.

- d) That the provision is entrenched, that is cannot be altered without a referendum.
2. Statutory requirement - Alternatively enhance the current provisions relating to portfolio committees contained in the Parliament of Queensland Act 2001 to provide that:
- a) Every Bill introduced into the Legislative Assembly must be referred to and reviewed by a portfolio committee, unless a special majority of the Assembly agrees to the bill not being referred to a portfolio committee
 - b) A special majority to be defined as at least 65% of the members of the Assembly (currently 58 members), including at least one member who is not a member of the party or parties constituting the government.

The effect of either of the above provisions would be to ensure that governments with comfortable or large majorities could not simply declare bills urgent by using provisions in Standing Orders, or by simply suspending Standing Orders – there would need to be bipartisan support. There would need to be justifiable reasons of urgency.

Of course the second solution would not prevent the repeal of the statutory requirement by a simple Act as it would not be entrenched.

To justify this submission, I need to evidence the use of urgent bills procedure which causes a minimisation of proper review of legislative proposals.

Use of the urgent bills procedure – minimising review

Standing Orders allow for the Government to declare a bill ‘urgent’ and thus bypass whichever requirement for time and debate was in force at the time).

I have been assisted by a parliamentary intern, Ms Karri Coles in analysing the use of urgency procedures in the last 20 years.²

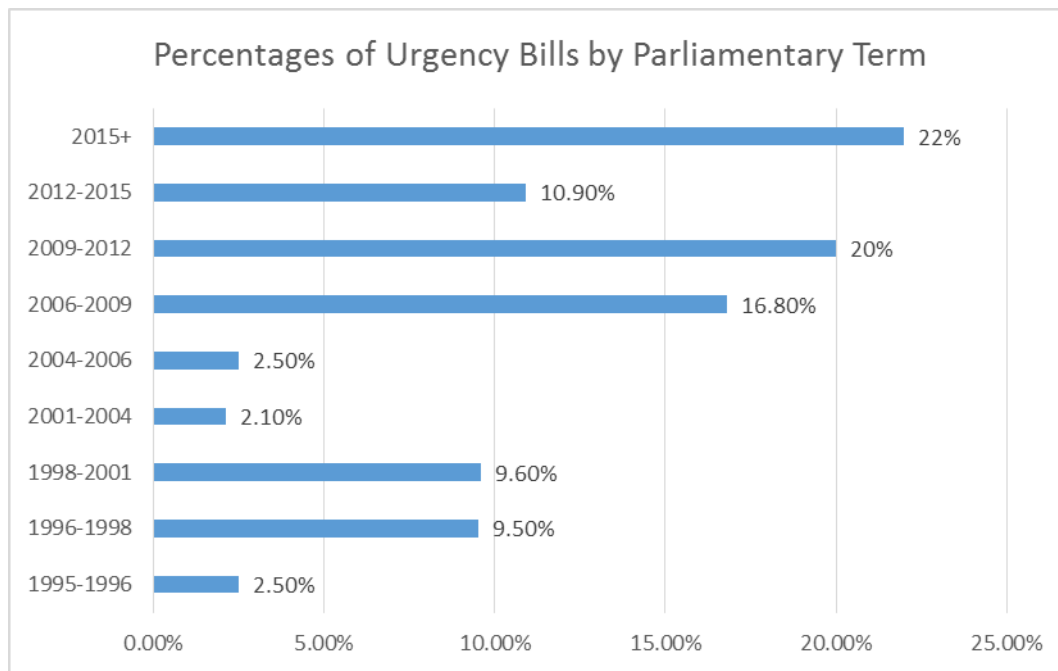
This is a period spanning nine (9) governments from both sides of the political divide.

Ms Coles’ research indicates that there have been 115 bills passed in accordance with urgency procedures. Ms Coles’ analysis has concluded that only six (6) of those 115 bills could be judged as genuinely urgent.³ Since 2006 and the commencement of the first Bligh government, there has been a marked increase in the use of urgency procedures - as shown in the graph below.⁴

² This project was started before the committee’s current inquiry.

³ I note here that any analysis in this area is likely to have some divergence based on the subjective views of the researcher. But the overall numbers identified by Ms Coles’ research, if not the categorisation, will remain objectively identifiable and consistent.

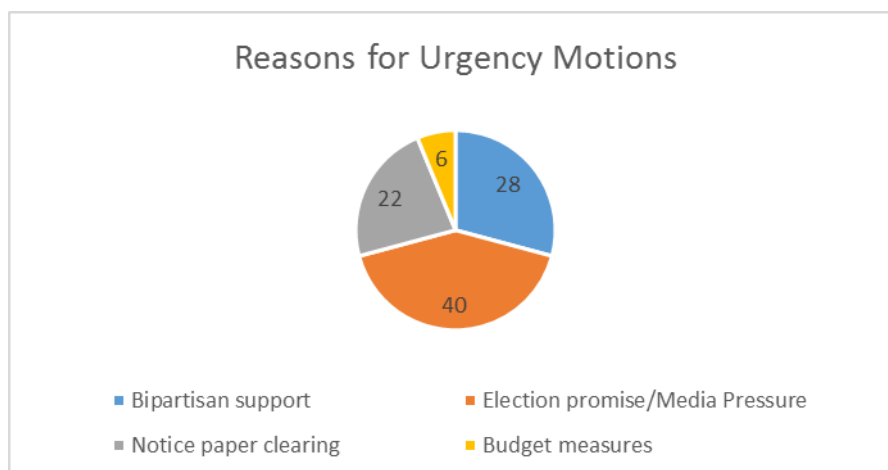
⁴ I note that the percentage for bills in the 55th Parliament is probably distorted by this Parliament being in its early stages and government seeking to implement election promises and/or propagate business.



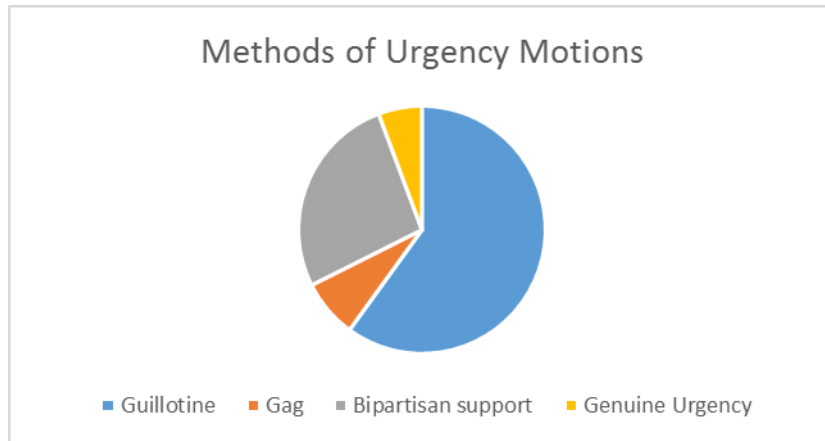
Ms Coles has classified the 115 urgency bills since 1995 into four (4) categories for the purpose of the research:

1. Urgency procedures where there has been bipartisan support (including genuine urgency bills)
2. Urgency procedures where there has been a political mandate (election promises & responses to viral media crises) oftentimes also the propagation of business at the commencement of a term
3. Notice paper clearing (usually at the end of the sitting or the year) – where the government seeks to dispose of matters on the notice paper
4. Budget measures (only during budget week) – where bills associated with the budget (for example, revenue bills) are needed to be passed.

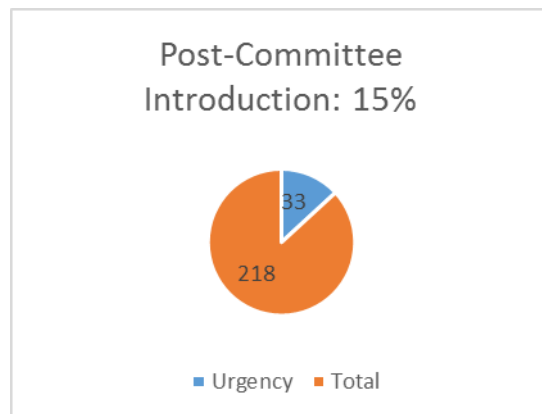
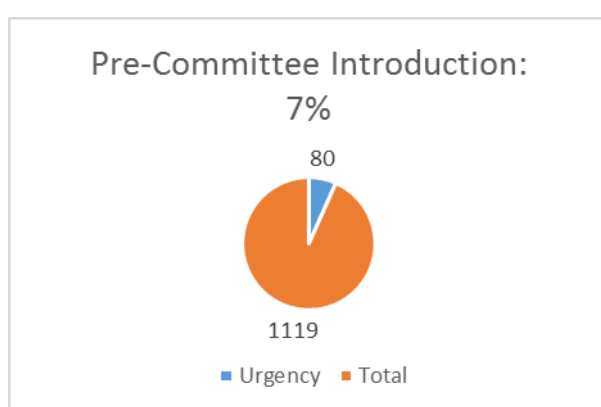
Ms Coles has found that of the four, political mandate is by far the most-utilised, at almost 42% of total urgency bills.



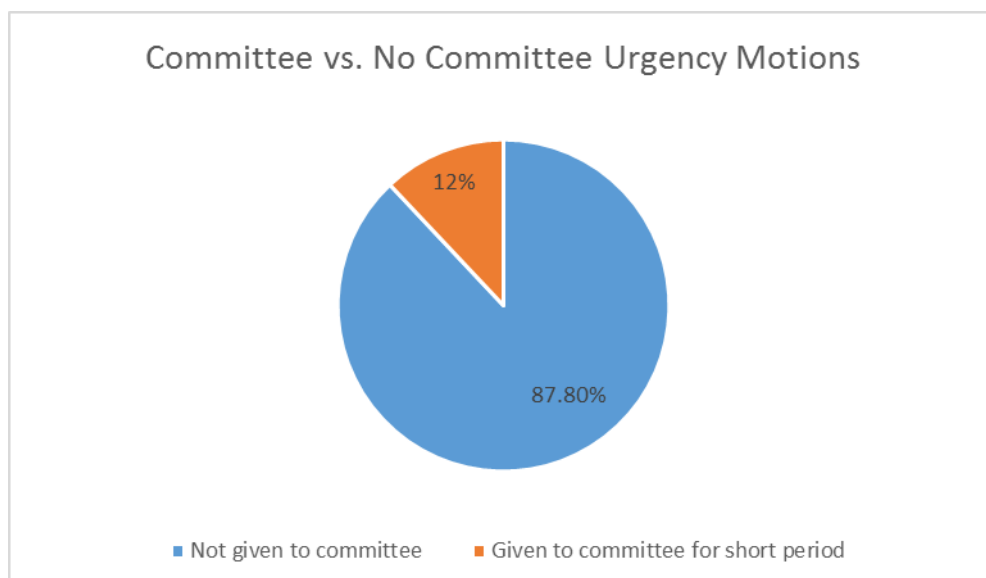
Genuine urgency – usually recognised by bipartisan support and no adverse debate or amendments – is the smallest component, indicating that the urgency provisions in Standing Orders are overused.



What is remarkable in Ms Coles' research is that after the introduction of the portfolio committee system, there was a doubling of the percentage of urgency bills. That is, before 7 September 2011, there was 1119 bills passed since 1995 and 80 of them were urgent; 7% of their total bills. In contrast, after September 2011 there have been 218 bills passed, and 33 bills were classed as urgent; 15% of bills.



Also interesting is that of those 33 bills passed urgently after the introduction of the committee system, only 12% of those (4 bills) were referred to a committee at all (albeit for only a few days), while the remaining 29 bypassed committees altogether.



The analysis suggests that the ability to declare bills as urgent and thus avoid detailed scrutiny is arguably being misused; with only six bills of the 115 passed are genuinely urgent and the large remainder are bypassing the prescribed method of review.

Accordingly, either the requirements for declaration of bills as urgent needs to be made more stringent, or there needs to be another avenue for review of bills that cannot be bypassed.

It is also noted that another aspect of the current review by portfolio committees is that relatively short periods are being provided to committees for the review of bills, but then the bills remain on the notice paper for a long period thereafter. This suggests that review by committees are, apart from urgency procedures, being unnecessarily truncated.

Fixed terms

In my view the only way to truly ensure four year terms is to fix the terms. Otherwise Premiers' will continue to call elections according to political opportunity.

In July 2000, the former Legal Constitutional and Administrative review Committee (LCARC) noted that "the record of elections held in Queensland since 1969 reveals that the average period of time between general elections has been 2 years and 11 months."⁵

However, the average period of time between elections has been on average less since that time. The time should rightly be calculated from the return of the writ or the opening, rather than between election days. In reality, the terms of each Parliament can be as high as 3 years and three months between elections under the current system. The table below indicates that despite having three years from the date set for the return of the writ, generally Parliaments have lasted as little as 2 years and 4 months to no more than about 2 years 10 months from the opening day to the dissolution since the 50th Parliament:

Parliament	Session	Opening Day	Last sitting day	Parliament dissolved	Duration
55	1	24-Mar-15	-	-	-
54	1	15-May-12	27-Nov-14	6-Jan-15	967 days 2 years, 7 months 23 days (inc. 6 Jan)
53	1	21-April-2009	16-Feb-12	19-February-2012	1035 days 2 years, 9 months and 30 days (inc. 19 Feb)
52	1	10-October-2006	12-February-2009	23-February-2009	868 days 2 years, 4 months and 14 days (inc. 23 Feb)
51	1	16-March-2004	10-August-2006	15-August-2006	883 days 2 years, 5 months (inc. 15 Aug)
50	1	20-March-2001	27-November-2003	13-January-2004	1030 days 2 years, 9 months and 25 days (inc. 13 January)

⁵ Report - No. 27, Review of the Queensland Constitution Review Commission's recommendation for four year parliamentary terms at page 22

Reasons given for ‘early elections’ vary from the need for by-elections to wanting to set long term policy, despite having a healthy majority.

I suspect that the real reasons are generally opinion poll driven or the fear that electoral conditions are on the wane. The option of “going early” gives the Premier of the day a degree of flexibility, not having to go when things may be worse.

Unless terms are fixed, then we will never actually see four year terms. We will instead see 3 years and 6 month terms or less – depending on the polls.

I also note that a fixed four year term is a different option to that put to the public in March 1991 when a referendum on four year terms was defeated. The amendment then proposed did not seek to insert either a minimum fixed period or a fixed period during which no early dissolution could occur, a dissolution could have occurred at any time during the proposed four year term. A fixed four year term is, therefore, a different question to that previously rejected by Queenslanders, albeit over two decades ago.

Timing

I note many submissions and the private members’ bill suggest fixed term elections should be held in March.

I believe that the council elections being held in March is probably behind this group think.

There are, I believe, a number of issues to be considered in setting the date:

- Weather patterns, particularly in North Queensland
- Avoiding holiday periods and significant events
- Avoiding disruption to business cycles
- Avoiding the accidental convergence of State and Local Government elections
- Avoiding the delay and associated uncertainty of the State budget which can effect business confidence.

In my opinion, the optimal period is the first or second weekend in September.

The last two elections have seen governments elected early in the year (March and January). On each occasion the budget has been significantly delayed. An election in the first week of September would be after the State budget, before the school holidays, well before the Christmas period and in generally good weather conditions throughout the State.

The private members’ bills

Two Private Members Bills were introduced on 17 September 2015 by Mr Ian Walker MP which the Committee is tasked to review.

The first Bill, *The Constitution (Fixed Term Parliament) Amendment Bill 2015* seeks to establish fixed four year terms.

I make the following general comments about the bill:

- I am concerned that the bill, by including incidental amendments to the Electoral Act is unduly complicating the bill to be put to the referendum. I suggest that these provisions could be excised into a separate bill, which takes effect upon Assent to the Four Year Bill. (There is precedent for “splitting” a bill.)
- The commencement of the Bill and associated provision is unduly complicated. The bill (or bills if split) should be stated to commence on a fixed date (ie 1 January 2017) or a set period after the referendum (1 year from the date of the referendum).

- In the United Kingdom, *The Fixed-term Parliaments Act 2011* introduced fixed-term elections to Westminster. Under the Act, parliamentary elections must be held every five years, beginning this year. Section 2 of the Act also provides for two ways in which a general election can be held before the end of this five-year period, one of which being if the House of Commons resolves "That this House has no confidence in Her Majesty's Government". If this motion is passed an early general election is held, unless the House of Commons within fourteen days subsequently resolves "That this House has confidence in Her Majesty's Government".

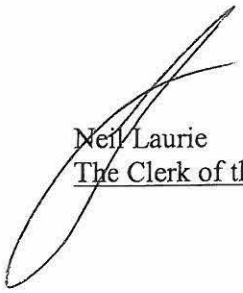
The private members' bill provides that one of the grounds for dissolution occurs if "a motion of no confidence in the government has been passed, or a motion of confidence in the government has been defeated, in the Legislative Assembly" and another government cannot be formed or a motion of confidence is not passed.

The difficulty lays in defining what a motion of confidence or no confidence is.

I would prefer the formulation in the UK Bill as it avoids arguments and uncertainty over the meaning of a motion of confidence or a motion of no confidence. That is, put the words in the statute.

- At one of the public forums doubt about whether the fixed term provisions would be entrenched was raised. My reading of clause 19G is that the Part establishing fixed four year terms is entrenched and the entrenching provision is also entrenched (thus being doubly entrenched).

Yours sincerely



Neil Laurie
The Clerk of the Parliament