1. INTRODUCTION

On 29 February 2000, the Premier tabled in the Queensland Constitutional Review Commission’s Report on the possible reform of and changes to the acts and laws that relate to the Queensland Constitution.

The QCRC’s report not only incorporates this committee’s previous work on consolidating the Queensland Constitution but also makes recommendations about substantial issues of constitutional reform.

In a ministerial statement to the Legislative Assembly on 29 February 2000, the Premier stated that he tabled the QCRC’s report for this committee’s ‘consideration and reporting’. The Premier also indicated that while the committee is considering the report, the Government will consider the QCRC’s recommendations and, in particular, Cabinet will examine options for the possible introduction of four year terms as recommended by the QCRC. The Premier further indicated that Cabinet might make a decision on the four year term issue before the committee brings down its report.

Accordingly, the committee resolved to review, and report to Parliament on, the QCRC’s report in two stages, namely:

- to review and report to Parliament on QCRC recommendation 5.2 that the maximum term of the Legislative Assembly be extended to four years (stage 1, part A);
- to (separately) review and report to Parliament on those QCRC recommendations which the committee considers as consolidatory and/or relatively non-controversial in nature (that is, capable of achieving bipartisan political support and likely widespread community support) and which the committee thinks it desirable to implement (stage 1, part B); and
- at some time after the tabling of the stage 1 reports, review and report to Parliament on the remainder of the QCRC’s recommendations as the committee sees appropriate at that point in time (stage 2).

This paper concerns part A of stage 1 of the committee’s inquiry, namely, the QCRC’s recommendation that the maximum term of the Legislative Assembly be extended to four years with a fixed minimum period of three years.

The purpose of this paper is to facilitate the committee’s call for public submissions on the QCRC’s recommendation regarding four year parliamentary terms by providing some further information relevant to the recommendation. The committee has not yet reached any conclusions or come to any recommendation on this issue.

The closing date for submissions is Friday, 12 May 2000. Please see the back page of this paper for guidelines on making a submission and the committee’s contact details.

2. THE QCRC REPORT

In its February 2000 report, the QCRC examined the three year term of the Legislative Assembly and stated:

One of the few provisions of the present State Constitution protected from alteration by an entrenched requirement for a referendum is the three-year term of the Legislative Assembly. When a proposal to extend the term to four years was put to the people in 1991 it was defeated.

However the case for a longer term remains valid. It has been said that under a three-year term, the first budget is devoted to paying off the promises made at the previous election and the
third budget to anticipating the promises to be made at the forthcoming election.

Consequently, only one budget out of three, the second, is likely to address important, long-term policies without the contamination of short-term political considerations. Queensland is now the only State that still has a three-year term.

It is significant that three of the five States that have gone over to a longer term have coupled it with a fixed term element, the so-called “maximum term with qualified fixed term component”. So long as the government of the day can call a general election at the best time for its own political advantage—because the Opposition is in disarray, or because of the distant prospect of unpleasant economic developments or the immediate prospect of good news, there is another unwelcome consequence. Once 12-18 months have passed since the previous general election, political and governmental affairs start to move into election mode. Speculation about an early election intensifies. Hard decisions are avoided by the Government and long-term decisions by the business community.

Extension of the maximum term is likely to be unpopular because it appears to give the Government of the day even more opportunity to look after itself when picking a date to go to the people. But where the “maximum term with qualified fixed-term components” is introduced, that period of uncertainty and indecision can be restricted to the final year of four, that it is one-quarter of the Parliament’s term instead of the de facto half that it is in Queensland and the Commonwealth. It should be added that a qualification, “largely restricted” is especially necessary in States which are bicameral because there is always the possibility that a hostile upper house may set off the additional necessary escape mechanism that a bicameral system requires—and Queensland would not.

Despite Queensland’s unicameralism some further escape mechanism is necessary. The essence of responsible government, a principle that is and should be embodied in the State Constitution, is that the political executive (the Cabinet) commands the support of a majority of the legislature (the Legislative Assembly). If it does not, effective government becomes difficult if not impossible. There are two principal types of evidence when it does not.

One involves “confidence”: a vote of no confidence in the Premier or their Government may be carried by the Legislative Assembly, or a vote of confidence sought by the Government is defeated. The second is “appropriation”: the Legislative Assembly may reject an appropriation bill or fail to pass such a bill. Failure to pass can introduce uncertainty. How long does consideration have to go on before failure to pass becomes operative? So, it is necessary to impose time limits, and this can be done by a message from the Governor (which is required to initiate all appropriation legislation) setting a time limit. It might be feared that identifying “an appropriation bill” could present problems; States that have introduced the mechanism have included lengthy definitions but in the context of bicameralism which increases the likelihood of argument. Unicameral Queensland could encounter the problem only in the exceptional circumstances when a minority Government faces a temporary combination of parties and Members prepared to unite against a bill which looks sufficiently like an appropriation bill, but not prepared to combine for a no confidence motion.

It is open to a Government that wishes to have an early election to set off one of these mechanisms itself. Enough of its supporters could vote for a motion of no confidence to ensure its passage. This has been done on occasion in at least one country, West Germany. However the political costs of so desperate a step, and by definition on the eve of an election, make it unlikely. If there is to be a “fixed-term component”, then it has to be “qualified” to resolve a situation in which the Government can no longer govern in the ways and to the extent that are expected of a Westminster model regime. The Commission recommends that the necessary provisions be introduced. The package should be referendum entrenched (R5.2).

Consequently, QCRC recommendation 5.2 is that the maximum term of the Legislative Assembly be extended to four years subject to a provision that a dissolution may not be granted during the first three years unless: (a) a vote of no confidence is carried or a vote of confidence fails to be carried; or (b) an appropriation bill is defeated or fails to pass. The QCRC further recommended that these provisions should be referendum entrenched.

[See pages 39-41 of the QCRC’s report and clauses 14(3) and (4), 15 and 84 of the QCRC’s Constitution of Queensland 2000.]
3. PRESENT POSITION IN QUEENSLAND

The position in Queensland is that the Legislative Assembly is elected for a term no longer than three years. This has been the position since 1890 when it was reduced from a five year term. The Government may advise the Governor to dissolve the Assembly at any time during that three year period in order to hold a general election. By convention, the Governor acts on that advice. If the Government were to be defeated in the Assembly by a no confidence motion and were to resign, the Governor would need to decide whether the Assembly should be dissolved and an election held, or whether another Government might be formed which has the confidence of the Assembly.

The present three year parliamentary term is prescribed by s 2 of the Constitution Act Amendment Act 1890 (Qld) and that period cannot be extended without the approval of the electorate by referendum pursuant to s 4 of the Constitution Act Amendment Act 1934 (Qld).

In March 1991, a referendum was held in Queensland to extend the parliamentary term to four years but it was defeated: "No" 808,112; "Yes" 771,103. Importantly, there was on that occasion no minimum fixed period during which no early dissolution could occur. Unlike the QCRC recommendation, a dissolution could have occurred at any time during the proposed four year term.

4. POSITION WITH OTHER AUSTRALIAN PARLIAMENTS

Queensland is the only State to retain a three year parliamentary term. The table attached as Appendix A shows that in all the other States, there is a four year term for the lower House. At the Commonwealth level, a referendum was defeated in 1988 to extend the term of the House of Representatives from three to four years with no restriction on the holding of an early election. The proposal also included reducing the term of the Senate from six to four years in line with that proposed for the House of Representatives.

When the position in the other States is examined closely, a significant difference emerges. In Tasmania and Western Australia, the Government can decide to hold an election at any time during their four year term. But in New South Wales, South Australia and Victoria, there is a period during which no early election can be called unless certain prescribed circumstances arise. In South Australia and Victoria, this is the first three years of the four year term—similar to what the QCRC recommendation proposes for Queensland. However, in New South Wales it is the entire four year term.

Between those three States, there is some variation in the prescribed circumstances by which the lower House may be dissolved early. Common to all three States is the situation where the Government loses the confidence of the lower House. Of similar effect in New South Wales is where the lower House rejects or fails to pass supply (that is, appropriation bills for the ordinary annual services of the Government). Additionally in South Australia and Victoria, various deadlocks with the upper House provide grounds for an early dissolution of the lower House. This situation is, of course, not pertinent to Queensland with only one House.

A further point of distinction is that in New South Wales, irrespective of the prescribed grounds for an early dissolution, the Governor expressly retains the power to dissolve the lower House "in accordance with established constitutional conventions" (ie in exercise of reserve power) throughout the four year parliamentary term. In South Australia and Victoria, this is the position only during the fourth year of the parliamentary term. An exercise of reserve power of dissolution is likely to arise where a Government is dismissed for proven illegality and there is no alternative government possible.

At the Territory level, the Australian Capital Territory Legislative Assembly has a fixed term of three years, while the Northern Territory Legislative Assembly has a four year term.

The move to four year terms in the other States and the Northern Territory is not recent. Tasmania was the first to adopt a four year term in 1973 and Western Australia was the last in 1987. A fixed four year term was adopted in New South Wales in 1981 with a minimum fixed term of three years in South Australia in 1985 and in Victoria in 1984. The Northern Territory has had a four year term since 1978. Many overseas countries have parliamentary terms of four or five years. Even the United Kingdom Parliament is elected for five years.
5. **THE QCRC RECOMMENDATION**

R5.2 That the maximum term of the Legislative Assembly be extended to four years subject to a provision that a dissolution may not be granted during the first three years unless (a) a vote of no confidence is carried or a vote of confidence fails to be carried, or (b) an appropriation bill is defeated or fails to pass. The provisions should be referendum entrenched.

This recommendation essentially follows the position in South Australia and Victoria of a fixed minimum period of three years but with the same grounds for an early dissolution as in New South Wales. As in the former two States, the Queensland Governor would not have any reserve power of dissolution of the Legislative Assembly during the fixed three year term. This would not prevent, however, the dismissal of a Government for proven illegality since the substitute Government will either possess the confidence of the Assembly or else be defeated and an early election will be triggered.

6. **ARGUMENTS FOR AND AGAINST THE QCRC RECOMMENDATION**

The arguments offered here relate to the specific QCRC recommendation just outlined. They address the position where a parliamentary term of four years is qualified by a fixed minimum period of three years during which no dissolution can occur unless the prescribed circumstances are complied with.

6.1 Arguments for

The primary advantage of the QCRC recommendation is to allow a newly elected or re-elected Government further time to address issues which require long-term planning and implementation. These issues arise particularly in the area of economic planning but may include controversial social issues. It is often said in overly simplistic terms that governments spend the first year of office settling in, the second year making decisions, and the third year planning for the next election. What this highlights is the relatively short period during which Governments may feel confident about making decisions in the public interest without giving-in to particular electoral pressures.

Apart from encouraging genuine leadership, further time is often required in order to plan the best approach in resolving difficult economic and social issues. The recommendation will provide further time for the implementation of the policies adopted as well as further time for an assessment of their success. These advantages not only benefit the Government, especially if newly elected, but they allow those members of the community affected by the policies to have appropriate input. They may also allow a fairer assessment of the merits and success of their implementation. This in turn provides more opportunity to modify policies in the light of that assessment.

Similarly, the business sector and the economy in general stand to benefit from the improved stability and greater certainty brought about by longer parliamentary terms. The certainty of working with a government over a longer period enables the private sector to plan their business cycles with greater predictability in accordance with government policies and agendas.

The recent extension to four year terms of local governments in Queensland was supported by similar arguments to those above.

There are several other advantages which flow from the minimum three year fixed period. The first is that a Government will have less scope to choose a favourable time to hold a general election. Under the QCRC recommendation, this can only occur in the fourth year rather than at present where an early election can be called at any time during the present three year term. The second advantage is that during the first three years of its term, a Government cannot threaten the Legislative Assembly with an early election. Finally, there are likely to be fewer elections with consequent savings for the public purse.

6.2 Arguments against

The primary argument against the QCRC recommendation to extend the parliamentary term to four years is that the electorate must wait a longer period to register its approval or disapproval of the Government. There is also 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.
These concerns assume greater importance in Queensland where there is no upper House to act as a house of review. While Queensland’s recently enhanced parliamentary committee system provides an important ‘review’ mechanism, such a system is not a replacement for an upper house.

The QCRC recommendation may also fuel community cynicism about politicians acting in their own interests.

A further argument against the QCRC recommendation is that it allows for the scenario where a minority Government is left in limbo by those members who are prepared to support it on any no confidence motion and vote it supply but oppose all other legislation.

In these circumstances, the grounds prescribed for an early dissolution are not addressed by the QCRC. This may leave a paralysed Government in office until the expiration of the minimum fixed period of three years. Without a reserve power to dissolve the Assembly until the expiration of that period, the Governor would need to encourage a political solution to such an impasse.

On the other hand, this impasse could be resolved if the Governor retains some form of reserve power of dissolution during that period.

7. **ENTRENCHMENT**

A referendum is necessary in order to adopt the QCRC recommendation to extend the current three year parliamentary term to four years. Consideration also needs to be given as to whether the four year term with a fixed minimum period of three years should itself be similarly entrenched. The QCRC recommended this for good reason, for unless entrenched, any extension of the parliamentary term and any restrictions on an early dissolution of the Legislative Assembly, could be changed by statute at any time.

8. **CONCLUSION**

Queensland is the only State not to have adopted a four year parliamentary term.

The QCRC has recommended that Queensland adopt a four year term but with a fixed minimum period of three years.

The arguments for the QCRC recommendation are primarily based on the certainty that a fixed term will bring in terms of enabling Government to plan and implement plans over a longer period. Improved stability and greater certainty also brings business and economic benefits.

The arguments against the QCRC recommendation are founded in issues of Government accountability to the people. Queensland’s status as the only unicameral Parliament in Australia means that the main method of accountability is the ballot box.

The QCRC recommendation also raises the issue of what reserve powers, if any, the Governor should have to dissolve the Assembly during the fixed three year period.

It is now a matter of weighing up the competing arguments to assess whether adoption of the QCRC recommendation is best in the interests of society as a whole. The capacity of government to achieve universally important goals such as major infrastructure planning, the reduction of unemployment levels and implementation of specific social reforms might or might not be said to be enhanced by the QCRC recommendation.

The QCRC recommendation might, with some minor modification, be able to address concerns raised on either side of the debate. The arrangements for four year parliamentary terms in the other Australian jurisdictions provide some guidance in this regard.
REFERENCES

Reports


Articles


Queensland Parliamentary Library, Duration of Parliaments: The proposal for four year terms, Information kit no 17, Brisbane, February 1991.
# Appendix A: Parliamentary terms in Australian jurisdictions

<table>
<thead>
<tr>
<th>Jurisdiction (lower House)</th>
<th>Term</th>
<th>Fixed term component</th>
<th>Grounds for early dissolution</th>
<th>Reserve power to dissolve the Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth (House of Reps)</td>
<td>3 years</td>
<td>Nil</td>
<td>N/A</td>
<td>Yes</td>
</tr>
</tbody>
</table>
| NSW | 4 years | 4 years | (i) lower House passes a motion of no confidence in the Government  
(ii) lower House rejects or fails to pass supply  
(iii) 2 months early to avoid clash with Cth election period or other inconvenient time | Yes |
| Vic | 4 years | 3 years | (i) upper House twice rejects a bill of special importance  
(ii) upper House rejects or fails to pass supply within 1 month  
(iii) lower House passes resolution of no confidence in Premier and ministry | Yes - except during fixed term component |
| Qld | 3 years | Nil | N/A | Yes |
| SA | 4 years | 3 years | (i) lower House passes motion of no confidence in Government  
(ii) motion of confidence in Government is defeated in the lower House  
(iii) upper House rejects a bill of special importance  
(iv) deadlock between both Houses results in double dissolution pursuant to s 41. | Yes - except during fixed term component |
| WA | 4 years | Nil | N/A | Yes |
| Tas | 4 years | Nil | N/A | Yes |
| ACT | 3 years | 3 years | Governor-General may dissolve the Legislative Assembly if incapable of effectively performing its functions or is acting in a grossly improper manner. | See the previous column. |
| NT | 4 years | Nil | N/A | Yes |

## Relevant Acts for Australian jurisdictions
- *Constitution Act 1902 (NSW)*, ss 24 and 24B
- *Constitution Act 1975 (Vic)*, ss 8(3) and 38(2)-(6)
- *Constitution Act 1934 (SA)*, ss 28 and 28A
- *Constitution Acts Amendment Act 1899 (WA)*, s 21
- *Constitution Act 1934 (Tas)*, s 23
- *Electoral Act 1992 (ACT)*, s 100; *Australian Capital Territory (Self-Government) Act 1988 (Cth)*, s 16
- *Northern Territory (Self-Government) Act 1978 (Cth)*, s 17(2).
GUIDELINES FOR MAKING A SUBMISSION

FORM

• There is no set form for a submission to the committee. Submissions may be in the form of a letter, a substantial paper or a short document and they may include appendices. Submissions may contain facts, opinions, arguments and recommendations for action.

• The committee will only consider written submissions. Typed text on A4 paper is preferable, though legible hand-written submissions are acceptable. It is helpful if submissions are also provided on computer disk (preferably in Word 7).

• Submissions must be signed and dated. Those signing a submission on behalf of an organisation should indicate at what level of the submission has been authorised (eg sub-committee, president, chair, state branch, etc.). A return address and contact number should also be provided.

• Public officers may make submissions as private individuals. However, if reference is made in a submission to their official position, it should also be made clear that the submission is made in a private capacity.

CONTENT AND RELEVANCE

• Submissions may cover some or all of the issues which form part of the committee’s inquiry.

• A submission should be relevant to the committee’s inquiry, otherwise the committee may decide not to accept it. The committee will inform you if it decides to reject your submission.

CONFIDENTIALITY

• If you want your submission, or part of it, to be treated confidentially, then you should clearly write ‘confidential’ on each page and, in a brief covering letter, explain why your submission should be treated confidentially. The committee will then consider your request for confidentiality.

UNAUTHORISED RELEASE

• A submission made to the committee must not be published or disclosed to any other person in that form without the committee’s authorisation.

• Publication of a submission without the committee’s permission means that that publication is not protected by parliamentary privilege and may amount to a contempt of Parliament.

FURTHER INFORMATION

All submissions should be sent to:

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

SUBMISSIONS CLOSE ON FRIDAY, 12 MAY 2000

Extensions to the closing date may be given. If you need more time to make a submission, contact the committee secretariat.

For further information, contact the committee secretariat on:

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