LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms

July 2000

Report No 27

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper)	1 October 1997
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Inquiry into issues of Queensland electoral reform (Background paper)	25 November 1999
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Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution (Position paper)	27 April 2000

COMMITTEE CONTACT DETAILS

Copies of this report and other Legal, Constitutional and Administrative Review Committee publications are available on the Internet via the Queensland Parliament's home page at: <**http://www.parliament.qld.gov.au/committees/legalrev.htm**>.

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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[#] Mr Warren Pitt MLA was appointed to the committee by resolution of the Legislative Assembly of 29 February 2000 replacing Mr Geoff Wilson MLA.

[*] Dr Peter Prenzler MLA was appointed to the committee by resolution of the Legislative Assembly of 11 November 1998 replacing Mr Charles Rappolt MLA whose resignation from Parliament was received by the Speaker of the Legislative Assembly on 4 November 1998.

CHAIR'S FOREWORD

In its February 2000 *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution,* the Queensland Constitutional Review Commission recommended that the maximum term of the Queensland Legislative Assembly be extended from three to four years. The QCRC's recommendation was subject to a proviso that a dissolution may not be granted during the first three years of this term unless: (a) a vote of no confidence is carried or fails to be carried; or (b) an appropriation bill is defeated or fails to pass.

The fact that this recommendation was made by an independent body comprising persons from diverse backgrounds says much in itself.

Nevertheless, as this report reflects, the committee has undertaken an extensive assessment of the QCRC's proposal. The committee has considered the position with respect to parliamentary terms in other Australian and overseas jurisdictions, evaluated the arguments for and against longer parliamentary terms, explored alternatives to the QCRC's proposed model, and critically examined what, if any, conditions for early dissolution should apply if the proposal is to be adopted.

All of this has been done in light of the significant number of public submissions the committee received in response to its background paper on this issue.

As a result of its extensive analysis, the committee has decided to essentially endorse the QCRC's recommendation with some minor fine-tuning. The committee believes that this is a responsible and sensible approach and one which will bring the Queensland Parliament into line with all other Australian states and Queensland local governments.

I have a number of people to thank on behalf of the committee for their assistance with this inquiry, namely, submitters for their valuable comments, Gerard Carney, Associate Professor of Law, Bond University for his timely, expert advice, and the staff of the committee's secretariat for their research and administrative assistance.

Of course, my thanks also extends to all committee members whose hard work has resulted in this report to Parliament.

Gary Fenlon MLA
Chair

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1. INTRODUCTION

1.1 BACKGROUND

The Queensland Constitutional Review Commission ('the QCRC') was established in May 1999 to report to government on any reforms needed to the Acts and laws that relate to the Queensland Constitution and to draft appropriate legislation.

On 29 February 2000, the Premier tabled in the Queensland Legislative Assembly the QCRC's *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution* ('the QCRC's report').[1]

The QCRC's report not only incorporates this committee's previous work on consolidating the Queensland Constitution[2] 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 parliamentary terms as recommended by the QCRC. (Currently, the Queensland Legislative Assembly is elected for a maximum term of three years.) The Premier further indicated that Cabinet might make a decision on the four year term issue before the committee brings down its report.

One of the areas of responsibility of the Legal, Constitutional and Administrative Review Committee ('the committee' or 'LCARC') is 'constitutional reform' which includes any bill expressly or impliedly repealing any law relevant to the state's Constitution.[3]

At its meeting of 15 March 2000, the committee noted the QCRC's report, the Premier's statement to the Assembly of 29 February 2000, and the desirability of Queensland having a modern, easy-to-read consolidated Constitution in the short term. Given these matters, and in light of the committee's statutory area of responsibility about constitutional reform, 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 with a fixed minimum period of three 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

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1 Queensland Constitutional Review Commission, *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*, The Brisbane Print People, Brisbane, February 2000 ('the QCRC's report'). A copy of this report is available at: <http://constitution.qld.gov.au>.

2 For further information regarding the committee's work on consolidating the Queensland Constitution, including the committee's consideration of those QCRC recommendations which relate to the consolidation exercise, see the committee's report no 24, *Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution*, GoPrint, Brisbane, July 2000 (available at: <http://www.parliament.qld.gov.au/committees/LCARC/LCARC%20QCRCreport.htm>).

3 *Parliamentary Committees Act 1995* (Qld), ss 9 and 11.

- 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).

The committee has already reported to Parliament regarding part B of stage 1 of its inquiry.[4]

This report concerns part A of stage 1 of the committee's inquiry, namely, the QCRC's recommendation 5.2 that the maximum term of the Legislative Assembly be extended to four years with a fixed minimum period of three years.

1.2 THE COMMITTEE'S INQUIRY PROCESS

On 11 April 2000, the committee called for public submissions on the QCRC's recommendation 5.2 that the maximum term of the Legislative Assembly be extended to four years with a fixed minimum period of three years and advertised its call in *The Courier-Mail*.

In addition, the committee directly wrote to approximately 450 persons and organisations that it identified as having an interest in the issue of longer parliamentary terms for Queensland. Persons and organisations approached by the committee included members of the Queensland Legislative Assembly, Queensland members and senators of the Commonwealth Parliament, state and national chambers of commerce and industry, industry associations and organisations, constitutional law academics and interest groups, QCRC submitters, all Queensland local governments, political parties and Queensland-registered unions.

The committee also wrote to:

- all interstate ministers responsible for constitutional matters asking for information about their jurisdiction's experience with four year parliamentary terms and any comments which they might have about the advantages or disadvantages of the model used to provide for four year terms in their jurisdiction; and
- all interstate ministers responsible for state development asking for their views about any business and/or economic benefits which they believe have resulted from four year parliamentary terms in their jurisdiction.

The committee facilitated its call for public submissions by publishing a background paper which provided further information relevant to the QCRC's recommendation.[5]

Submissions closed on 12 May 2000, although the committee continued to accept submissions well past that date. The committee received 65 submissions to its inquiry. A list of those persons and organisations who made submissions to the committee's inquiry appears as **Appendix A**. The majority of submissions have been tabled and can be viewed at the Bills and Papers Office, Parliament House, Brisbane.

The committee has now considered all submissions together with the comprehensive collection of relevant research gathered by the committee's secretariat. In addition, the committee has sought the advice of a consultant, Associate Professor Gerard Carney, on a number of matters associated with the QCRC's recommendation.

The committee now reports to Parliament on its consideration of the QCRC's recommendation 5.2.

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4 See n 2.

5 Available at: <http://www.parliament.qld.gov.au/comdocs/legalrev/lcabp4yt.pdf>.

To assist readers and inform debate in the wider community regarding four year parliamentary terms for the Queensland Legislative Assembly, the committee has attempted to make this report as informative as possible. To this end:

- chapter 2 sets out the QCRC's reasoning behind its recommendation for four year parliamentary terms;
- chapter 3 explains the current position in Queensland regarding the length of parliamentary terms and why a referendum is required to change this position;
- chapter 4 outlines the position with respect to the length of parliamentary terms in other Australian jurisdictions and some overseas jurisdictions;
- chapter 5 summarises the position taken in submissions to the committee's inquiry and details arguments for and against longer parliamentary terms;
- chapter 6 assesses the QCRC's recommended conditions for early dissolution during the fixed minimum three year period;
- chapter 7 discusses alternatives to the QCRC's proposed four year term model; and
- chapter 8 deals with the issue of the timing of a referendum to change the current position.

In chapter 9 the committee comes to a conclusion on its position regarding the QCRC's recommendation 5.2 and makes an appropriate recommendation.

2. THE QCRC'S RECOMMENDATION

In July 1999, the QCRC released an extensive issues paper regarding possible constitutional reform for Queensland.[6] In its issues paper, the QCRC canvassed the issue of parliamentary terms and noted that it would be possible to extend the term of the Legislative Assembly from three to four years, or it would be possible to both extend the term and introduce a fixed term provision.[7]

In its report the QCRC again 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.*

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6 Queensland Constitutional Review Commission, *Issues paper for the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution,* GoPrint, Brisbane, July 1999. This paper is available at: <http://constitution.qld.gov.au>.

7 Note 6 at paras 12.59-12.60 and at page 1220.

> *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).*[8]

Hence, QCRC recommendation 5.2 was:

> *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.*

The QCRC's recommendation is reflected in clauses 14(3) and (4), 15 and 84 of the QCRC's Constitution of Queensland 2000 (which formed part of the QCRC's report). A copy of these clauses appears as **Appendix B**.

[8] QCRC report, n 1 at 39-41.

3. THE PRESENT POSITION IN QUEENSLAND

3.1 LEGISLATIVE ASSEMBLY TERMS

Currently, the Queensland Legislative Assembly is elected for a term no longer than three years. This has been the position since 1890 when the term of the Legislative Assembly was reduced from five years. The Premier 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 maximum three year parliamentary term is prescribed by s 2 of the *Constitution Act Amendment Act 1890* (Qld). This requirement is 'entrenched' in that the three year period cannot be extended except in the way provided for in s 4 of the *Constitution Act Amendment Act 1934* (Qld).[9] This involves the approval of the relevant amending bill, following its passage by the Assembly, by a majority of electors at a referendum. If a majority of electors voting approve the bill, then the bill must be presented to the Governor for royal assent.

(In chapter 8 of this report the committee discusses the question of the timing of a referendum to extend the current three year parliamentary term.)

In March 1991, a referendum was held in Queensland to extend the term of the Legislative Assembly to four years. The then Premier, the Hon W K Goss MLA, explained the reasons for seeking to extend the term in his second reading speech on the relevant amending legislation:

> *The Labor Government was elected with a commitment to a more efficient and effective system of public administration in Queensland. It also wants to ensure that the cost burden of Government in this State is reduced across the board. It is with this aim in mind that I am today introducing this Bill, which will extend the term of future Parliaments from three to four years. This will reduce the number of elections that the people of Queensland must face, a move which will bring greater efficiency to the administration of the State and consequent savings to the taxpayers.*
>
> *Throughout the world, democracies are, in one sense or another, captives of the political cycle. The activities of Government are inevitably influenced by the necessity to prepare for elections and, when new Governments are elected, the aftermath of those elections. Short periods of time between elections can impede the decision-making process. Too long between elections can effectively deny the voters a regular enough democratic choice. The challenge for us, as elected politicians, is to strike the balance. It is to find that period of time which suits efficient administration and the sensible staging of elections.*
>
> *For the past two decades, at least at a State level, the trend throughout Australia has been to have less frequent elections. Queensland now stands as the only State that still operates on a three-year term. Every other State has changed to a four-year term. The Queensland Government believes that this is a sensible and necessary reform, which is why I have introduced this legislation today. In our view, three years is not long enough. It allows for an effective period of Government that is far too short for rational and sensible decision-making. On the other hand, four years does provide a*

[9] In fact, this requirement is 'doubly entrenched' as any repeal of or amendment to s 4 (the entrenching provision) must also be approved by the electorate by referendum: *Constitution Act Amendment Act 1934* (Qld), s 4(6).

decent amount of time to put in place the programs and policies upon which Governments are elected. Any longer than four years, as is the case in some democracies, would, in the view of this Government, be too long. The voters rightly demand, expect and deserve regular opportunities to exercise their democratic rights.

As I said before, if this reform is adopted, Queensland will be the last State to institute it. Tasmania was the first, having moved to a four-year term in 1973. In the past decade, all the other States have moved to four-year terms: New South Wales in 1981; Victoria in 1984; South Australia in 1985; and Western Australia in 1986. There has been some public debate about the frequency of elections and what effect this reform might or might not have on that frequency. State elections in Australia are held on a fairly regular basis, with most Parliaments running their full term, except in what are sometimes exceptional circumstances. In fact, in 1974, the National/Liberal Government in Queensland chose to go to the polls early simply to exploit an unpopular Federal Government and for no other reason.

I believe that Parliaments should run their full term. Governments are elected for a specific period, and voters are entitled to expect that Government will run for a specific time. But there must also be enough flexibility in the system to allow for exceptional circumstances and to allow for early elections if a Government loses confidence on the floor of the House, the business of Government becomes unworkable, or an extraordinary mandate might be required.

It has been suggested that there should be a constitutionally protected minimum term. This might be superficially attractive, but it could lead to a constitutional crisis which could paralyse a State and make the business of a State unworkable. The situation could arise in which a coalition partner, for example, might withdraw support but still ensure that confidence was maintained in a Government and Supply was passed. This could mean that all other legislation would be rejected, reducing the governance of a State to a shambles. What advocates of such a system suggest is that we have a cocktail of the Westminster system and the United States Presidential system. The simple fact is that the two do not mix, and those who propose such a mixture do not understand the fundamental operation of the Westminster system.

Another suggestion that has been made is that the current term of this Parliament should be fixed now. I am unsure exactly how this proposal would operate, but I assume that those who propose it want me to now set the date for the next election. I have said often, and I repeat today, that I fully expect this Parliament to run its full term. I can see no need for an election that could be considered early. But, by the same token, there is not a political leader anywhere who operates under the Westminster system who would commit himself or herself to such a proposition. This Government was elected to serve three years, and I expect that it will run its full term.

The proposed reform that this legislation enables is a proper balance. It will give to Queensland a more predictable and stable political cycle. The business of Government will be more efficiently planned and conducted, making the business of Queensland more efficiently planned and conducted. Not only will public policy be able to be planned on a more rational basis; life will be easier for those whose affairs are, to a large extent, governed by what we do as a Government. There will be more coherent economic planning, something that will benefit everyone in the State.[10]

[10] Hon W K Goss MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 28 November 1990 at 5472-5473. Immediately after introducing this bill, the then Premier introduced a further bill—the Constitution (Duration of Legislative Assembly) Referendum Bill 1990 (Qld)—to submit the extension of the term of the Legislative Assembly for the approval of the electors. This bill provided that the vote was to be taken under the (then) *Referendums Act 1989* (Qld).

The referendum on the amending legislation, which was held in conjunction with the local government elections in March 1991, was defeated: "No" 811,078; "Yes" 772,647.[11]

It is important to note that the amendment then proposed did not seek to insert a 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.

3.2 LOCAL GOVERNMENT TERMS

In 1999, the various local government Acts were amended to extend the terms of local government councils from three to four years.[12] This amendment followed consultation by the minister responsible for local government with the local governments.[13]

Queensland local government elections are now held on a fixed day, that is, the last Saturday in March of every fourth year, commencing in 2000.[14]

As discussed further in chapters 5 and 7 of this report, a number of submitters to the committee's inquiry expressed the view that the Legislative Assembly should similarly have fixed four year terms. These submissions came from both local governments[15] and other interested persons.[16]

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11 *Queensland Government Gazette*, no 10, 4 May 1991 at 77.

12 *Local Government and Other Legislation Amendment Act (No 2) 1999* (Qld).

13 See the explanatory notes to the Local Government and Other Legislation Amendment Bill (No 2) 1999 (Qld) and the Local Government Minister's response to question on notice no 1093 dated 24 August 1999. The minister's response, tabled on 20 September 1999, advised that as at 15 September 1999, 52 local governments had responded in favour of four years terms for local governments, 18 local governments had responded they were not in favour of four year terms for local government and 46 local governments had not advised of their position on the matter.

14 *Local Government Act 1993* (Qld), s 269. Although, s 269(3) provides that a regulation may fix a different date for a particular year. Similar provision is made in the: *City of Brisbane Act 1924* (Qld), s 16 (regarding Brisbane City Council elections); and the *Community Services (Aborigines) Act 1984* (Qld), s 16 and the *Community Services (Torres Strait) Act 1984* (Qld), s 16 (regarding Aboriginal and Torres Strait Island Council elections).

15 See, for example, submissions nos 10, 12, 16, 17, 29, 43, 45, 55, 58 and 65.

16 See, for example, submissions nos 1 and 33.

4. THE POSITION IN OTHER JURISDICTIONS

4.1 OTHER AUSTRALIAN JURISDICTIONS

4.1.1 The states and territories

Queensland is the only state in Australia to retain a three year parliamentary term. The table attached as **Appendix C** shows that in all the other states, there is a four year term for the lower house.

However, the manner in which four year terms are provided for differs between the states. In Tasmania and Western Australia, a government can decide to hold an election at any time during its 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 proposes for Queensland. (Although, there is currently a proposal before the Victorian Parliament to introduce a fixed term of four years for both houses.[17]) In New South Wales it is the entire four year term.[18]

Between New South Wales, South Australia and Victoria, 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 which has 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' (that is, 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 with no fixed term component.

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. New South Wales extended the term of its Legislative Assembly from three to four years in 1981. A further referendum in New South Wales in 1995 fixed four year parliamentary terms.

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17 Constitution (Amendment) Bill 2000 (Vic). For further information regarding this bill refer to: <http://www.dms.dpc.vic.gov.au/>.

18 For background on the introduction of a 'qualified fixed term' in New South Wales see: Joint Select Committee on Fixed Term Parliaments, *Final report on the Constitution (Fixed Term Parliaments) Special Provisions Bill 1991*, Parliament of NSW, Sydney, September 1992 and G Griffith, 'Fixed term parliaments, with a commentary on the Constitution (Fixed Term Parliaments) Amendment Bill 1992', NSW Parliamentary Library briefing note no 003/95, January 1995.

South Australia adopted a four year term with a minimum fixed term of three years in 1985 and Victoria in 1984. The Northern Territory has had a four year term since 1978.

4.1.2 The Commonwealth

The issue of whether the term of the lower house of the Commonwealth Parliament should be extended from three to four years has been considered on a number of occasions.[19] In 1929, the Royal Commission on the Constitution recommended that the maximum term of the House of Representatives be extended from three to four years.[20]

The Constitutional Commission in its 1988 report recommended that the Commonwealth Constitution be altered to provide that the maximum term of the House of Representatives be four years and that the house shall not be dissolved within three years of its first meeting after a general election unless the house has passed a resolution expressing a lack of confidence in the government and no government can be formed from the existing house.[21]

The Constitutional Commission further recommended that the Senate should not have the power to reject or block a government's money bills during the first three years of the term of the House of Representatives, and that the procedure for resolving deadlocks be altered so that a double dissolution can only take place in the fourth year of the term of the House of Representatives.[22]

A referendum was subsequently held on 3 September 1988 to extend the term of the House of Representatives from three to four years, however, the relevant bill included no restriction on the holding of an early election.[23] 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. The referendum was defeated.[24]

There continues to be discussion regarding extending the term of the House of Representatives from three to four years. In particular, the Commonwealth Parliament's Joint Standing Committee on Electoral Matters has supported the move.[25]

4.2 OVERSEAS JURISDICTIONS

Many overseas countries have parliamentary terms of four or five years. For example, the House of Commons of the United Kingdom Parliament is elected for five years. Relatively few legislatures in overseas jurisdictions have three year terms. The United States House of Representatives is the only national lower house with a two year term. The table below gives the figures and where possible includes examples of liberal democracies in each category.[26]

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19 For details in this regard see: Constitutional Commission, *Final report of the Constitutional Commission*, AGPS, Canberra, 1988, volume one at paras 4.368-4.377.

20 Royal Commission on the Constitution, *Report of the Royal Commission on the Constitution*, Government Printer, Canberra, 1929 at 268.

21 Note 19 at para 4.345.

22 Note 19 at para 4.361.

23 See the Constitution Alteration (Parliamentary Terms) Bill 1988 (Cth).

24 The referendum obtained majority in no state: see the *Parliamentary Handbook* published by the Parliamentary Library, Parliament House, Canberra and available at <http://www.aph.gov.au/library/elect/referend/results.htm>.

25 Joint Standing Committee on Electoral Matters, *The 1996 federal election*, AGPS, Canberra, 1997 at para 9.42 and Joint Standing Committee on Electoral Matters, *The 1998 federal election*, CanPrint Communications Pty Limited, Canberra, June 2000 at para 5.129.

26 This table has been provided courtesy of Mr Scott Bennett, Parliamentary Library, Parliament House, Canberra.

Table 1: Length of national lower house terms

Length of Term	Number	Comments
2 years	1	USA
3 years	13	*Including* Australia, New Zealand, Sweden
4 years	55	*Including* Austria, Belgium, Denmark, Germany, Japan
5 years	76	*Including* Canada, France, Ireland, Italy, UK
6 years	3	Morocco, Nicaragua, Sri Lanka

Source: Inter-Parliamentary Union, *Electoral systems: A world-wide comparative study*, Geneva, 1993. See also *Blackwell Encyclopaedia of Political Science*, Blackwell, Oxford, 1991 at 332.

5. ARGUMENTS FOR AND AGAINST LONGER PARLIAMENTARY TERMS

5.1 THE POSITION TAKEN IN SUBMISSIONS

Submissions to the committee were divided in their support for longer parliamentary terms for Queensland.

While there was a fair degree of support for longer parliamentary terms in submissions, there was a difference of opinion as to the exact model. Some submitters specifically supported QCRC recommendation 5.2, that is, a four year term with a fixed minimum period of three years during which no dissolution can occur unless certain prescribed circumstances are complied with.[27] Others supported four year parliamentary terms generally without expressing a definitive view on any particular model.[28]

Some submitters supported four year terms but with a fixed period of four years. While a number of these submissions came from local governments (which now have fixed four year terms),[29] others came from interested individual submitters.[30]

On the other hand, a substantial number of submitters were against longer parliamentary terms.[31] Some in the 'against' category suggested that the three year parliamentary term should not only remain but that it should be fixed.[32]

As for the position of political parties on the issue, the ALP (Queensland) in its submission to the committee stated that it '*strongly supports amending the Queensland Constitution to extend parliamentary terms to four years*'.[33] The City Country Alliance Queensland also submitted that it supports four year terms on the model proposed by the QCRC but with two additional grounds for early dissolution, namely:

- '*the people of Queensland, by initially obtaining the support of a specified number or percentage of registered voters, recording their disapproval of the government in a manner to be determined by an appropriate body, [calling] for a referendum to be convened at short notice whereby the people of Queensland can determine whether they wish to allow the government to continue to govern or to call an election'*; and
- '*an external authority such as the Governor or a constitutional Court [finding] a government has not acted properly in accordance with strict criteria'*.[34]

Conversely, the National Party (Queensland) submitted that the issue of a four year term '*does not appear to be an issue in the community that is regarded as urgently requiring attention'* and that '*no further action be contemplated at this time on the question of a*

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27 See, for example, submissions nos 6, 20, 27, 28, 37, 40, 44, 48, 50 and 52. A couple of submitters, while supportive of the QCRC's recommendation, noted that there might be a need to provide for the Governor to retain some form of reserve power of dissolution during the fixed minimum period: see, for example, submissions nos 28 and 44. This issue is discussed further in chapter 6 of this report.

28 See, for example, submissions nos 10, 25, 32, 39, 51, 53, 56, 57, 63 and 64.

29 See, for example, submissions nos 10, 12, 16, 17, 29, 43, 45, 55, 58 and 65.

30 See, for example, submissions nos 1 and 33.

31 See, for example, submissions nos 2, 4, 7, 9, 19, 21, 22, 26, 31, 34, 35, 54 and 61.

32 See, for example, submissions nos 4, 7, 13, 15, 30, 34 and 62.

33 Submission no 41. See also Queensland Labor, *State platform document*, 1999 at 87.

34 Submission no 60.

referendum for a four-year term for State Parliament, or upon the QCRC's consequential recommendation for a fixed minimum period of three years'.[35]

No other political parties made a submission to the committee.

Below, the committee summarises the arguments for and against longer parliamentary terms. Many of the arguments in relation to the QCRC's recommendation focus on either the extension of the parliamentary term to four years or the fixed term aspect including the grounds for an early dissolution. While any assessment of the QCRC recommendation requires both aspects to be considered together, an attempt is made to divide the various arguments in relation to these two aspects.

The committee includes in the discussion in this chapter arguments raised in public submissions to the committee both for and against longer parliamentary terms generally and QCRC recommendation 5.2 specifically.

5.2 ARGUMENTS FOR

5.2.1 A four year term

(1) Facilitates longer-term planning and implementation by government

The principal advantage of a four year term is that it allows a newly elected or re-elected government further time to address issues which require long-term planning and implementation, especially in relation to economic and social policies. It is often said in 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. This means that only a third of a government's term is likely to be unaffected by an election.

This was recognised as early as 1929 in the *Report of the Royal Commission on the Constitution*[36] which recommended a four year term for the Commonwealth House of Representatives. A three year term was considered inadequate in view of, among other matters, the fact that '*a portion only of the term for which members are elected can be devoted to the transaction of the business of Parliament, [and] the extent to which that term is in effect curtailed by the time taken up in settling down after an election and in the preparation for a new election…*'.[37]

In more recent times, the Constitutional Commission in its 1988 report went further in recommending a four year term for the House of Representatives with a three year fixed term.[38] After noting that since 1945 there has been a federal election approximately every two years, the Commission observed:

> *A short electoral cycle tends to place pressure on Governments to adopt expedient short-term measures for the purpose of electoral success. Governments which fear electoral repercussions in the near future are notoriously reluctant to make hard decisions, however necessary or desirable they may be for the long-term benefit of the country.*[39]

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35 Submission no 49.
36 Note 20.
37 Note 20 at 268.
38 Note 19 at para 4.345.
39 Note 19 at para 4.394.

A four year term effectively doubles the period during which a government may be prepared to make these 'hard decisions'. This means that there are at least two budgets instead of one where electoral issues are given less weight.

While it is not possible to empirically establish a link between four year terms and better long term policy making,[40] anecdotal evidence supports the correlation. The Premier of South Australia, the Honourable John Olsen MP, in his submission to the committee advised that the most significant of a number of reasons for South Australia introducing four year parliamentary terms in 1985 was to:

> *...provide governments with the opportunity for a more strategic and long term approach to policy making, one which would also benefit all sections of the community, including the business sector.*
>
> *In effect it would allow new governments a 'settling in' period and a chance to put their policies into practice without the threat of an impending election. It would also ensure the stability needed for taking 'hard' decisions, which may be in the interests of good government in the long term but may be electorally unpopular in the short term.*
>
> *There was also evidence of the electorate's disaffection with too frequent elections.*
>
> *It is not possible to evaluate the success of these arrangements definitively, but I believe that the guaranteed three year term provides a more stable electoral cycle in terms of government planning and policy implementation, for business planning and for party campaign planning.*[41]

(2) Likely to generate better policies

Apart from encouraging genuine leadership, further time is often required in order to plan the best approach in resolving difficult economic and social issues. A four year term provides further time for the implementation of the policies adopted. These benefits were recognised by Professor Colin Hughes in 1981:

> *[I]t is often the case that governments do not know what to do, often don't know what the problem is or whether there is one there at all. They need time to assemble and evaluate the requisite information for proper planning of policies and determination of priorities. The problem is likely to be especially serious when there has been a change of government.*[42]

(3) Allows for more accurate assessment of implementation of policies

A four year term also allows for a fairer assessment of the merits and success of the implementation of government policies. This in turn provides more opportunity to modify policies in the light of that assessment.

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40 One submitter suggested that the committee attempt to establish whether there has been a study to ascertain whether the move to four year terms in other states has enabled better long-term policy-making by government, and that if no such study perhaps the committee could commission one: '*It may be argued that this is difficult or impossible to determine, but the attempt should at least be made. If it is impossible to determine, then the adoption of a four year term would simply be a shot in the dark.*' Submission no14.

41 Submission no 18.

42 C A Hughes, 'Extended and/or fixed parliamentary terms', paper presented at the South Australian constitutional conference, 27-28 November 1981, South Australian Parliament, Adelaide at 7.

(4) Encourages economic activity

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. This view was expressed by Sir Roderick Carnegie in 1987 as President of the Business Council of Australia in relation to the proposal for a four year term for the Commonwealth Parliament:

> *The frequency of elections has major implications for government decision-making, for budgetary policies and therefore for the economic climate in which businesses have to make major investment decisions. There is a direct link here: frequent elections have an adverse effect on government planning and this has an adverse effect on private sector planning and on business confidence.*[43]

This view was endorsed by the Constitutional Commission in its 1988 report:

> *A system which fails to provide an environment favourable to responsible long-term Government planning is likely to have an adverse effect on the private, as well as the public sector.*[44]

And it has been reinforced today by the submission to this committee from the Queensland Chamber of Commerce and Industry:

> *Business relies upon consistency and/or predictability in government policy and decision making processes to plan for future business paths and activities. The business sector requires a long-term perspective to be developed and implemented. Given this, QCCI supports the implementation of a four year term in Queensland. The Chamber believes this move would lengthen the period in which the State Government was not in election mode and so able to primarily 'govern' rather than primarily 'politic'.*[45]

(5) Assists other sectors of the community

A number of the benefits of longer parliamentary terms identified in relation to the business sector also apply to other sectors of the community. For example, there are advantages for the community service sector in terms of increased certainty and longer term planning.

(6) Enhances effectiveness of parliamentarians and the parliamentary committee system

A longer term will enable members of the Legislative Assembly to become more familiar with, and hence more effective in, their roles and to build better, more stable working relationships with individuals and organisations within the community.

Community respect for parliamentarians might also be enhanced because of '*the less frequent onset of electioneering*'.[46]

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43 Business Council of Australia, *Towards a Longer Term for Federal Parliament*, Business Council of Australia, Melbourne, 1987 at 10.

44 Note 19 at para 4.395.

45 Submission no 63.

46 Royal Commission on the Electoral System, *Towards a better democracy*, appendix to the journals of the House of Representatives of New Zealand 1986-87, vol ix H–'Commissions, royal commissions', Government Printer, New Zealand, December 1986 at para 6.17.

A four year parliamentary term also enhances scrutiny of the executive government as well as of the legislative process by providing further time for parliamentary committees to investigate and report on a wide range of important issues.

(7) Enables ministers to become better acquainted with their portfolios

Longer parliamentary terms would provide ministers with further time to become acquainted with their portfolios and departments.

(8) Brings Queensland into line with other parliaments

All lower houses in the Australian State Parliaments as well as the Northern Territory Legislative Assembly have four year terms. As well, all local governments in Queensland are now elected for four year terms. (For further information regarding parliamentary terms in other jurisdictions refer to chapter 4 of this report.)

(9) Parliament remains accountable

Some argue against a four year term on the ground that the government and parliament become less accountable to the people since they must wait another year to vote at a general election. However, it could also be argued that the extension of the life of parliament by merely one year is insufficient to warrant such concern. Any argument that there is less accountability in the other states with four year terms is untenable. This was also the view of the Constitution Commission which concluded in its1988 report:

> *We do not agree that increasing the parliamentary term by one year would decrease parliamentary accountability. Accountability is dependent upon many factors besides frequent elections, including openness of government, debate and questioning in the Parliament and freedom of the media. In any event we consider that, on balance, any perceived disadvantages of this sort are outweighed by the advantages of increased stability and the likelihood of better government.*[47]

5.2.2 A fixed three year minimum period

(10) Reduces political manipulation of election dates

Integral to the QCRC's recommendation to extend the parliamentary term is the incorporation of a three year fixed period during which an early election can only be held in the circumstances prescribed. The purpose of this fixed period is to ensure that elections are not held early for reasons of political expediency. It is clearly not in the public interest for a government to decide to hold an early election simply to gain some electoral advantage over the opposition parties. 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 three year term.

(11) Fewer elections

Obviously, four year terms will result in fewer state elections. The AWU submission cites that with the introduction of four year terms in the other states (except NSW), the period between elections has increased. For example, in Western Australia elections are now held

[47] Note 19 at para 4.401.

every 3.3 years compared with 2.6 years previously.[48] In Queensland, the period between elections has varied since 1969 between 2 years and 7 months up to 3 years and 1 month.[49]

(12) Financial savings

The Electoral Commission of Queensland advises that the estimated operational costs of conducting the last three state elections were: $6.738M in 1992, $6M in 1995, and $6.295M in 1998.[50] These figures do not include costs associated with the non-voter process and the public funding of elections.

In addition to reducing the costs associated with elections, fewer elections also result in cost savings in relation to parliamentary pensions and the costs associated with new members.

In respect of the costs associated with new and former members, the Speaker of the Queensland Parliament, the Honourable Ray Hollis MP submitted to the committee:

> *Leasing costs for the electorate offices have increased by 74% ($1.03m) since 1992-93.*
>
> *Costly relocations occur because of election results, changes to electoral boundaries and shifts in electorate population base. Relocation generally results in improved or larger offices and hence additional rental costs.*
>
> *More elections mean more former Members. Following the 1998 State Election and subsequent resignations, the number of former members entitled to make a claim under the provisions of the Members Handbook has increased considerably. Expenditure has increased from $0.137m in 1995-96 to an estimated $0.335m in 1999-2000.*[51]

5.2.3 Summary of the arguments for

Professor Colin Hughes in 1981 summed up the advantages of a four year term:

> *A four-year timetable would allow more careful preparation, sounder implementation, and more effective evaluation of outcomes by government itself and also by the media, by interest groups, by the Opposition, and ultimately by the electorate.*[52]

Thus, the benefits which flow from a four year term arguably advantage not only government and business but all the people of the state.

A fairly comprehensive outline of the main advantages of a *fixed term parliament* is given in McMillan, Evans and Storey, *Australia's Constitution: Time for Change?*,[53] in reference to a proposal for a fixed term for the Commonwealth Parliament. These arguments are equally applicable to the Queensland Parliament.

> *[T]he… proposal deprives a Prime Minister of the power to manipulate election dates for reasons that are purely arbitrary, partisan or capricious. When misused, that power can be unfair to other contestants, and can tend to disparage the democratic electoral process itself. Equally, it is said, governmental and political processes can be distorted if conducted in a continuous atmosphere of election fever. Governments may be discouraged from taking unpopular but necessary decisions; attention may be distracted from issues of vital national importance; governments are prone to engage*

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48 Submission no 52.

49 Queensland Parliamentary Library, *Queensland Parliamentary Handbook*: *The 48th Parliament*, GoPrint, Brisbane, 1997 (available at: <http://www.parliament.qld.gov.au/parlib/historic/results.html>).

50 Information provided by the Electoral Commissioner Queensland to the committee.

51 Submission no 50.

52 Note 42 at 8.

53 Law Foundation of New South Wales and George Allen & Unwin Australia, Sydney, 1983 at 264.

> *in attractive vote-catching behaviour, regardless of long-term consequences; and oppositions are equally likely to adopt an unrelenting, combative and disruptive stance as if snap elections are always around the corner. The alternative, if election dates are fixed, is argued to be a more stable political environment, in which policies are more coherently devised and implemented; in which all politicians, government and opposition alike, have greater political freedom to debate issues in a bipartisan spirit, and to carry out their electorate duties; and in which other participants in government and politics—parliamentary committees, public servants, parliamentary staff and the like—can concentrate on their normal duties.*

5.3 ARGUMENTS AGAINST

5.3.1 A four year term

(1) Loss of voter sovereignty

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. This was recognised in the dissenting view of three members to the 1929 *Report of the Royal Commission on the Constitution*: '*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*'.[54]

An extension to a four year term may also fuel community cynicism about politicians acting in their own interests.

(2) Inappropriate for a unicameral parliament

The above argument assumes 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 argument that the lower houses in all other Australian state parliaments have four year terms overlooks the fact that none of them are unicameral parliaments.

A number of submitters who opposed extending Queensland's parliamentary term stressed the relevance of Queensland's unicameral status.[55]

Indeed, it appears that maximum three year parliamentary terms were an essential element of the move to a unicameral Parliament in Queensland. In the lead up to the abolition of the Legislative Council in October 1921 the then Premier, the Honourable E G Theodore, advised the Governor that:

> *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.*[56]

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54 Note 20 at 304.

55 See, for example, submissions nos 7, 13, 23 and 34. The committee acknowledges that the extracts referred to in the above text on this discussion were initially drawn from submission no 23 from Mr Don Willis.

56 Queensland Studies Centre, Griffith University, *One chamber only: Queensland's upper house 75 years on*, Proceedings of a symposium conducted at Parliament House, Brisbane on 22 March 1997, Griffith Uni Print, Brisbane, 1997 at 3.

In introducing the bill to abolish the Legislative Council Theodore stated:

> *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.*[57]

(3) Insufficient safeguards for the parliamentary process

Extension to a four year term for a unicameral parliament needs to be complemented by other safeguards to reinforce the role of parliament and democracy. As Mr Elliott in his submission to the committee noted: '*Proposals for a four year term would be more acceptable if at the same time they strengthened democracy and the parliamentary system'*.[58]

A suggestion made by a number of submitters was that a mechanism of citizen initiated referendum should be introduced at the same time as a four year term.[59]

The undesirablility of merely extending the parliamentary term to a four year term was also recognised in New Zealand by the Royal Commission on the Electoral System in relation to its unicameral parliament:

> *Although the effective government arguments favour a 4-year term they cannot, as we previously indicated, be said to do so conclusively. Nevertheless, they would lead us to favour the relatively modest extension to a 4-year term, which we would not regard as significantly reducing voter sovereignty, were it not for the relative lack of restraints on the power of New Zealand Governments. In our view, there are as yet insufficient restraints to justify recommending a change to a 4-year term. We would not be prepared to do so until the present trend towards additional restraints has been further developed*'.[60]

(4) Less representative parliament

Changes to electoral boundaries arising from increased and shifting population statistics would only be given effect every four years. That is, while an electoral redistribution might be triggered in the second or third year of an electoral term, the malapportionment would remain until the next election was called. With four years terms that next election date is likely to be significantly later than with three year terms. This is an unacceptable period of time during which the representative basis of parliament is out-dated.

(5) Poorer decision-making

There is also the danger 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.

(6) Does not facilitate long-term government planning

Whether the opportunity for long-term planning and policy formulation by governments is improved by the extension from three to four year terms is not certain. Other forces (for

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57 D Murphy, R Joyce and M Cribb (eds), *The Premiers of Queensland*, University of Queensland Press, Brisbane, 1990 at 322.

58 Submission no 24.

59 See, for example, submissions nos 38 and 47. Submission no 19 also opposed four year terms while the Queensland Parliament remains unicameral and Queensland does not have any citizen initiated referenda mechanisms.

60 Note 46 at para 6.30.

example, overseas markets, exchange rates and Commonwealth Government policies) also affect government planning which may impact with little warning.

Mr Don Willis submitted to the committee that several points may be made in relation to the argument that four year terms would enable governments to undertake better long-term planning:

> *Firstly, extension of the parliamentary term from three to four years with a statutory minimum of three years is not in reality that much of an increase so as to enable a government to undertake the long term planning that the background paper suggested would eventuate. In all probability a government would still be looking towards securing its next term in office and act accordingly. This observation is particularly relevant given that under the QCRC's proposal a government could call an election as soon as the minimum statutory period had expired.*
>
> *Secondly, irrespective of whether the parliamentary term is three or four years, government policy making and planning will be subject to the reality of rapidly changing circumstances which will require flexibility and adaptability on the part of the policy makers and planners. As has been observed, "*…the contingent nature of policy delivery and the changing characteristics of the policy environment can often unhinge the most 'rational' of objectives". [Footnote reference to Davis, Wanna, Warhurst & Weller, Public Policy in Australia, 2nd edition, 1992 at 186.] *The need for continual revision in this respect is demonstrated by the fact that government agencies are required to develop their three-year strategic plans on an annual basis*. [Footnote reference to section 17, Financial Management Standard 1997.]
>
> *Thirdly, whether the parliamentary term is three or four years is relatively immaterial when it comes to the ramifications of our participation in the global economy. While it has become an economic fact of life, globalisation has a recognised downside in terms of its impact on the ability of governments to implement their social and economic policy intentions.* [Footnote reference to Argy, Australia at the Crossroads, 1998, Allen & Unwin at 11, 134, 216 and 220.] *The following extract articulates the impact of globalisation on a government's ability to adequately predict economic outcomes:*
>
> > *The trend to increasing globalisation has four related implications: it has increased the potential influence of world financial markets on a nation's economy; it has forced governments to reconsider their economic policy goals and priorities; it has affected the ability of governments to use certain policy instruments such as exchange rates or fiscal demand management; and it has made macro-economic policy more complicated and unpredictable*.[Footnote reference: ibid at 130.]
>
> *Fourthly, the impact of the Australian federal system on the State will remain unchanged regardless of the length of the parliamentary term. Queensland will still be affected by the budgetary and planning decisions of the Commonwealth (which operates on the basis of three- year parliamentary cycles) as well as by any exercise of its significant constitutional and financial powers and influence in relation to the State.*[61]

The Clerk of the Senate, Mr Harry Evans, similarly noted in his submission to the committee that there are two preliminary observations to be made about the thesis that four year terms better enable governments to take a long-term view in policy formulation:

> *First, the alleged advantage is often put in terms of allowing governments more scope to make unpopular or difficult decisions, or decisions which may involve short-term disadvantages for the electorate in return for long-term advantages. It should be noted*

[61] Submission no 23.

> *that implicit in this argument is an assumption that the electorate is generally incapable of taking a longer term view and of appreciating the advantages to be gained by policies which have short-term disadvantages. Also implicit in the argument is an assumption that governments are incapable of persuading the electorate to take a longer term view and that the kinds of policies in question are worth pursuing for the longer term advantages. I do not believe that the electorate or governments actually suffer from these serious deficiencies; if they did, we would have a very strong argument against democracy as such. Do the proponents of longer parliamentary terms really believe that the electorate and governments suffer from these fatal deficiencies? Is that why they believe that governments should be freer of electoral sanction, that is, that the quantum of accountability should be reduced? They should be invited to be explicit on this point.*
>
> *Secondly, the argument cannot be that the longer the parliamentary term the better the quality of government decision-making. It is a matter of finding an optimum. As the parliamentary term is expanded a point must be reached at which the supposed advantage of government being able to implement policies more freely is lost, or is completely cancelled out by the loss of accountability. As the salutary check of accountability to the electorate is weakened the government is more able to disregard the public interest and turn its attention to its own interests, at least for a time. A consideration of parliamentary terms should include a consideration of where that point lies. It may well lie short of four years.*[62]

5.3.2 A fixed three year minimum period

(7) Does not provide the business sector and the economy generally with improved stability and greater certainty

There is no guarantee that, in practice, four year terms—with a fixed minimum period of three years—would provide stability and certainty. There is nothing to stop a government calling an election at any time after three years.

As Mr Don Willis submitted to the committee:

> *…the most likely scenario is that by the time three years of a four-year term had elapsed, the Government, the Opposition and the business community would all be anticipating and planning for the next general election. Furthermore,… under the QCRC's proposal a government would not be prevented from calling an election as soon as the fixed three-year part of the term had concluded. In this case any benefit resulting from the extension of the additional year may only be illusionary with no real advantage flowing to business or the economy. As to the possibility of improved political stability flowing from an extension to the current parliamentary term, it is not unknown for majority governments part way through their term to become minority governments simply as a result of a by-election. Irrespective of the length of the parliamentary term or changing political fortunes the electorate would still expect their representatives to deal maturely with each other for the greater good of the wider community.*[63]

(8) Danger of government in limbo

The very limited circumstances prescribed for allowing an early election within the first three years of the parliamentary term might be inadequate. They do not necessarily cover all the possible situations where it would be necessary to give the electorate the right to vote a new

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62 Submission no 14.

63 Submission no 23.

parliament. Nor is the Governor conferred any reserve power to allow an election in these circumstances.

For instance, one scenario not covered is where a minority government is left in limbo by those members of parliament who are prepared to support it on any no confidence motion and vote it supply but oppose all other legislation.[64]

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.

(This issue is discussed further in chapter 6.)

(9) Devious approaches to avoid the fixed period

A devious government could still arrange an early election by orchestrating the prescribed conditions for an early election, for example, passage of a no confidence motion.[65] Instances of this practice, which constitute a fraud on the parliamentary system, occurred in the former West Germany in 1972 and 1982. More likely, a government might resign knowing that a new minority government would be appointed and then be defeated by a no confidence motion, thereby triggering an early election.[66]

There is also the likelihood that the Courts will be dragged into any conflict over whether the conditions for an early election have been satisfied. Apart from raising the issue of judicial review, this may delay a timely resolution of any parliamentary impasse.

(10) A fixed term is unnecessary and undemocratic

Realistically, a Queensland premier is not free at present to call an election at any time. The same constraints recognised at the Commonwealth level apply in Queensland:

> *It is unrealistic to assume that a Prime Minister always has an election in his pocket, since he needs to convince the Governor-General, his own party and the electorate that one is necessary.*[67]

Indeed, 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.[68]

Nor is a fixed period democratic since it prevents recourse to the electorate to resolve a parliamentary impasse. This is essential if parliament is to perform its representative function and properly serve the people of the state:

> *[I]t is axiomatic that a government be able to appeal to the electorate at any time—for instance, if it is encountering parliamentary obstruction, if it wants to gain a mandate for a new and major policy, or if it loses its majority as the result of a by-election.*[69]

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64 In this regard see McMillan, Evans and Storey, n 53 at 266.

65 The QCRC recognised this in its report but considered that '*the political costs of so desperate a step, and by definition on the eve of an election, make it unlikely*': QCRC report, n 1 at 41. This possibility was also noted by a couple of submitters: see submission nos 14 at 3 and 23 at 4.

66 See G Lindell, 'Fixed term parliaments: the proposed demise of the early federal election', *The Australian Quarterly*, Autumn, 1981 at 24.

67 McMillan, Evans and Storey, n 53 at 265.

68 Queensland Parliamentary Library, *Queensland Parliamentary Handbook: The 48th Parliament*, n 49.

69 McMillan, Evans and Storey, n 53 at 266.

(11) Risk of government incompetence or corruption

There is a risk that a government might lose all sense of accountability, secure in the knowledge that it cannot be called to account to the people for the first three years. This view was well expressed by Senator Austin Lewis in 1981:

> *A fixed term would mean that no government need fear the perils of mismanagement, corruption or incompetence as no mechanism would exist to demand an appeal to the electorate ... [T]he nation could have suffered irreparable damage while a government thrashed about aimlessly but secure in the knowledge that nothing could force it to the polls.*[70]

(12) Few financial savings

With a fixed three year minimum period there would be nothing to prevent a government from calling an election as soon as the fixed three year period had expired. Thus, possibly the period between elections would not be substantially longer than has been the case over the last 20 years in Queensland. Consequently, the cost savings from fewer elections could be illusory.

One submitter, Mr Frank Lightfoot, also made the observation that '*[b]ad governments are capable of costing the community for more than an election*'.[71]

5.3.3 Summary of the arguments against

The main argument against four year terms is that a longer term would, in effect, reduce the accountability of the government to the parliament, and hence to the people, as the people would have to wait another year before voting at a general election. As the Constitutional Commission noted in its 1988 report in the context of extending the term of the House of Representatives:

> *One of the most common arguments cited in support of the maintenance of the three year term is that it provides greater parliamentary accountability to the public. It is said that the longer the parliamentary term the greater the risk that Governments will become complacent and unrepresentative of current opinion.*[72]

A further argument against longer parliamentary terms in Queensland specifically is that Queensland is the only state in Australia to have a unicameral legislature. Thus, there is no upper house (or 'house of review') to act as a check on government by scrutinising the activities, policies and legislation of the government.

A number of submitters to the committee also stressed that insufficient time has passed since the last (defeated) referendum was held on four year terms in Queensland in 1991,[73] and that nothing has occurred during the intervening period which would indicate a different result might be achieved should another referendum now be held on the issue.

In this regard the National Party (Queensland) submitted:

> *The National Party takes the view that this issue was canvassed in—and rejected at—the 1991 referendum on four-year terms for State Parliament conducted by the Goss*

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70 A paper entitled 'Fixed Term Parliaments' presented at the Australasian Study of Parliament Group, Third Annual Workshop, Fixed Terms Parliaments, 29-30 August 1981, Canberra at 2.

71 Submission no 38.

72 Note 19 at para 4.400.

73 See, for example, submissions nos 4, 7, 19, 30, 31 and 34.

Government. It does not appear to be an issue in the community that is regarded as urgently requiring attention. Our view is that the people have given no indication of willingness to add another year to parliamentarians' time in office, having soundly defeated the concept in 1991. Nothing material has changed in the intervening nine years. No argument therefore exists for a further expensive referendum.[74]

[74] Submission no 49.

6. CONDITIONS FOR EARLY DISSOLUTION

6.1 THE QCRC'S CONDITIONS FOR EARLY DISSOLUTION

QCRC recommendation 5.2 is that the maximum term of the Legislative Assembly be extended to four years subject to a provision that the Governor may not dissolve the Assembly during the first three years unless one of four conditions for early dissolution are met, namely:

(a) a vote of no confidence in the government is carried; or

(b) a vote of confidence in the government fails to be carried; or

(c) an appropriation bill is defeated; or

(d) an appropriation bill fails to pass.

The following extract from the QCRC's report explains the QCRC's reasoning behind these conditions for early dissolution:

> *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.*[75]

The QCRC's conditions for early dissolution are reflected in clause 14(4) of the QCRC's Constitution of Queensland 2000, although it is important to refer to both subclauses (3) and (4) which are as follows:

> ***Summoning, proroguing and dissolution of Legislative Assembly***
>
> ***14 …***
>
> ***(3)*** *Subject to subsection (4), the Governor may dissolve the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.*
>
> ***(4)*** *The Governor may not dissolve the Legislative Assembly unless—*

[75] QCRC report, n 1 at 40.

> *(a) a period of three years has elapsed since the day of its first meeting after a general election; or*
>
> *(b) the Legislative Assembly has passed a motion of no confidence in the government; or*
>
> *(c) the Legislative Assembly has defeated a motion of confidence in the government; or*
>
> *(d) the Legislative Assembly has rejected a Bill for an Appropriation Act, or an Annual Appropriation Act, within the meaning of the* Financial Administration and Audit Act 1977*; or*
>
> *(e) the Legislative Assembly has failed to pass a Bill for an Appropriation Act, or an Annual Appropriation Act, within the meaning of the* Financial Administration and Audit Act 1977 *before the time that the Governor by a message has informed the Legislative Assembly that the appropriation is required.*

It is clear from clause 14(4) that the Governor has no power to dissolve the Legislative Assembly unless one of those grounds is satisfied. Within the fixed three year period, the Governor is not empowered to dissolve the Assembly on any other grounds. However, this does not mean that the Governor *must* dissolve the Legislative Assembly if the Premier advises that one of the grounds is satisfied. Clause 14(3) implicitly provides the Governor with a discretion whether to accede to such a request. While the Governor would normally exercise that discretion in accordance with the advice of the Premier, circumstances might arise where the Governor may need to act without that advice.

To that extent, clause 14(3) gives statutory recognition and effect to a reserve power of the Governor to decide whether or not to *dissolve*[76] the Assembly on the prescribed grounds within the fixed three year period or on any ground during the fourth year of the parliamentary term. The Governor presently has a similar reserve power to grant or refuse a dissolution of Parliament when sought by the Premier before the expiration of the current three year parliamentary term. Presumably, Parliament would intend that the conventions which currently regulate the exercise of that reserve power continue to apply under clause 14(3).

In this chapter, the committee considers whether, if the QCRC recommendation is to be adopted, there should be any amendment to the QCRC's conditions for early dissolution.

6.2 A VOTE OF NO CONFIDENCE OR DEFEAT OF A VOTE OF CONFIDENCE

The committee has considered whether a notice and/or time requirement should be built into the QCRC's proposed clause 14(4)(b) and (c).

Under s 24B(2) of the NSW *Constitution Act 1902,* the NSW Legislative Assembly may be dissolved if:

> *(a) a motion of no confidence in the Government is passed by the Legislative Assembly (being a motion of which not less than 3 clear days' notice has been given in the Legislative Assembly); and*

[76] Clause 14(3) does not affect any other reserve powers which the Governor might possess.

> *(b) during the period commencing on the passage of the motion of no confidence and ending 8 clear days thereafter, the Legislative Assembly has not passed a motion of confidence in the then Government.*[77]

In Queensland, standing order 39 requires at least one day's notice for all substantive motions. However, the Assembly may vary this by:

- sessional orders;
- granting leave for a member to move a motion without notice; or
- otherwise agreeing to suspend standing orders to permit a member to move a motion without notice (or within a shorter period of notice).

Rather than rely on standing order 39, a notice and/or time requirement could be built into the QCRC's clause 14(4)(b) and (c) by, for example:

- amending clause 14(4)(b) to provide…*the Legislative Assembly has passed a motion of no confidence in the government being a motion of which not less than XX clear days' notice has been given in the Legislative Assembly*; and
- amending clause 14(4)(c) to provide…*the Legislative Assembly has defeated a motion of confidence in the government and within XX clear days thereafter, the Legislative Assembly has not passed a motion of confidence in the then Government*.

The first requirement would effectively ensure that a minimum period of time elapses between when notice of the intention to move is given and when the motion is moved. Not only would such a requirement enable preparation time for debate on the motion, but it would also attempt to ensure against the passage of an 'opportunistic' vote of no confidence achieved merely because at a particular point in time government numbers in the Assembly are depleted.

The second requirement would likewise ensure against a motion of confidence being put by the opposition and defeated because at a particular point in time government numbers in the Assembly are depleted.

A possible disadvantage with either requirement is that technical questions might arise as to whether the requirement has been met, something which the QCRC recommendation by its simplicity avoids. In this regard, on 8 September 1999, the Leader of the NSW Legislative Assembly suspended standing orders so that a no confidence motion moved by the Leader of the Opposition was brought on forthwith, rather than three clear days after the notice was given (as required by the NSW Constitution). While the motion was negated, the events raised the question whether the motion, if passed, would have triggered a possible dissolution of the Assembly. The Clerk of the NSW Legislative Assembly advised the committee that it was his view, based on Crown Law advice, that the motion, if passed, would not have triggered the dissolution of the Assembly.[78]

Alternatively, the same purpose could be achieved by:

- amending the QCRC's clause 14(4)(b) to provide…*the Legislative Assembly has passed a motion of no confidence in the government and has not within XX clear days thereafter passed a motion of confidence in the then government*; and

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[77] Note that the NSW provision differs from the QCRC's clause 14(4)(b) and (c) in that a failure to pass a vote of confidence alone is not a sufficient ground to trigger an early election.

[78] Submission dated 15 May 2000 to the committee's review of the QCRC's recommendation relating to a consolidation of the Queensland Constitution.

- amending the QCRC's clause 14(4)(c) to provide…*the Legislative Assembly has defeated a motion of confidence in the government and has not within XX clear days thereafter passed a motion of confidence in the then government*.

This option would have the advantage of ensuring that the government could not delay resolution of the motion by causing the Assembly to adjourn after notice of a no confidence motion was given (assuming the government then had the numbers to so adjourn the Assembly).

While the QCRC's report does not reveal whether the QCRC considered a notice and/or time requirement, it appears from the Governor's discretion in clause 14(3) that the Governor would have the responsibility of being satisfied before dissolving the Assembly that a no confidence motion or failure to obtain a confidence motion truly reflected the Assembly's loss of confidence in the government.

6.3 AN APPROPRIATION BILL IS DEFEATED OR FAILS TO PASS

Paragraphs (d) and (e) of the QCRC's proposed clause 14(4) refer to a rejection or failure to pass a bill for an Appropriation Act or for an Annual Appropriation Act within the meaning of the *Financial Administration and Audit Act 1977* (Qld).

The Clerk of the Senate, Mr Harry Evans, suggested in his submission to the committee that an early dissolution be confined to those appropriation bills *for the ordinary annual services of the government* (as opposed to appropriation bills relating to the legislature or a specific government activity).

> *More consideration is required, however, of the proposition that an early dissolution should be allowed in the event of the Assembly failing to carry any appropriation bill. It may be argued that failure to pass an appropriation bill* for the ordinary annual services of the government *should allow an early dissolution. Even that condition may be disrupted, in that the Assembly may be willing to grant the government adequate supplies but may have some legitimate objection to a particular provision of such a bill. It would seem to unduly favour a government to allow it to go to a dissolution on the rejection of* any *appropriation bill. The Assembly may have a legitimate objection to a particular appropriation bill to fund some particular government activity, while not being willing to submit the state to the cost and inconvenience of an election over the issue. A government which thinks that the political tide is running in its favour could use such an appropriation bill to give itself the opportunity for an early dissolution.*[79]

This reflects the position under the NSW and Victorian Constitutions.

Section 24B(3) of the *Constitution Act 1902* (NSW) refers to '*a bill which appropriates revenue or moneys for the ordinary annual services of the Government*'. Further, s 24B(3) of the NSW Constitution makes it clear that the subsection does not apply to a bill which appropriates revenue or moneys for the Legislative Assembly only. This proviso was inserted during the amending bill's passage through the NSW Legislative Assembly. According to the member who introduced the amendment, its purpose was to provide for the independence of Parliament: '*the question of a separate appropriation for the Parliament is vital to its independence from the Executive Government'*.[80]

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79 Submission no 14.

80 Griffith, n 18 at 8.

Section 8(3)(c) of the *Constitution Act 1975* (Vic) similarly refers to '*a Bill dealing only with the appropriation of the Consolidated Fund for the ordinary annual services of the Government*'.

The proviso in s 24B(3) of the NSW Constitution, which makes it clear that the ground does not cover appropriation for the legislature, seems unnecessary provided the reference to '*the ordinary annual services of the Government*' is interpreted as a reference to the executive government—which is how it should be interpreted.

It would be prudent to ensure that the basis for an early dissolution in Queensland only arises in relation to the funds necessary to ensure:

- the continued functioning of the executive government as opposed to the legislature; and
- the continued functioning of government, rather than some specific item of appropriation which does not necessarily reflect a lack of confidence in the government itself.

Arguably, this is not necessary given the current definitions of 'Appropriation Act' and 'Annual Appropriation Act' in the *Financial Administration and Audit Act 1977* (Qld). 'Appropriation Act' is defined to mean '*an Act that authorises amounts to be paid from the consolidated fund to departments in a financial year*'.[81] 'Annual Appropriation Act' is defined to mean an Act for a financial year that—

> *(a) authorises the Treasurer to pay a total amount from the consolidated fund for the financial year; and*
>
> *(b) for each department for the financial year—*
>
> *(i) appropriates a total amount for the department for application to its departmental outputs, administered items and equity adjustment for the financial year; and*
>
> *(ii) states its departmental outputs, administered items and equity adjustment for the financial year and the amounts for application to the outputs, items and adjustment.*[82]

However, another issue for consideration is the desirability of a provision of the Constitution referring to definitions contained in an ordinary statute (which might be amended by Parliament at any time), particularly if the provision is to be entrenched.

6.4 THE NEED FOR ANY OTHER CONDITIONS FOR EARLY DISSOLUTION

The committee has considered whether there might be any other circumstances or conditions which, if fulfilled, justify an early dissolution of the Legislative Assembly during the fixed three year period.

6.4.1 A minority government in limbo

In chapter 5, the committee noted that an argument against QCRC recommendation 5.2 is that it does not cater for the scenario where a minority government is left in limbo by those members of the Legislative Assembly who are prepared to support it on any no confidence motion and vote it supply but oppose all other legislation.

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81 *Financial Administration and Audit Act 1977* (Qld), schedule 3.

82 *Financial Administration and Audit Act 1977* (Qld), s 3(1).

In these circumstances, the grounds prescribed for an early dissolution are not addressed in the QCRC's Constitution of Queensland 2000. This might leave a paralysed government in office until the expiration of the minimum fixed period of three years.

Apparently, it was for this reason that the proposal put to Queenslanders in 1991 did not propose a fixed minimum term. The then Premier, the Hon W K Goss MLA stated:

> *It has been suggested that there should be a constitutionally protected minimum term. This might be superficially attractive, but it could lead to a constitutional crisis which could paralyse a State and make the business of a State unworkable. The situation could arise in which a coalition partner, for example, might withdraw support but still ensure that confidence was maintained in a Government and Supply was passed. This could mean that all other legislation would be rejected, reducing the governance of a State to a shambles. What advocates of such a system suggest is that we have a cocktail of the Westminster system and the United States Presidential system. The simple fact is that the two do not mix, and those who propose such a mixture do not understand the fundamental operation of the Westminster system.*[83]

Without a reserve power to dissolve the Assembly until the expiration of the fixed minimum period, the Governor would need to encourage a political solution to such an impasse.

While such an extreme situation might be difficult to envisage, given the possibility of such an unusual occurrence the committee has sought the advice of Associate Professor Gerard Carney on the option of extending the reserve power of the Governor to prevent a government being placed in limbo for up to three years.

Associate Professor Carney advised as follows:

> *Little if any guidance is available from the experience of other Australian Parliaments which have a fixed term component (NSW, Vic, SA and ACT). Of those, only New South Wales expressly retains a reserve power in s 24B(5) of the Constitution Act 1902 (NSW) in these terms:*
>
> *" This section does not prevent the Governor from dissolving the Legislative Assembly in circumstances other than those specified in subsections (2)-(4), despite any advice of the Premier or Executive Council, if the Governor could do so in accordance with established constitutional conventions."*
>
> *The difficulty with this provision is that it assumes there is a reserve power to dissolve against the advice of the government and that there are "established constitutional conventions" to justify the exercise of such a power on grounds other than those prescribed which trigger the power to dissolve. Neither such a reserve power nor such conventions are clearly established. It may be that s 24B(5) actually provides for a new reserve power from which future grounds and conventions will evolve. In any event, it provides no useful basis for devising a solution to the problem posed by the Committee.*[84]
>
> ***Reserve power and conventions***
>
> *It is clearly established that one of the few remaining reserve powers of the Crown is the power to* grant *or* refuse *a dissolution of Parliament: see eg R D Lumb,* Australian Constitutionalism *(1983) at 76. Most constitutional precedents concern a situation where the Government requests an early dissolution and the issue is whether the*

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83 Hon W K Goss MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 28 November 1990 at 5473.

84 This view is supported by the submission to the committee from the Honourable Richard McGarvie AC (submission no 36 at 5).

Governor is obliged to accede to that request. Those precedents will remain vitally important under cl 14(3). Most rare is the situation where a Governor dissolves a parliament against the advice of the Government for this would entail the dismissal of the Government as well. It is very unlikely that there is a separate reserve power to dissolve: see Eugene Forsey, The Royal Power of Dissolution of Parliament in the British Commonwealth *(Oxford University Press, Toronto, 1968 reprint of the 1943 publication, at p 270).*

The dilemma of a paralysed government falls into neither of those situations. No record has been found among the constitutional precedents of a case resembling the situation of a paralysed government. However, those precedents provide some guidance on the circumstances which may justify a dissolution.

The clearly established grounds for seeking a dissolution are already covered by cl 14(4): a Government defeated by a no confidence motion; or a Government unable to obtain supply. However, other grounds are cited in Todd's Parliamentary Government in England*, (ed Walpole, 1892) vol ii at 126-7 which were summarised in these terms by Dr H V Evatt in* The King and his Dominion Governors *(2nd ed) at 254:*

"Todd asserts that the Sovereign's power to dissolve 'may properly take place in four circumstances', viz (1) After the dismissal of Ministers by the Sovereign, as in 1784, 1807, and 1834. (2) On account of disputes between the two Houses. (3) In order to ascertain popular opinion in relation to any important act of the Executive Government if 'some question of public policy' creates a dispute between Ministers and the Commons. (4) 'Whenever there is reason to believe that the House of Commons does not correctly represent the opinions and wishes of the nation'."

While all of these grounds do not necessarily apply today, the third of them covers a situation where in effect a Government suffers a no confidence motion. Similarly, Hallam in Constitutional History of England *(7th ed) vol iii at 16 refers to the Crown's reserve power "of putting a stop to parliamentary disputes by a dissolution".*

Anson in Law and Custom of the Constitution*, vol i (Parliament) (5th ed) at 327 despite expressing the debatable view that the Sovereign does not refuse a request for a dissolution, considered that it could only be "rightly demanded whenever there is reason to suppose that the House of Commons has ceased to represent the opinion of the country."*

These expressions of constitutional practice provide some justification for a reserve power of dissolution in circumstances of a paralysed government. They support the principle that a dissolution of parliament is warranted when the parliamentary system or the legislative process is rendered inoperative. It is precisely a constitutional crisis of this nature for which the Governor's reserve power is designed as a safety valve.

Conclusion

The difficulty is to formulate a reserve power which confines the power to dissolve the Assembly to those circumstances which clearly warrant its exercise while at the same time minimising the opportunity for political manipulation. It would be unwise to assume that there are already established conventions to guide the exercise of such a reserve power. What needs to be created by statute is a new reserve power. The circumstances in which such a power can be exercised need to be sufficiently defined to cover the situation of a paralysed government or any other situation where an election is necessary to resolve a constitutional stalemate.

One approach is to insert the following additional ground for an early dissolution as paragraph (f) to cl 14(4), that is, if:

"(f) the Governor considers the capacity of the Legislative Assembly to enact legislation has been sufficiently frustrated to warrant its dissolution."

> *An alternative provision, narrower in scope, is one which allows the Governor to dissolve where in effect there is a constructive vote of no confidence:*
>
> *"(f) the Legislative Assembly has defeated or failed to pass one or more Bills which the government has declared is or are of special importance."*
>
> *Both of these suggestions entail some risk of political manipulation, although the risk appears less with the former provision. In the end, it is impossible to eliminate that risk. Even the specified grounds for an early dissolution, a vote of no confidence etc and the denial of supply, can be manipulated. It is important though that any provision minimises that risk as far as possible and certainly is not so wide as to allow dissolution whenever the Government wants one.*

Therefore, it appears that it is possible to formulate a statutory reserve power to overcome the unlikely 'minority government in limbo' scenario. However, such a reserve power would have to be carefully drafted to avoid any abuse of the power for political gain.

Essentially, a decision has to be made as to whether:

(a) it is necessary to include in the Constitution an appropriately drafted grant of reserve power; or

(b) given the unlikelihood of such a scenario arising, whether it is better left to political resolution.

However, there also remains the issue of whether an even wider reserve power is required.

6.4.2 The need for a general reserve power of dissolution

In his submission to the committee, the former Victorian Governor, the Honourable Richard McGarvie AC,[85] expressed grave concerns over QCRC recommendation 5.2 in its current form. In Mr McGarvie's opinion, QCRC recommendation 5.2 would:

> *…leave the Queensland constitutional system seriously deficient in the safeguards of the democratic operation of the system. It would substantially curtail the vital safeguard of the Governor's reserve authority to exercise a reserve power when that is absolutely necessary to ensure the effective operation of our system of parliamentary democracy and its safeguards of democracy. That is the fail-safe mechanism that enables an exceptional and intractable constitutional malfunction to be referred as a last resort to the Parliament or people for resolution. It authorises the Governor in a situation of absolute necessity to act independently of ministerial advice and exercise the reserve powers of appointing or dismissing a Government or dissolving or declining advice to dissolve Parliament, in such a way as brings the constitutional malfunction before Parliament or the electorate. (*Democracy, *pp 145-153) The curtailment of the fail-safe mechanism of the reserve authority would result from the Governor being deprived for the first three years of the reserve power to dissolve Parliament for an election and thus bring the issue of a malfunction before the electorate.*
>
> *… The ultimate guarantor of democracy is reference to the electorate. If there is restriction of the Governor's capacity to refer a constitutional malfunction to the electorate when it becomes absolutely necessary in order to continue the effective operation of the democratic system and its safeguards of democracy, it follows that the democratic quality of the system suffers.*

[85] Submission no 36.

Mr McGarvie cited some examples of how, over time, this deficiency would impair the democratic operation of the Queensland constitutional system, the first one being where a government '*persisted in acting or encouraging action in clear and grave breach of the law, and neither legal nor political action would be rapid or reliable enough to protect the integrity of the system*'.

Currently in Queensland, the Governor has reserve authority to dismiss a government persisting in illegal action and, in the event no alternative government is possible, to bring about an election in which the people have the opportunity of deciding to elect a government which will comply with and uphold the law.

However, Mr McGarvie argues that under the QCRC proposal, a Governor who did during the first three years dismiss a government clearly acting illegally might well bring about the precise situation which is raised in section 6.4.1 above, that is, a paralysed minority government following the dismissal of a majority government for illegality. This would come about if a substitute (minority) government were appointed and the former government chose not to defeat the new government on the floor of the Assembly but rather delay an election so as to recover from the dismissal:

> *A Government dismissed for such serious illegality could well prefer to postpone for as long as possible the time when it would have to face the electorate, and seek to rebuild its image during the balance of the three years while the State drifted under a minority Government unable to govern except with the support on particular issues of the majority tainted by illegality.*

Mr McGarvie further comments that the possibility of a paralysed minority government might discourage a governor from dismissing a government although it is clearly acting illegally:

> *Assume the illegal conduct occurred six months into the life of the Parliament. The Governor could dismiss the Premier and Government perpetrating or encouraging the illegality but could not appoint another Premier and Government able to govern or able until the expiration of two and a half years to advise and bring about an election. The Governor would know that a Government prepared to achieve its political objectives through grave illegality would be likely to be prepared to exert on the Governor the pressures of frustration in order to force its own reappointment. It would be well within its power, with its control of the majority in the Legislative Assembly, to frustrate the Governor. It could avoid an election and retain its majority so long as it avoided a vote of no confidence being carried, ensured that every vote of confidence was carried, and ensured that every appropriation bill passed. The Governor, whose primary obligation to the community is to appoint from the Parliament a Government fitting the notion of the elected Government, and able to govern, would be unable to do so unless the Government dismissed for illegality were reappointed. No other Government could obtain the support of the majority of the Legislative Assembly and without that support could not pass any Act of Parliament. Compare* Democracy, *pp. 48-50, 59. The constitutional system would be drifting with no effective Government and no effective Government other than the Government involved in illegality could be obtained for two and a half years.* ***Although the power to dismiss a Government for persisting clear and grave illegality would exist during the first three years, the absence of effective power to install an effective Government in its place through dissolution and election would greatly discourage a Governor from making any use of reserve authority even in a case of the gravest, clearest and most blatant illegality. There would be no realistic option but to leave the offending Government in office.*** [Emphasis added.]

Mr McGarvie also proposes other scenarios whereby a government could undertake action which substantially reduces the potential accountability of the government to the electorate but which, under QCRC recommendation 5.2, would leave the Governor powerless to act. These scenarios, which Mr McGarvie notes Dr Evatt describes as 'attempts to cheat the electors of the right to control the Legislature', include a government with a large majority in the legislature amending an electoral law so that only members of its party could be eligible as candidates for election to Parliament.

Thus, Mr McGarvie argues that it is highly desirable that the reserve authority of the Governor continue to exist for the whole life of Parliament:

> *I have given some examples but the advantage of the reserve authority is that it is not limited to particular situations but authorises the Governor to exercise a reserve power and refer an exceptional constitutional malfunction to Parliament or people for resolution as a last resort in any situation where that becomes absolutely necessary to ensure the effective operation of the constitutional system and its safeguards of democracy. It is available for situations when they arise which meet those criteria although the situation has not at present been encountered or thought of.*

While Mr McGarvie suggests a provision of similar effect to the NSW provision under which the Governor expressly retains the power to dissolve the lower house 'in accordance with established constitutional conventions' throughout the four-year term, he regards the NSW provision as 'most ineptly expressed'. In other words, Mr McGarvie suggests that the Queensland provision should have the effect of retaining the Governor's existing reserve authority to exercise reserve powers throughout the four year term. Mr McGarvie also proposes that because such a provision carries an undesirable risk of giving the courts jurisdiction to investigate and decide whether a purported exercise of a reserve power was justified, it would be important to provide that that issue is not justiciable by the courts.

6.4.3 Summary

The above discussion raises the issue as to whether to provide for a reserve power in the QCRC's clause 14 (if it is to be adopted) and, if so, the form of that power. The committee has identified four alternative courses of action.

First, clause 14 could include a broad reserve power such as Mr McGarvie suggests. However, to some extent such a power risks political manipulation to convince the Governor of the need to dissolve.

A second option is to provide for a narrower reserve power along the lines of a new paragraph (f) to the QCRC's clause 14(4) to enable an early dissolution where:

> (f) the Governor considers the capacity of the Legislative Assembly to enact legislation has been sufficiently frustrated to warrant its dissolution.

A third alternative is to attempt to prescribe the specific scenarios in which the Governor's reserve power of dissolution arises within the fixed three year period. However, this option involves a number of difficulties.

For example, it is difficult to predict today all scenarios which might arise in the future involving a constitutional malfunction of such magnitude so as to impair the effective operation of our system of parliamentary democracy.

Further, each scenario would have to be described in some detail to avoid the risk of political argument over whether the conditions for exercise of the reserve power had been fulfilled. How effectively this can be achieved is questionable. For example, in the 'government acting illegally' scenario what constitutes illegal action? Is it illegality proved by a court of law? What if the illegality is of a trifling nature?

The fourth and final alternative is not to provide for a reserve power at all.

Ultimately, the reserve power question involves weighing up on the one hand the likelihood of the remote scenarios outlined above occurring with, on the other hand, the trust and power to be placed in the Governor to exercise a reserve power of dissolution in appropriate circumstances.

From another perspective, the issue is whether such scenarios should be resolved by the application of statutory provisions or are better left to political resolution.

Another issue relevant to each of the four alternatives outlined above is whether specific provision should be made regarding judicial review. As noted above, Mr McGarvie has submitted that it would be important to provide that a purported exercise of a general reserve power such as he suggests is not justiciable by the courts. However, a question arises as to whether *any* exercise by the Governor of the power in the QCRC's proposed clause 14(3) and (4) should be subject to judicial review.

7. ALTERNATIVES TO THE QCRC'S PROPOSED MODEL

7.1 OTHER POSSIBLE MODELS

The QCRC has recommended four year terms for the Queensland Legislative Assembly based on the 'maximum term with qualified fixed term component' model. However, Queensland could move to four year parliamentary terms by adopting a different model to that recommended by the QCRC.

As noted in section 5.1, a number of submitters to the committee advocated a fixed four year term (as opposed to a fixed minimum period of three years), such as exists at local government level in Queensland. The Clerk of the Senate, Mr Harry Evans, also urged the committee to consider fixed four year terms:

> *The proposal before the committee is for the government not to have the power to go to an early dissolution except in certain circumstances during the first three years of the proposed four year term. This would reduce the power of the government to hold an election at a time politically convenient to itself, and would be a desirable limitation on the otherwise excessive powers of governments under the so-called 'Westminster' system, particularly in Queensland.*
>
> *It appears, however, that the case for giving the government 'flexibility' in the last year of its term has not been adequately argued. Why should the term not be fixed for the whole four years? This is quite distinct from the question of a fixed election date. The term of the Legislative Assembly could be fixed, without the government having the ability to shorten it, except in the specified circumstances, for the whole four years of the term, while still allowing the government some flexibility as to the actual election date and length of campaign period. It has not been established why the government should be allowed to go to an election at a time of its choosing over the last year of the legislative term. I suggest that the committee explore this question more fully than it has been explored so far.*[86]

Possible variations on the 'maximum term with qualified fixed term component' model are:

- a four year term with no fixed term component;
- an unqualified fixed four year term;
- a qualified fixed four year term.

These alternatives are discussed in this chapter.

7.2 A FOUR YEAR TERM WITH NO FIXED TERM COMPONENT

The proposal put to Queenslanders in 1991 was for four year parliamentary terms without a fixed minimum period during which no early dissolution could occur: see section 3.1.

The then government's reasoning for not advocating a constitutionally protected minimum term was explained by the then Premier, the Hon W K Goss MLA, as follows:

> *It has been suggested that there should be a constitutionally protected minimum term. This might be superficially attractive, but it could lead to a constitutional crisis which could paralyse a State and make the business of a State unworkable. The situation could arise in which a coalition partner, for example, might withdraw support but still ensure that confidence was maintained in a Government and Supply was passed. This could mean that all other legislation would be rejected, reducing the governance of a*

[86] Submission no 14.

> *State to a shambles. What advocates of such a system suggest is that we have a cocktail of the Westminster system and the United States Presidential system. The simple fact is that the two do not mix, and those who propose such a mixture do not understand the fundamental operation of the Westminster system.*[87]

At the time, the Liberal Party also did not support a fixed minimum period:

> *Because the Liberal Party does not want a constitutional crisis to occur in years to come, it recommends that a four-year term for Parliament be introduced—not a four-year fixed term or a four-year term with a three-year fixed term. I have listened frequently to statements made by honourable members who want a fixed term of three years. However, a three-year fixed term would not stop the Government of the day from going to the polls after three years and one day. The fixed term would not achieve much. If a Government goes to the polls after having served a couple of years, it would be a pretty brave Government. Federal Governments have gone to the polls early. On a number of occasions, the Federal Governments that pulled that stunt were voted out of office. The public gets sick and tired of it and could vote the Government out of office. It is important to bear in mind that a Parliament must have the ability to sack a Government without causing a constitutional crisis and without having to resort to the judiciary. If a constitutional crisis occurs, the matter will be resolved by the High Court. I do not think that honourable members want judges—no matter who they are—making decisions on whether Parliaments should go to the people. That is a matter for the Parliament and for the people. Honourable members should not lose sight of that.*[88]

Four year terms with no fixed minimum period currently exist in Tasmania, Western Australia and the Northern Territory: see section 4.1.1 of this report and Appendix C.

Nevertheless, there are a number of arguments for a constitutionally protected minimum term, not the least of which relate to certainty and predictability for government, business and the community.

The absence of a fixed minimum period underpinned the National Party's opposition to the 1991 proposal. As the then Leader of the Opposition, Mr R Cooper MLA, stated during second reading debate on the bill:

> *The National Party will oppose this Bill because the two qualifications it has consistently indicated as preconditions for its support have not been met. The Bill does not provide for a minimum term of three years and it does not guarantee that the Government will run its full term for this term. The failure of the Government to guarantee a minimum term of three years is the major fault in this Bill. Without some guarantee that four-year terms will actually be achieved, or nearly achieved, the introduction of this legislation means absolutely nothing. The Government clearly wants unqualified four-year terms, and it wants them for the reason only that unqualified four-year terms can be useful to Governments—to enjoy them, if they wish, and to cast them aside if and whenever there is a window of opportunity for an election. The major benefit of unrestricted four-year terms therefore is, in essence, a political benefit; that is, more room to move.*[89]

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87 Hon W K Goss MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 28 November 1990 at 5473.

88 Mr D Beanland MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 5 December 1990 at 5931.

89 Mr R Cooper MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 5 December 1990 at 5921.

7.3 AN UNQUALIFIED FIXED FOUR YEAR TERM

The second alternative to that proposed by the QCRC is for a fully or unqualified fixed four year term.[90] Under such a model, the Constitution would state that the term of the Legislative Assembly is for four years and provide that elections for members of the Assembly would be held on a fixed day (for example, the first Saturday in a certain month of the year) every four years. The Assembly could not be dissolved earlier no matter what the position in the Parliament or the desire of the government of the day.

Perhaps the best known example of the unqualified fixed term model is the United States where elections for political positions at the federal level and in 45 of the 50 states are held on set dates in alternate years (that is, the Tuesday after the first Monday in November in even-numbered years). However, there are significant differences between the Australian and US political systems, not the least of which is the absence of a system of responsible government in the US.[91] In the US there is a complete separation of the executive arm of government from the legislature.

The main advantage of an unqualified fixed term is that it provides stability and predictability which aids governments' long-term planning and has consequential economic and business benefits. There is no speculation about when an election is to be called. This lack of discretion also means that:

- governments are denied the ability to call an election at a time which best suits them (an ability which many regard as unfair); and
- the opposition has time in which to formulate its own policies and assess government policies without the preoccupation of preparing for an election to be held on an unknown date.

Conversely, the lack of flexibility is a major disadvantage of an unqualified fixed term. For example, the Legislative Assembly could not be dissolved and an election called if a government lost its majority in the Assembly. In the absence of a new majority (and government) being formed, the Assembly would have to complete its term under a minority government or an 'uneasy coalition'. Other constitutional crises might also arise which would not be capable of resolution by early dissolution of the Assembly. The inflexibility of the US system has arguably denied electors the opportunity to vote in a new government where circumstances have warranted that they be given such opportunity.

The suggestion that the term of the Queensland Legislative Assembly be fully fixed was rejected as an option in the proposal put to the people in 1991. The then Premier, the Hon W K Goss MLA, stated:

> *Another suggestion that has been made is that the current term of this Parliament should be fixed now. I am unsure exactly how this proposal would operate, but I assume that those who propose it want me to now set the date for the next election. I have said often, and I repeat today, that I fully expect this Parliament to run its full term. I can see no need for an election that could be considered early. But, by the same token, there is not a political leader anywhere who operates under the Westminster*

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90 Both this term and the material used in this section is drawn from the Constitutional Commission's background paper no 13, *Fixed term Parliaments*, 1987 and Griffith, n 18 at 14-15.

91 'Responsible government' means that the government is responsible to the lower house and stays in office for only so long as it can maintain the confidence of that house.

> *system who would commit himself or herself to such a proposition. This Government was elected to serve three years, and I expect that it will run its full term.*[92]

The then leader of the Liberal Party echoed these sentiments:

> *When honourable members refer to fixed terms, we are thinking of the United States executive system of government, which is entirely different from the Westminster system of government under which Parliaments in Queensland and Australia operate. Recently, I spoke to a number of constitutional experts who have expressed concern about the consequences of fixed terms. Such terms are a recipe for a constitutional crisis, which may not occur for a decade, for 100 years, for 150 years—who knows. So many things could happen that it would be impossible to make provision for all of them in the Constitution.*[93]

7.4 A QUALIFIED FIXED FOUR YEAR TERM

Under a qualified fixed term model,[94] the Constitution would state that the term of the Legislative Assembly is for four years and provide that elections for members of the Assembly would be held on a fixed day (for example, the first Saturday in a certain month of the year) every four years. However, this would be subject to limited exceptions whereby the Assembly is able to be dissolved earlier. The most obvious grounds for early dissolution would be when the Assembly passes a vote of no confidence in a government and no other government can be formed from the house, or when a government is unable to obtain supply.

This is the model used in New South Wales where no election can be called within the four year term unless certain prescribed circumstances arise: see section 4.1.1. Similarly, in the ACT the *Australian Capital Territory (Electoral) Act 1988* (Cth) provides for fixed three year terms. General elections are to be held on the third Saturday of every third February. However, early dissolution of the ACT Legislative Assembly is possible:

- by the Governor General if, in his or her opinion, the Assembly is 'incapable of effectively performing its functions' or 'is conducting its affairs in a grossly improper manner'; or
- where a resolution of no confidence is passed in the Chief Minister (although this is subject to a proviso that an election cannot be held within a certain period in a pre-election year).[95]

The main advantage of the 'qualified fixed term' model is that it overcomes the inflexibility of the unqualified fixed term model while maintaining the advantages of stability of government and predictability of elections.

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92 Hon W K Goss MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 28 November 1990 at 5473.

93 Mr D Beanland MLA, Constitution (Duration of Legislative Assembly) Amendment Bill 1990 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 5 December 1990 at 5931.

94 Both this term and the material used in this section is drawn from the Constitutional Commission's background paper no 13, *Fixed term Parliaments*, 1987 and Griffith, n 18 at 15-16.

95 *Australian Capital Territory (Self-Government) Act 1988* (Cth), ss 16 and 48.

8. THE TIMING OF A REFERENDUM

As noted in section 3.1, a referendum must be held to extend the maximum term of the Queensland Legislative Assembly beyond three years. In order for the committee's report to Parliament on this issue to be fully informative, the committee also sought the advice of Associate Professor Gerard Carney on:

- whether a referendum to extend the parliamentary term to four years as required by s 4 of the *Constitution Act Amendment Act 1934* must be held prior to the issue of the writ for the next general election in order for the term of the new Assembly to be so extended; or
- whether such a referendum might be held at the same time as that election.

Associate Professor Carney, in his advice to the committee, was unable to conclude that such a referendum could legally be held at the same time as the next election. Apart from this uncertainty as to the legal position, he recommended that such a referendum be conducted ahead of any general election to avoid any electoral uncertainty over the term of the new Assembly. Associate Professor Carney's advice considered this issue of the timing of the referendum on the basis of the following three considerations (the last of which is the most problematic):

> *(i) Any Bill to extend the parliamentary term needs to be carefully drafted so as to extend specifically the term of the next parliament which commences at the return date of the writ as well as the term of all subsequent parliaments.*
>
> *Under s 2 of the* Constitution Act Amendment Act *1890 (Qld) the three year term commences on the day appointed for the return of the writ. As there appears to be no constitutional obstacle to an existing Parliament seeking to extend its term by appropriate referendum, there is logically no reason why this change could not be sought at a general election.*
>
> *However, to hold such a referendum at the same time as a general election obviously subjects the electorate to a political dilemma in that they will not know at the time they vote, whether they are voting for a three or four year parliament. For this reason, it is clearly desirable that the referendum be held ahead of that election.*
>
> *(ii) If the Bill is approved by referendum, it would need to be presented to the Governor before the return date of the writ. Section 4(2) of the 1934 Act makes it clear that the Bill cannot be presented to the Governor until it is approved by referendum. And the Bill would need to be enacted before the return date of the writ since that is when the term of the new Assembly commences pursuant to s 2 of the 1890 Act. Of course, these requirements might be changed as part of the constitutional amendment/consolidation - although this seems unnecessary.*
>
> *Presumably, in accordance with SO 279 The Clerk of the Parliament would be able to present a Bill after its approval at a referendum despite the dissolution of the Assembly.*
>
> *(iii) Finally, there remains the difficulty whether a Bill which has passed the Assembly and not yet been presented to the Governor for royal assent lapses on the dissolution or expiration of the Assembly.*
>
> *There is little authority on this issue but the view that the Bill does not lapse seems to be supported by* Odgers' Australian Senate Practice, *9th ed at 497 and by an opinion of the Commonwealth Solicitor-General in 1984 in relation to the House of Representatives.*
>
> *Further support for that view is given by the decision of the New Zealand Court of Appeal in Simpson v Attorney-General [1955] NZLR 271 per Stanton and Hutchinson*

> *JJ at 282-283. However, their Honours relied on s 56 of the New Zealand* Constitution Act *1852 which is in similar terms to s 58 of the Commonwealth Constitution both of which refer to Bills being reserved for the Queen's pleasure. Given the possibility of delay in obtaining that assent, this indicated that there was no requirement that the House remain in existence. However, there is no comparable provision in the Queensland Constitution.*
>
> *An opposing view could be mounted if the legislative power of the Parliament is expressed in terms which requires its exercise by a particular body comprising the relevant Houses and the Queen or her representative. This was the approach taken by McGregor J in Simpson v Attorney-General at 285 relying on ss 32 and 53 of the NZ Constitution which vest the legislative power in a General Assembly consisting of the Governor and both Houses. Although his Honour left the issue open in the end, he seemed persuaded that those sections required all the components of the General Assembly to act together and remain in existence in order to enact a law.*
>
> *Reference was also made in Simpson's Case to the process of reporting back to the Parliament after royal assent has been given. No similar provisions appear in the Queensland Standing Orders.*
>
> *By comparison, s 2 of the* Constitution Act *1867 (Qld) vests the legislative power in Her Majesty acting "with the advice and consent of the said Assembly". Although s 2A provides that the Parliament of Queensland consists of the Queen and the Assembly, it does not specifically vest the legislative power in the Parliament as such. Nonetheless, the interpretation of s 2 is arguable. It could be argued that the requirement to act "with the advice and consent of the Assembly" contemplates the continued existence of the Assembly.*
>
> *Even if the majority view in Simpson's Case is followed, how long can royal assent be delayed? In that case, assent occurred the day after the dissolution. In other words, for what period of time after dissolution can it be said that the Assembly's "advice and consent" exists?*

Associate Professor Carney went on to conclude that these are very difficult issues to resolve and that arguments can be mounted for both sides.

> *Although the limited authorities support the Bill not lapsing, they are by no means conclusive or persuasive. In terms of principle, royal assent ought to be given only so long as the Assembly exists. And this could be made clear in any future reform of the Queensland Constitution.*
>
> *Given the uncertainty which surrounds this issue, it would seem prudent for the Committee to adopt a conservative approach and recommend that any referendum be held prior to the dissolution of the Assembly.*

The committee notes that a referendum on the four year term issue in Queensland could not be held on the same day as a federal election without the approval of the Governor-General. Section 394(1) of the *Commonwealth Electoral Act 1918* (Cth) provides:

> ***No State referendum or vote to be held on polling day***
>
> *(1) On the day appointed as polling day for an election of the Senate or a general election of the House of Representatives, no election or referendum or vote of the electors of a State or part of a State shall, without the authority of the Governor-General, be held or taken under a law of the State.*

9. CONCLUSION AND RECOMMENDATION

9.1 COMMITTEE CONCLUSION

The committee has now considered the arguments for and against longer parliamentary terms and, in particular, the model proposed in QCRC recommendation 5.2, and reviewed a comprehensive collection of relevant material on this issue. As a result of its deliberations, the committee concludes that there is a compelling case for four year parliamentary terms in Queensland with a qualified fixed minimum period of three years.

A four year parliamentary term for Queensland

Queensland is now the only Australian state not to have moved to a four year parliamentary term.

Extending the term of the Queensland Legislative Assembly from three to four years will ensure that the government (formed from the Assembly) has a longer period during which to address social and economic issues requiring long term planning and implementation. Many social and economic issues which are critical to the overall wealth and health of the state and its citizens require a long term perspective. Moreover, longer terms provide governments with more opportunity to consult with relevant stakeholders regarding proposed policies, assess the success of those policies once implemented, and modify them where appropriate.

Current three year parliamentary terms mean that, in practice, only one year of a government's term is focussed 'on the business of Parliament'. A significant amount of the remainder of the government's term is devoted to settling-in following an election and preparing for the next election. The committee endorses the sentiment of the 1988 Constitutional Commission that such a short electoral cycle tends to place governments under pressure to make more expedient, short-term decisions aimed at electoral success rather than to make harder decisions which, in the longer term, might be more beneficial to the state and its citizens.

Four year terms will considerably lengthen the period during which a government might make such 'hard decisions'.

The stability and certainty brought about by longer parliamentary terms also has an important flow-on effect for the business sector and the economy generally. As the Queensland Chamber of Commerce and Industry's submission to the committee reinforces, the certainty of working with a government over a longer period enables private sector businesses to plan their business cycles with greater predictability in accordance with government policies and agendas.

Similarly, there are advantages for the community service sector in terms of increased certainty and capacity for longer term planning.

Longer parliamentary terms would further enable members to build stronger working relationships with their constituents and other persons and organisations. In the case of ministers, this would extend to increased familiarity with their relevant portfolios.

Moreover, scrutiny of the executive and the legislative processes would be enhanced by effectively extending the time that parliamentary committees have to consider important issues.

The primary argument against a four year term raised in submissions to the committee was that a longer term would, in effect, reduce the accountability of the government to the Parliament, and hence the people, as the people would have to wait another year before voting at a general election. It follows that this brings greater risk of a government which is either complacent and/or no longer representative of current opinion.

A number of submissions saw this accountability issue as particularly critical in Queensland given the unicameral nature of our legislature.

While the committee stresses that this is not the place for reopening the debate on bicameralism, the effectiveness of an upper house as an accountability mechanism should not be overrated. An upper house is likely to refuse to pass appropriation or other bills only where it is of a different political complexion to its respective lower house.

Indeed, fixed terms have been advocated in bicameral legislatures as a means of solving the problem created where an opposition controlled upper house has the power to refuse or reject money bills necessary for the government to continue to function despite the fact that the government retains the confidence of the lower house.[96]

The accountability argument also overlooks current mechanisms, apart from more frequent elections, by which the executive government in Queensland is accountable. For example, government is accountable through freedom of information and judicial review legislation, parliamentary officers such as the Auditor-General and the Ombudsman, independent 'watchdogs' such as the Criminal Justice Commission, a now-established and effective parliamentary committee system, Parliament's annual examination of the government's proposed expenditure through the estimates process, and debate and questioning in the Parliament.

In any case, the committee believes that, on balance, the benefits of longer parliamentary terms, particularly in terms of the likelihood of better government and consequent increased stability for the private and public sectors and the economy, far outweigh any perceived disadvantages.

The fixed-term component

The discussion in this report reveals that merely extending parliamentary terms from three to four years will not necessarily bring about the desired stability and certainty of longer terms. While a government is able to call an election at any time during its term, there will be speculation as to likely election dates. As the Constitutional Commission noted in its 1988 report:

> *The uncertainty generated by this [often long period of speculation and rumour] can have harmful consequences for public administration, business and the community generally. Further, it distracts the Government and the Parliament from giving proper attention to carrying out their respective functions. …*
>
> *The power of the Government to determine when an election will be held gives it an electoral advantage over the Opposition because it can choose the time which it considers to be most favourable to its own chances of re-election.*[97]

[96] Constitutional Commission background paper no 13, n 90 at 8.

[97] Note 19 at paras 4.408-4.409.

The committee therefore believes that to ensure the benefits of a longer parliamentary term are realised, it is imperative that there be some minimum fixed term. The question is whether a fixed term of three or four years is most appropriate. In this regard, the committee has studied not only the model proposed by the QCRC—the 'maximum term with qualified fixed term component' model—but also the alternative models noted in chapter 7.

The committee has grave reservations regarding the 'unqualified fixed term model' such as exists in the United States. As noted in section 7.3 of this report, this model does offer stability and predictability. However, the lack of flexibility is a major disadvantage. The inability to dissolve the Assembly early in order to resolve a constitutional crisis would, in the committee's opinion, substantially reduce the potential accountability of the government to the electorate.

The 'qualified fixed term model' arguably overcomes some of the inflexibility with the 'unqualified fixed term model', although the committee still has some reservations as to whether it is sufficiently flexible.

The model which appears to combine the best of all options is the 'maximum term with qualified fixed term component' model, as advocated by the QCRC. Specifically, the committee proposes that the Legislative Assembly have a maximum term of four years but should not be dissolved within the first three years unless certain conditions are met. (These conditions for early dissolution are discussed further below.)

Adoption of this model in Queensland would essentially mean parliamentary terms of at least three years, and hence reduce political manipulation of election dates and bring about more stability and predictability than at present. At the same time, this model would allow more flexibility than if Queensland adopted an unqualified or qualified fixed four year term.

The result of fewer state elections would also mean significant cost savings. These cost savings relate not only to the conduct of elections (at least $6 million each election) but also to ancillary costs related to new and former members. As the submission from the Speaker of the Queensland Parliament reveals, these ancillary costs are not insignificant.

The committee notes the argument that if a minimum three year fixed term were adopted, a government could call an election after three years and one day thereby defeating the benefits of a longer term. However, the prospects of such occurrence should be weighed against the political consequences of any such decision.

Conditions for early dissolution

The QCRC proposes a four year term with a fixed minimum period of three years subject only to earlier dissolution if:

- a vote of no confidence in the government is carried or a vote of confidence in the government fails to be carried; or
- an appropriation bill is defeated or fails to pass.

The committee canvassed in chapter 6 whether there should be any amendment to these conditions for early dissolution and has now considered this issue further.

A vote of no confidence or defeat of a vote of confidence

The committee concludes that there should be some mechanism to ensure against either a successful no confidence motion or the defeat of a confidence motion being brought about merely because of circumstances such as an administrative error with pairing arrangements. This is particularly important given the close Parliaments that have existed in Queensland recently.

The committee believes that this would be best achieved by:

- amending the QCRC's clause 14(4)(b) to provide…*the Legislative Assembly has passed a motion of no confidence in the government and has not within three clear days thereafter passed a motion of confidence in the then government*; and
- amending the QCRC's clause 14(4)(c) to provide…*the Legislative Assembly has defeated a motion of confidence in the government and has not within three clear days thereafter passed a motion of confidence in the then government*.

An appropriation bill is defeated or fails to pass

The discussion in chapter 6 presents a sound argument that it would be prudent for the Constitution to provide that the basis for an early dissolution only arises in relation to the funds necessary to ensure:

- the continued functioning of the executive government as opposed to the legislature; and
- the continued functioning of the government, rather than some specific item of appropriation which does not reflect a lack of confidence in the government itself.

Further, the committee believes that it is highly preferable these conditions for early dissolution are not linked to definitions contained in an ordinary statute (namely, the *Financial Administration and Audit Act*) which might be amended by Parliament at any time. This is particularly the case given that below the committee recommends entrenchment of the provisions regarding four year parliamentary terms.

In order to address all of these concerns, the committee proposes to insert into the QCRC's clauses 14(4)(d) and (e) the phrase 'for the ordinary annual services of the executive government' and remove the references to the *Financial Administration and Audit Act*.

The need for any other conditions for early dissolution

The committee has carefully considered whether, in addition to the conditions for early dissolution within the fixed three year period proposed by the QCRC (amended as outlined above), there is a need for some further reserve power of dissolution to be vested in the Governor.

As discussed in section 6.4 of this report, the argument has been raised that the QCRC's recommendation does not cater for other possible situations where it would be necessary, in the interests of democracy, to give the electorate the opportunity to vote a new Legislative Assembly.

In particular, it has been suggested that one scenario not covered is where a minority government is left in limbo by those members of the Legislative Assembly who are prepared to support it on any no confidence motion and vote it supply but oppose all other legislation.

The concern is that this scenario could leave a paralysed government in office until the expiration of the minimum fixed period of three years.

In his submission to the committee, the former Victorian Governor, the Honourable Richard McGarvie AC, raised other scenarios in which he felt the QCRC's recommendation in its present form would leave the Queensland constitutional system deficient, namely, where a government:

- persists in engaging in illegal conduct and neither legal nor political action is adequate to protect the integrity of the system; or
- engages in some action which undermines the democratic nature of the system of government.

Thus, Mr McGarvie suggests that it is highly desirable that the Governor retain the reserve power to dissolve the Assembly during the whole life of the Parliament so that such 'exceptional constitutional malfunctions' are referred to the people for resolution. This would be '*as a last resort in any situation where that becomes absolutely necessary to ensure the effective operation of the constitutional system and its safeguards of democracy*'.

A broad statutory reserve power would also possibly provide a solution to the 'minority government in limbo' scenario (described in section 6.4.1.).

After carefully considering the discussion in section 6.4, the committee has concluded against recommending that a provision be inserted in the Constitution giving the Governor either a broad reserve power of dissolution such as Mr McGarvie suggests, or a power in terms of draft paragraph (f) outlined in section 6.4.3.

In the committee's opinion, formulating an appropriate statutory reserve power which is not open to abuse for political gain is difficult. Further, a broad reserve power also runs the risk of allowing additional exceptions to the fixed minimum period which would defeat the main purpose of the proposal, namely, to ensure stable government and fewer elections. Finally, despite the excellent service of state governors, both powers are highly dependent on the integrity of the Governor of the day.

The alternative of attempting to list in the Constitution certain scenarios where the Governor retains a reserve power of dissolution is also fraught with the difficulties of: (a) identifying and prescribing today all events which might warrant the exercise of the reserve power; and (b) being unable to precisely define in statute the circumstances in which the power can be exercised.

The committee considers that the various scenarios which may warrant an early dissolution are highly unlikely to eventuate. In particular, the committee cannot find any precedent for the 'minority government in limbo' scenario having occurred elsewhere. It is therefore not surprising that no other Australian jurisdiction has catered for such a reserve power. The risk of a statutory reserve power being open to political manipulation is, in the committee's opinion, greater than the likelihood of such a constitutional impasse occurring. Moreover, the committee believes that if such an unlikely scenario did arise, it would be more appropriately resolved politically.

Judicial review

A final issue is whether any exercise by the Governor of the power in the QCRC's clause 14(3) and (4) should be subject to judicial review. Ousting judicial review of the exercise of

that power would be consistent with the non-justiciability of the Governor's current reserve power.

The question of judicial review raises important and complex constitutional considerations. Further, the committee notes that the issue of judicial review was not referred to in the QCRC's report in relation to clauses 14(3) and (4) and has not been expressly addressed in the other Australian state constitutions which have qualified fixed terms.

The committee has not dealt with this issue as part of its current review, although it would be prepared to consider this issue further if requested.

Conclusion

In essence therefore, the committee endorses the QCRC's proposed model for four year parliamentary terms subject to the slight variations to the QCRC's conditions for early dissolution noted above. This would mean that the maximum term of the Legislative Assembly be four years subject to a provision that the Governor may not dissolve the Legislative Assembly unless:

(a) a period of three years has elapsed since the day of its first meeting after a general election; or

(b) the Legislative Assembly has passed a motion of no confidence in the government and has not within three clear days thereafter passed a motion of confidence in the then government; or

(c) the Legislative Assembly has defeated a motion of confidence in the government and has not within three clear days thereafter passed a motion of confidence in the then government; or

(d) the Legislative Assembly has rejected an appropriation bill for the ordinary annual services of the executive government; or

(e) the Legislative Assembly has failed to pass an appropriation bill for the ordinary annual services of the executive government before the time that the Governor by a message has informed the Legislative Assembly that the appropriation is required.

Quite apart from the sound reasoning which supports four year parliamentary terms (with a fixed minimum period of three years), the committee notes that in the last decade at least, there has been no consistent position taken by the political parties on the issue of longer parliamentary terms for Queensland. The recommendation of the QCRC is further strengthened by the fact that it is the recommendation of an independent body comprised of people from diverse backgrounds.

Contrary to the argument raised in certain submissions, the question to be put to the people on this occasion would be significantly different to that in 1991 which concerned four year parliamentary terms *with no fixed minimum period*.

The QCRC has recommended that the provisions giving effect to its recommendation 5.2 be referendum entrenched. Referendum entrenchment of the four year maximum term of the Legislative Assembly is effected by clause 84 of the QCRC's proposed Constitution which entrenches clause 15 (Duration of Legislative Assembly to be 4 years maximum) of that bill: see Appendix B. This provision is effectively entrenched as any amendment of clause 84 also requires a referendum, that is, the provision is 'doubly entrenched'. The committee agrees

that the provision regarding the maximum term for the Legislative Assembly should be (doubly) entrenched (as is the presently the position). Otherwise, a majority government could amend the Constitution by ordinary legislation to extend the length of the parliamentary term to, say, eight years.

However, despite the QCRC's recommendation that the four year term 'package' be referendum entrenched, the committee notes that clause 84 does not seek to referendum entrench the QCRC's clause 14(3) and (4). The committee believes that these provisions should also be entrenched to ensure that the intention behind an extended parliamentary term with a fixed minimum period is not defeated.

The committee believes that the most appropriate mechanism for entrenchment of these provisions regarding the parliamentary term continues to be by referendum.

Accordingly, the committee recommends that, in the absence of a successful referendum to consolidate the Queensland Constitution as recommended by the committee in its report no 24 *Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution,*[98] a referendum be held to amend s 2 of the *Constitution Act Amendment Act 1890* (Qld) in accordance with s 4 of the *Constitution Act Amendment Act 1934* (Qld) to provide for a four year parliamentary term in Queensland with a fixed minimum period of three years qualified as outlined above.

In the event that a successful referendum is held to consolidate the Queensland Constitution as recommended by the committee in its report no 24, the bill to give effect to the committee's recommendation here for a four year parliamentary term would propose to amend the Constitution of Queensland 2000. This bill would likewise need to be put to the people in a referendum in accordance with the Constitution of Queensland 2000 and should also seek to entrench those provisions.

From the committee's preliminary research, it seems that referenda to consolidate the Queensland Constitution and to provide for four year parliamentary terms could be conducted consecutively on the same day. Although, this would require the Assembly to pass a bill providing for four year parliamentary terms which is drafted to cover both possible outcomes of the first referendum on the consolidation.

Having said this, the committee sees the timing of a referendum to extend the parliamentary term in Queensland as a matter for government following its consideration of advice on this issue. (Advice received by the committee and outlined in chapter 8 of this report might assist the government in its deliberations in this regard.)

9.2 COMMITTEE RECOMMENDATION

The committee recommends that the Premier—as the minister responsible for Queensland's constitutional legislation—introduce a bill ('the proposed bill') to extend the maximum term of the Legislative Assembly to four years subject to a provision that the Governor may not dissolve the Legislative Assembly unless:

(a) a period of three years has elapsed since the day of its first meeting after a general election; or

[98] Note 2.

(b) the Legislative Assembly has passed a motion of no confidence in the government and has not within three clear days thereafter passed a motion of confidence in the then government; or

(c) the Legislative Assembly has defeated a motion of confidence in the government and has not within three clear days thereafter passed a motion of confidence in the then government; or

(d) the Legislative Assembly has rejected an appropriation bill for the ordinary annual services of the executive government; or

(e) the Legislative Assembly has failed to pass an appropriation bill for the ordinary annual services of the executive government before the time that the Governor by a message has informed the Legislative Assembly that the appropriation is required.

The proposed bill should further provide that, subject to the above, the Governor may dissolve the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.

These provisions should be referendum entrenched.

The proposed bill would, in the absence of a successful referendum to consolidate the Queensland Constitution as recommended by the committee in its report no 24 *Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution,* seek to amend s 2 of the *Constitution Act Amendment Act 1890* (Qld) in accordance with s 4 of the *Constitution Act Amendment Act 1934* (Qld).

In the event that a successful referendum is held to consolidate the Queensland Constitution as recommended by the committee in its report no 24 *Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution,* the proposed bill would seek to amend the Constitution of Queensland 2000. This bill would likewise need to be put to the people in a referendum in accordance with the Constitution of Queensland 2000 and should also seek to entrench those provisions.

STATEMENT OF RESERVATION

(MRS J GAMIN MLA & MR D BEANLAND MLA)

The committee has always prided itself on its bi-partisan approach to all matters which come before it, and its non-involvement in party political philosophies. In report no 27, we believe the committee has been unwise in committing itself to supporting what is essentially a party political matter.

Support or otherwise for a four-year term for the Queensland Parliament is clearly the province of the political parties which make up the composition of the Parliament. The political party which enjoys a majority in the House (and therefore forms government) should determine whether it wishes to hold a referendum on this issue. The political parties which make up the Opposition will then determine whether they support or oppose the government's proposition.

In accordance with its statutory jurisdiction, the committee has resolved to review and report to Parliament on 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*. Chapter 1 of the committee's report sets out the steps taken in this process, and explains that QCRC recommendation 5.2 (the issue of four-year terms) would be the subject of this separate report to Parliament.

The committee has carefully examined the issue of four-year terms for the Queensland Parliament, has studied submissions and consulted with constitutional authorities. The body of the report clearly enunciates arguments for and against the QCRC proposal, and pays considered attention to the mechanics of timing for the required referendum.

We have no argument with the report up to the end of Chapter 8. We think it is excellent and very well presented. However, Chapter 9—***Conclusion and Recommendation***—takes a step across that invisible line of partisan politics and/or philosophy. The committee should have presented the arguments for and against in a non-committal manner, and should then have refrained from making any recommendation one way or another. The committee should have maintained its policy of non-involvement in partisan politics.

The reality is that the conduct of a referendum on a constitutional change, such as the introduction of four-year terms, is only feasible if there is broad bi-partisan political support. Otherwise, the whole exercise is a waste of taxpayers' money. The decision must be left to the respective political parties, and it is foolish for the committee to let itself get bogged down in political detail.

Accordingly, we disassociate ourselves from the conclusion and recommendation which make up Chapter 9 as embodied in this report.

J M Gamin MLA
Member for Burleigh

D Beanland MLA
Member for Indooroopilly

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APPENDIX A: SUBMISSIONS RECEIVED

1 Mr H V Gillies
2 Dr G Sheil
3 Mr P C Friis
4 Mr G L Paterson
5 Hon M Ahern
6 Communications Electrical Plumbing Union (Electrical Division – Queensland Branch)
7 Mr L Nightingale
8 Mrs Kate Carnell MLA, Chief Minister (ACT)
9 Mr W Robinson
10 Belyando Shire Council
11 Emerald Shire Council
12 Tambo Shire Council
13 Mr B Sheehy
14 Mr H Evans (Clerk of the Senate)
15 CONFIDENTIAL
16 Bundaberg City Council
17 Hinchinbrook Shire Council
18 Hon J Olsen MP, Premier of South Australia
19 Mr R McFadyen
20 Mr A Sandell
21 Burnett Shire Council
22 Mr C E Clark
23 Mr D Willis
24 Mr J Elliott
25 Ipswich City Council
26 Mr J M A James
27 Mareeba Shire Council
28 Mr D Liddell, Dr P Reynolds and Mr D Blake
29 Eacham Shire Council
30 Australia United Queensland (Bayside Branch)
31 Mr P Carew
32 Pine Rivers Shire Council
33 Mr K C Herron
34 Mr J Walter

35 F.R.E.E. Assn. Inc.
36 Hon R E McGarvie AC
37 Cairns City Council
38 Mr F Lightfoot
39 Paroo Shire Council
40 Torres Shire Council
41 Australian Labor Party (Queensland)
42 Mr N Turner
43 Atherton Shire Council
44 Councillor E Santagiuliana (Mayor – Redland Shire)
45 Banana Shire Council
46 Blackall Shire Council
47 Ms H Haining
48 Chinchilla Shire Council
49 National Party (Queensland)
50 Hon R Hollis MP, Speaker of Queensland Parliament
51 Duaringa Shire Council
52 The Australian Workers' Union (Queensland Branch)
53 Mr L D Thomas
54 Tara Shire Council
55 Livingstone Shire Council
56 Brisbane City Council
57 Gladstone City Council
58 Maroochy Shire Council
59 Gatton Shire Council
60 City Country Alliance, Queensland
61 Mr W P Barry
62 Mr C Tooley
63 Queensland Chamber of Commerce and Industry Limited
64 Bulloo Shire Council
65 Johnstone Shire Council

APPENDIX B: RELEVANT CLAUSES OF THE QCRC'S CONSTITUTION OF QUEENSLAND 2000

Summoning, proroguing and dissolution of Legislative Assembly (CA s 27 + part of s 12, DD s 14, new)

14.(1) The Governor may summon the Legislative Assembly in the Sovereign's name by instrument under the Public Seal of the State.

(2) The Governor may prorogue the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.

(3) Subject to subsection (4), the Governor may dissolve the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.

(4) The Governor may not dissolve the Legislative Assembly unless—

(a) a period of three years has elapsed since the day of its first meeting after a general election; or

(b) the Legislative Assembly has passed a motion of no confidence in the government; or

(c) the Legislative Assembly has defeated a motion of confidence in the government; or

(d) the Legislative Assembly has rejected a Bill for an Appropriation Act, or an Annual Appropriation Act, within the meaning of the *Financial Administration and Audit Act 1977*; or

(e) the Legislative Assembly has failed to pass a Bill for an Appropriation Act, or an Annual Appropriation Act, within the meaning of the *Financial Administration and Audit Act 1977* before the time that the Governor by a message has informed the Legislative Assembly that the appropriation is required.

Duration of Legislative Assembly to be 4 years maximum (CAAA 1890 s 2, DD s 15, new)

15.[10] Every Legislative Assembly is to continue for a maximum of 4 years from the day appointed for the return of the writ for a general election of its members.

Referendum entrenchment (new)

84.(1)[30] This section applies to a Bill for an Act that offends against a referendum entrenched principle.

(2) The Bill may not be presented for royal assent, and if enacted and assented to so as to be otherwise a valid law is nevertheless of no effect, unless the Bill is approved by a majority of electors voting on the question.

[10] This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

[30] This section is itself a referendum entrenched provision—see subsection (5).

(3) A Bill that must be approved by electors under this section must be submitted to electors for their approval in a referendum.

(4) The Bill may be presented to the Governor for royal assent if—

(a) section 83(3)(a) and (b) are satisfied for the Bill; and

(b) a majority of electors voting on the question approve the Bill.

(5) In this section—

"electors" means the persons entitled to vote at an election for members of the Legislative Assembly under the *Electoral Act 1992*.

"referendum" means a referendum under the *Referendums Act 1997*.

"referendum entrenched principle" means a principle of a referendum entrenched provision.

"referendum entrenched provision" means any of the following provisions—

- section 5
- section 6
- section 7
- section 9
- section 11
- section 15
- section 29(1), (6) and (7)
- section 60
- section 61
- section 63(1)
- section 64(1) and (2)
- section 67
- section 69
- section 72
- section 74
- section 82
- section 83
- section 84
- section 85
- section 86.

APPENDIX C: PARLIAMENTARY TERMS IN AUSTRALIAN JURISDICTIONS

Jurisdiction (lower house)	Term	Fixed term component	Grounds for early dissolution	Reserve power to dissolve the Parliament
Commonwealth (House of Reps)	3 years	Nil	N/A	Yes
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) can be dissolved two months early to avoid clash with Commonwealth 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	(i) Governor-General may dissolve the Legislative Assembly if incapable of effectively performing its functions or is acting in a grossly improper manner (ii) the Assembly passes a motion of no confidence in the Chief Minister prior to a certain period in a pre-election year	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), 38(2) and 66
- *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), ss 16 and 48
- *Northern Territory (Self-Government) Act 1978* (Cth), s 17(2).