



Telephone: (Office)

17 October 2005

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Madam

I write in relation to the Legal, Constitutional and Administrative Review Committee's July 2005 Discussion Paper entitled "Voices and Votes" and the associated Response Form. I wish to provide the following comments and observations regarding several issues raised in these documents.

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The Response Form proposed that the Government consider a change to fixed term elections and noted that elections for local government authorities in Queensland are held every four years on the last Saturday in March. The document suggested that with fixed election dates, civics education courses, mock elections and other strategies could be conducted in parallel with election campaigns.

I do not agree that fixed election dates will necessarily facilitate an increased interest by young people to be involved in the political process. None of the reasons given on page 3 of the Discussion Paper indicate a link between young people's disinterest in political participation and the lack of a fixed parliamentary term. In any event, I do not think it is realistic to suggest that the current maximum three-year parliamentary term inhibits educational institutions from providing instruction and learning opportunities in democracy and civics education. The Response Form noted that there is no formal subject called 'civics education' or 'citizenship education' in Queensland schools (pages 5 to 7). While this situation needs to be rectified, instruction in such matters should nevertheless take place on a regular basis and not be left to only ever coincide with election campaigns.

The Response Form made reference to fixed four year terms for local governments as a "new idea" that could be considered for State elections. However, it should be pointed out that prior to 2000 local government terms were for three years and that increasing them to four years was achieved by an Act of Parliament¹ without the matter first being put to a referendum to determine whether such a move had popular support. While there may not have been a constitutional requirement to do so, putting it first to the people would have been appropriate given that in 1991 they had rejected a proposal to increase

¹ Local Government and Other Legislation Amendment Act (No. 2) 1999

the parliamentary term from its current three years to four years. Despite the failure of the 1991 referendum, there is again strong support for the introduction of fixed four-year terms for the Queensland Parliament² and the new arrangements for local government terms are being used as a justification in this regard.³ Although it is constitutionally necessary for the electorate's approval to be first obtained before parliamentary terms can be lengthened, if fixed four-year terms were to ever eventuate there is every likelihood of young people being further alienated from the democratic process. The following brief outline of the history of parliamentary terms in Queensland explains why.

Three-year terms were introduced in Queensland while it still had a bicameral Parliament, in the early 1890s. Prior to this time parliamentary terms were for five years, although it appears that soon after Queensland became a colony agitation commenced for parliamentary terms to be of a shorter duration.⁴ In 1890, legislation was finally passed which reduced the length of the parliamentary term to three years.⁵ The parliamentary debates relating to the *Constitution Act Amendment Bill 1890* indicate that the primary reason for the change was for the express purpose of facilitating greater responsiveness and accountability of members to their electors.⁶ The change was made at a time when the pressures of organised party discipline were not so apparent in political life, which meant that representatives could exercise more independent thought and action than has subsequently been the case. Nevertheless, it was consistent with the general move across all Australian Parliaments during that period to reduce the length of parliamentary terms.⁷ 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 representatives.⁸ The Hansard records reveal that members were aware of the fact that during the seventeenth century, triennial parliamentary terms existed in England to keep tighter control of the executive and that this had changed in 1716 to provide for seven-year terms.⁹ 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 the length of terms.¹⁰

² The Premier recently indicated that the Government is still committed to four-year fixed terms (Hansard, 23 August 2005, p. 2577).

³ Hansard, 30 September 2005, p. 3111.

⁴ Hansard, Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, p. 274.

⁵ Although this reform did not actually commence until 1893.

⁶ Hansard, Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, pp. 274–286 and 31 July 1890, pp. 434–438; Hansard, Legislative Council, *Constitution Act Amendment Bill*, 16 September 1890, pp. 79–81.

⁷ 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 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 (Hansard, Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, p. 276).

⁸ Sawer 2001, p. 36. Also, the relevant Hansard records indicate that Chartist principles were on the minds of many of the members who supported the Bill (Hansard, Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, p. 281).

⁹ It appears that this increase in the length of parliamentary terms was driven by the desire of the then governing Whig Party to retain political power (Source: www.es.grin.edu/~gables/septennial.html).

¹⁰ Hansard, Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, p. 281. Finally, in 1911 the duration of terms for the House of Commons was reduced to five years.

However, in 1890 not all members supported the proposal to reduce the length of the parliamentary term and one of the arguments they used to oppose the change had a distinctly modern ring. 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 year making decisions, and the third year planning for the next election.¹¹ This was almost the same argument that was used during the debate to oppose the Bill. In this respect the then Premier, the Honourable B D Morehead, stated, "*The first year [members] are learning, the next year they are doing, and the third year they are electioneering.*"¹² 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 was abolished in 1922 on the understanding that the system of three-year parliamentary terms which had been introduced in 1890 would be retained. The then Premier, the Honourable E G Theodore, expressly indicated that three year parliamentary terms would allay any concern that the introduction of unicameralism could have detrimental implications as a consequence of governments exercising power in the absence of bicameral checks and balances. In 1921, Theodore wrote to the 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.*"¹³ In subsequently introducing the Bill to abolish the Legislative Council 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.*"¹⁴ In 1934, three-year parliamentary terms and unicameralism were constitutionally entrenched to ensure, as stated by then Premier, the Honourable W Forgan Smith, 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.¹⁵

Queensland's three-year parliamentary terms and its unicameral parliamentary arrangements are inextricably linked. The clear intention was that the former would underpin the latter. Thus, any proposal to extend the length of the parliamentary term would need to explain why it is no longer considered necessary for this nexus to be maintained. Furthermore, since three-year parliamentary terms were specifically

¹¹ Legal, Constitutional and Administrative Review Committee, *Four Year Parliamentary Terms – Background Paper*, April 2000, p. 4. Source:

www.parliament.qld.gov.au/view/committees/documents/lcsrc/otherPublications/lcsrcp1yt.pdf; Queensland Constitutional Review Commission Report 2000, pp. 39, 40. Source:

www.constitution.qld.gov.au/review/final.pdf

¹² Hansard, Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, p. 278

¹³ Cited in Fitzgerald, R. 1984, *From 1915 to the Early 1980s – A History of Queensland*, UQP, Brisbane, pp. 26 – 27

¹⁴ Cited in Murphy, D., Joyce, R. & Cribb, M. (Eds) 1990, *The Premiers of Queensland*, UQP, Brisbane, p. 322.

¹⁵ Queensland Constitutional Review Commission Report 2000, pp. 68 – 69. Source: www.constitution.qld.gov.au/review/final.pdf

introduced to facilitate greater member responsiveness and accountability, it would need to be explained how any increase in the length of the parliamentary term would serve to advance the responsiveness and accountability of members.¹⁶

Even more pertinently, it would need to be explained how the holding of elections less frequently than at present would enhance public participation in the democratic process and ultimately, democracy itself. There has long been concern that increasing the length of parliamentary terms contributes to the 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, "*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*".¹⁷ Even some Industry figures do not support an increase in the length of parliamentary terms on these grounds. For instance, Pat McKendry of the National Retail Association was reported as having 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."¹⁸

The great constitutional scholar A V Dicey once observed that the electorate is the "*true political sovereign of the state*".¹⁹ While there are many forms of democratic activity, the franchise is the primary and most tangible way for citizens to be involved in the democratic process and for them to exercise their political sovereignty. Accordingly, any increase to and fixing of the length of the parliamentary term would reduce the opportunities for citizens, young and old, to participate in the democratic process by decreasing the number of occasions in which they would be able to exercise their right to vote. For this reason any proposal to increase and fix the length of the State parliamentary term would need to be subject to wide ranging public discussion in which the claimed advantages and disadvantages could be open to scrutiny and debate.²⁰

¹⁶ Similarly, concerns that longer terms may diminish the responsiveness of members have been made in relation to the recent proposal for Commonwealth parliamentary terms to be increased from three to four years (see **Attachment 1**).

¹⁷ 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). Source: www.aph.gov.au/library/pubs/rp/2003-04/04RP02.htm#bureau

¹⁸ Courier Mail, *Business supports term vote*, 15 October 2003, p. 13

¹⁹ Cited in Funnell, W. 2001, *Government by Fiat*, UNSW Ltd, Sydney, p. 2. Similarly, the former 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). 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; *Trooponous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at para 13 per Deane J.

²⁰ It has been claimed that four year terms produce significant financial and economic benefits for business. As well, it is claimed that longer terms enable Governments to better plan their activities and to allow them more time to implement their policies. However, evidence is lacking as to whether longer terms necessarily give rise to such claimed benefits (see **Attachment 2**).

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The Response Form asked whether young people would be more likely to vote if the voting system was changed so that candidates running on certain issues of particular interest to young people were more likely to get elected and have a voice in parliament.

Young people will most likely become more interested in being involved in the democratic process if they can see that their input can make a real difference and produce real benefits for society. Of course, any changes in these respects would assist in making older citizens to also become more interested in participating in the political process. To this end there would be great merit in consideration being given to the adoption of a voting system whereby a broader cross section of community views could be represented in the Parliament.

The Response Form pointed out that in Queensland a system of optional preferential voting is used. Of this system concern has been expressed that not only does it risk becoming a de facto first-past the post voting system in which an elected member may not be able to claim the majority of the overall vote, but also, *"if voters simply follow party instructions to vote for one candidate and out of ignorance or unfamiliarity do not allocate preferences, then if their votes exhaust this could be a denial of a true democratic outcome."*²¹ The reality is, as the Response Form notes, that the current voting system in Queensland makes it very difficult for minority views to achieve representation in the Parliament.

Proportional representation appears to offer a voting system in which a more diverse range of views may be able to be represented in the Parliament. The advantages of proportional representation are such that even during the constitutional conventions of the 1890s it was intended that the Senate should be elected in accordance with a proportional representation system to ensure that it reflected a wide diversity of views.²² Appendix D of the Discussion Paper noted that in 1990 the Electoral and Administrative Review Commission (EARC) considered a system of proportional representation involving multi-member districts and concluded that in Queensland the disadvantages outweigh the advantages (page ix). However, given the indications that there may not have been unanimity within EARC with respect to its recommendations in this regard,²³ it is perhaps timely for consideration to again be given to the introduction of a more representative voting system in Queensland. Doing so may help to encourage young people to become willing to engage in the democratic process if they can see that their views can be given a real voice in the Parliament.

Although not canvassed in either the Discussion Paper or the Response Form, another idea that may encourage young people to engage with the democratic process is the establishment of a democratically elected Upper House in Queensland. One of the

²¹ Wanna, J. "Democratic and Electoral Shifts in Queensland: Back to First Past The Post Voting". Source: <http://democratic.audit.mq.edu.au/wanna/discuss.pdf>

²² Uhr, J. "Why we chose proportional representation". Source: www.apli.gov.au/senate/pubs/papers.htm; Odger's Australian Senate Practice 10th Edition, Edited by H Evans, Clerk of the Senate, p. 8. Source: www.apli.gov.au/senate/pubs/html/httoc.htm

²³ Proportional Representation Society of Australia (Queensland Branch), "Submission to EARC: Legislative Assembly Electoral Review 1990". Source: <http://www.cs.mq.edu.au/~lee/prsa/earc/>

important functions of an Upper House is to act in a review capacity to improve the legislative proposals that emanate from the Lower House.²⁴ Since 1922, Queensland has not had the benefit of an Upper House (Legislative Council) to act as a check on and to review the legislative proposals of the executive-dominated Lower House (Legislative Assembly). In this regard the observation has been made that, *"In the long term, the absence of a second Chamber in Queensland encouraged governments to rush legislation through the Assembly without adequate discussion."*²⁵ By the late 1980s this situation was increasingly recognised as a problem in Queensland: *"The operation of the party system in a unicameral assembly, the continuing growth in the scale and extent of Government activity, and the increasing complexities of policy making affect the ability of Parliament to review the Government's legislative activity or public administration."*²⁶ In 1992, EARC observed, with respect to the absence of an Upper House, that this: *"...has had a profound impact on the ability of the Queensland Parliament to carry out its functions under the Constitution and conventions which require it to act responsibly and review the activities of the executive arm of government."*²⁷ The reintroduction of an Upper House in Queensland has been suggested as one mechanism to *"prevent abuse of power."*²⁸ The Legal, Constitutional and Administrative Review Committee of a previous Parliament has also noted that, *"While Queensland's recently enhanced parliamentary committee system provides an important 'review' mechanism, such a system is not a replacement for an upper house."*²⁹

However, an Upper House would only be acceptable if it was reflective and inclusive of broad community views; that is, its introduction was coupled with the proportional representation system for the election of members to ensure representative diversity. This contrasts with the Legislative Council that existed in Queensland between 1860 and 1922 which was *"... a nominated Upper House primarily composed of men of property and commerce"*³⁰ and which was noted as much for its lack of democratic legitimacy as for its representation of vested interests.³¹ The introduction of an elected Upper House based on the proportional representation system could be a valuable mechanism for expanding the opportunities for people, young and old, to reconnect with and participate in the foremost democratic forum of this State, the Parliament.

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The Response Form asked whether the voting age should be lowered to 17 or 16 years and if so, whether voting at the lowered age should be compulsory.

²⁴ Uhr, J. 2001, *"What is a House of Review?"*, Source: <http://democratic.audit.anu.edu.au/Uhrpaper.rtf>

²⁵ Fitzgerald 1984, p. 27

²⁶ Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (G F Fitzgerald, Commissioner) 1989, p. 124

²⁷ Cited in www.samanthagriffith.org.au/papers/html/volume15/v15chap2.html.

²⁸ Carney, G. 1993, *"Separation of Powers in the Westminster System"*, Australasian Study of Parliament Group (Queensland Chapter). Source: <http://www.parliament.qld.gov.au/aspg/papers/930913.pdf>

²⁹ LCARC, *Four Year Parliamentary Terms*, Background Paper (April 2000), p. 5. Source: <http://www.parliament.qld.gov.au/view/committees/documents/lcacr/otherPublications/lcbrp4.pdf>

³⁰ Fitzgerald 1984, p. 8

³¹ Queensland Parliament, Fact Sheet 39, *"Abolition of the Upper House"*, Source: <http://www.parliament.qld.gov.au/view/forSchools/documents/factsheets/Sheet%2039-%20%20ABOLITION%20OF%20THE%20UPPER%20HOUSE%20.pdf>

Recent research findings have pointed out that the human brain is still developing and maturing up until the mid-twenties.³² This would perhaps explain why some young people are simply not interested in "adult" pursuits like political activity. The information on page 5 of the Response Form regarding the surveys and studies that have been conducted on whether the voting age should be lowered would seem to support this conclusion. Therefore, more research and consultation would need to be undertaken before any move was taken to lower the voting age in Queensland.

In any event, if the voting age was ever lowered it would still be essential for voting at the lowered age to be compulsory. Not only is this because of the benefits of compulsory voting which are not apparent under voluntary voting,³³ but also because making voting voluntary for 16 or 17 year olds could cause them to be confused about whether or not they were subject to compulsory voting requirements once they attained the age of 18. Furthermore, the recent announcement of the Prime Minister to not introduce voluntary voting for the Commonwealth Parliament³⁴ is another reason why compulsory voting should be applied to any lowered voting age in Queensland.

Thank you for the opportunity to write this letter. I trust the above comments and observations will assist the committee in its deliberations.

Yours faithfully



Don Willis

³² Catalyst, "Teen Brain". Source: <http://www.abc.net.au/catalyst/stories/S1424247.htm>

³³ Hill, L. "Compulsory Voting". Source: <http://democratic.audit.nyu.edu.au/Comp%20Vote.pdf>

³⁴ Courier Mail, "Committee courts vote law change", 5 October 2005, p. 12