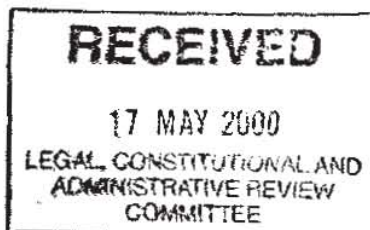


DEPARTMENT OF GOVERNMENT

PROFESSOR PAUL BOREHAM
HEAD OF DEPARTMENT



Submission No 28



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17/5/00.

Mr Gary Jenlon MLA,
Chair,
Legal, Constitutional and Administrative
Review Committee,
Parliament House.
Fax No: 3406 7070.

Dear Gary,
Thank you for soliciting an input on the Committee's
draft regarding 4 year terms for the Queensland Parliament.
I attach an opinion by a legally qualified friend, Mr
David Liddell. I would wish to support his position, as
would Mr Damon Blake. Although we three are all
members of the executive of the ASPG (Qld Chapter), I
would strongly emphasise that we are doing this in our
private capacities; that this does, in no way, commit the
Chapter to any position and that, as an apolitical
organisation, the Chapter does not take a position on matters
of this nature.

Yours sincerely,
Paul.

Dr Paul Reynolds : Reader in Government

DAVID LIDDELL

2 May 2000.

Dr Paul Reynolds,
Chair,
Queensland Chapter,
Australasian Study of Parliament Group
C/- Department of Government
University of Queensland,
ST LUCIA QLD 4072

Dear Paul,

Re Background Paper on Four Year Terms.

You asked me to consider the Background Paper released by the Legal Constitutional and Administrative Review Committee on the question of four year terms for the Queensland Parliament and to recommend to the Committee of the Queensland Chapter of the Australasian Study of Parliament Group whether the Chapter should make any submissions on the proposal to extend the parliamentary term.

The Queensland Constitutional Review Commission has recommended in its report that there should be four-year terms. The Background Paper is preliminary to the Legal, Constitutional and Administrative Review Committee reviewing that report and itself recommending to Parliament whether the Commissions report should be accepted. To do this the Committee is calling for public submissions by 12 May.

Current Position

The current position in Queensland is that Parliamentary terms are three years duration with the Government of the day having the unrestricted ability to advise the Governor to dissolve the Assembly at any time during that term. The Governor also has a reserve power to dissolve the Assembly in certain circumstances.

The term is entrenched in the Constitution and the parliamentary term can not be extended without a referendum.

The QCRC report.

The Queensland Constitutional Review Commission's report to Parliament in February 2000 recommended:

1. Parliamentary terms should be four years;
2. There should be a period of three years in which Parliament can not be dissolved except in prescribed circumstances, and
3. These provisions should be entrenched

Reasons for the QCRC's Position

The Term should be extended to four years basically for budgetary and long term planning reasons. At the present time only the second budget of a three-year parliament is able to address important long-term policies. The first looks back to fulfilling promises from the last election and the third looks forward to promises in the forthcoming election.

Secondly Queensland is the only state to still have three-year terms. (The Commonwealth and the ACT being the others out of step with the majority)

The Commission's reasons for recommending a fixed period component of the four-year term include:

- (a) In the present situation after about 12 to 18 months into the parliamentary term speculation begins to mount about an early election and parties and governments tend to commence to move into election mode. This leads to the avoidance of hard decision making by government and uncertainty in business circles. If the term were merely extended this would not necessarily cure this problem but if mandatory three year periods were introduced this would confine the uncertainty to the last year of the four year term.
- (b) The likelihood that the extension of the term without a minimum period would be seen by the electorate as merely providing the government with space for further political opportunism. (The 1991 Queensland referendum and the 1988 Commonwealth referendum on four year terms without any fixed period were defeated.)

The advantages of the four-year proposal with a three year fixed period are said to be to allow the government of the day further time to address issues which require long term planning and implementation. To give the business community longer-term certainty and to prevent opportunistic dissolution of the Assembly for overt political reasons.

Arguments against include the electorate having to wait longer to vote on the government's performance and the government becoming less responsive to community interests.

There is some variation among the other Australian Parliaments which have four-year terms as to the length of the fixed period. In NSW, WA, NT and Tas the full four years are "fixed" In SA and Vic it is 3 years. The Commission has chosen the SA and Vic model in this regard.

Dissolution during the fixed period or No!

In the Commission's recommendations the Queensland Parliament could only be dissolved during the fixed period if:

- (a) A no confidence motion was carried or a confidence motion was lost, or
- (b) An appropriation bill was lost or failed to pass.

In these recommendations the Governor would have no reserve power to dissolve parliament during the fixed period. The two conditions for dissolution reflect the current position. So what in effect is changed is that during the fixed period the Government cannot call an election at a time of its own choosing and the Governor cannot dissolve the Assembly under any other of the reserve powers.

In the other three Australian states which have a fixed period, be it for the full four years or three, there is a degree of similarity in relation to the grounds on which dissolution may occur during the fixed period. The only significant difference to the Commission's proposals relates to the fact that the parliaments concerned have bicameral legislatures. These reasons would obviously have no application in Queensland.

The Reserve Power.

In NSW the reserve power is retained throughout the full four year fixed term of parliament. In Vic and SA the reserve power can not be exercised during the fixed period of three years. In WA and Tas where there is no fixed period the reserve power is fully retained.

In this instance the Commission's recommendations follow the Vic and SA positions.

In the Background Paper the Committee makes the point that situations could arise where neither of the above conditions are present yet it is appropriate, for some other reason that the Assembly should be dissolved. It gives the example of a minority government which survives a no confidence motion and has its appropriation bills passed but other substantial legislation is defeated. In other words the Government would be unable to carry out the agenda on which it was elected.

Two other Australian parliaments have the reserve power retained during the fixed period. However both have the full term of their parliaments fixed. They are NSW and the ACT parliaments. The latter parliament, being a recent creation, has the conditions on which the Governor General may dissolve the parliament set out in legislation. He can dissolve the Assembly if it is incapable of effectively performing its functions or is acting in a grossly improper manner. Were he to exercise these powers the Governor General would not, of course, strictly be exercising powers reserved to the Crown at all. He never had any such power in the first place so far as the new ACT Assembly is concerned and his powers are created by the legislation setting up the ACT Assembly.

Conclusion

While the Commissions recommendations are based on anecdotal evidence rather than any firm research I think the reasons which they have put forward are generally acceptable.

It would be my recommendation that the Chapter support the introduction of four year terms in the Queensland Legislative Assembly and that there be a fixed period of three years in which the Assembly may only be dissolved in the circumstances as recommended by the Commission.

However it would also be my recommendation that the Governor retain some form of reserve power to dissolve the Assembly. This could be done either by a reservation of his current powers, which are somewhat indeterminate, or the reserve powers would be abolished and specific circumstance designated, such as in the ACT. The latter course being preferable.

I have not developed any significant argument to support this recommendation save that unforeseen circumstances have a habit of arising from time to time and it is preferable that there be some mechanism in place for dealing with them.

The position in Queensland would then be a hybrid in that the term of parliament would be four years with a fixed period of three years with no dissolution possible within that period unless:

- A vote of no confidence is carried or a vote of confidence lost, or
- An appropriation bill is lost or fails to pass,

(In either of which cases the dissolution would be automatic in that the legislation would provide for automatic dissolution), or

- The Assembly is incapable of effectively performing its functions or is acting in a grossly improper manner.

(In which case it would be for the Governor to decide whether the required conditions existed and whether the Assembly should be dissolved)

The provisions should be entrenched.

I am returning the letter and the Background Paper which you sent me. The latter contains directions for lodging submissions.

Kind Regards

A handwritten signature in black ink, appearing to read "David Liddell". The signature is written in a cursive style with a large, sweeping initial "D".

David Liddell