



24 January 2013

Electoral Reform
Strategic Policy
Department of Justice and Attorney-General
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Dear Sir or Madam

Re Electoral Reform Discussion Paper January 2013

I write in relation to the above Discussion Paper and provide the following comments for your consideration.

Political donations

The need for transparency and disclosure of political donations in order to minimise the potential for political corruption and undue influence on governmental decision making was highlighted by the 1989 Fitzgerald Report.¹ In particular, Fitzgerald wrote, "*The possibility of improper favour being shown or being seen to have been shown by the Government to political donors must also be eliminated.*"² With this in mind, I would favour option (b) as outlined in the Discussion Paper as the most likely option to achieve the objective of limiting the potential for undue influence being exercised. While constitutional considerations may need to be taken into account as noted by the Discussion Paper (p. 9), any concerns along these lines should be allayed by the fact that the potential for undue influence and the associated adverse impact for democracy, would be addressed by all donations being targeted and not just those relating to campaigns. As the Discussion Paper itself notes, this approach has been adopted in New South Wales even given the constitutional issues that may be involved (p. 9).

Public funding

The Discussion Paper notes that an argument in favour of public administrative funding is that it reduces the potential for undue influence by limiting political parties' reliance on private donations (p. 15). While some observers have argued that public funding is not necessarily conducive to a healthy democracy,³ what particularly frustrates many voters are those political opportunists with little prospect of being elected yet who still stand as candidates and so are able to take advantage of the

¹ Source: 12.1990 at <<http://www.cmc.qld.gov.au/research-and-publications/browse-all-publications>>

² Ibid, p. 137

³ For example, Prasser, S., "Biggest rort of all slips under the radar – Public funding of election campaigns has undermined key aspects of our democracy", *The Courier Mail*, 30 July 2007, p. 19

public purse.⁴ Such behaviour has the potential to seriously affect public confidence in the electoral system as well as undermine trust in the integrity of those candidates who are serious contenders for public office. The public funding rules need tightening to discourage this particular behaviour from occurring.

Truth in Political Advertising

The Discussion Paper raises a proposal for truth in political advertising (p. 24); however, it recognises that focussing on “advertising” alone would not be sufficient (p. 25). Certainly, any consideration of “truth in political advertising” would need to include any political comment/statement made in the context of an electoral campaign either during the campaign proper or in the period prior to the campaign. Politicians and candidates need to be accountable for anything they may undertake or promise for the purposes of being elected, particularly if once elected they take actions diametrically opposed to what they indicated prior to the election. When politicians and candidates engage in such practices public confidence and trust in the political process is undermined, an outcome that is not good for democracy generally.

How-to-vote cards

The Discussion Paper raises a number of options in relation to how-to-vote cards. I would point out that it is not compulsory for a voter to take a how-to-vote card. A voter is free to take or not to take a card. Provided how-to-vote cards are not misleading or deceptive, I do not consider that there is a need to increase the already existing regulation in this area.

Proof of identity

The Discussion Paper raises a number of options in relation to this issue and notes a number of arguments against the proposal. It also notes that if Queensland was to adopt the proposal it would be the only jurisdiction in Australia to do so with the “...*risk that the requirement would lead to voter confusion*” (p. 29). Importantly, the Discussion Paper points out that “... *as there is no specific evidence of electoral fraud in this area, introduction of proof of identity requirements could be considered a disproportionate response to the risk*” (p. 29). As there is no pressing need to introduce the proposal, in the interests of avoiding unnecessary red tape I suggest that it not be considered for implementation.

Enrolment on Polling Day

The Discussion Paper raises the proposal for changing the legislation to allow for enrolment on polling day (p. 29). I agree that voters should be permitted to enrol up to and including polling day.

⁴ Ibid; Steketee, M., “System open to corruption – Why should taxpayers owe Pauline Hanson and other electoral opportunists a living?”, *The Australian*, 24 January 2008, p. 10

Electronic voting

Until a “fool-proof” system of electronic voting can be devised, electronic voting should continue to be limited to particular classes of voters and not rolled out to the wider electorate.

Postal voting

I agree with the Tasmanian and ACT model, option (a) (p. 33) and with option (c) as outlined in the Discussion Paper. As to option (b), there would need to be fail safes built into the system to ensure that only legitimate applications were received (hence the rationale for the current requirement for a voter to sign the application).

Compulsory voting

The Discussion Paper notes a number of arguments for and against Queensland’s current system of compulsory voting (p. 35). It also notes the 1997 report of the Joint Standing Committee on Electoral Matters on the conduct of the 1996 federal election which recommended that “*if Australia is to consider itself a mature democracy compulsory voting should be abolished*” (p. 36). However, the paper proceeds to point out that the committee did not make this recommendation in its reports on subsequent federal elections (p. 36). It also points out that any removal of the requirement for compulsory voting in state elections would have the potential to cause voter confusion as voting in federal and local government elections would still be compulsory (p. 36).

The current system of compulsory voting has enabled Australia to be identified as a world leader in voter turnout.⁵ Compulsory voting and the high voter turnout it encourages help to protect our democracy by ensuring that all eligible citizens have a say in determining their parliamentary representatives and ultimately, the government of the day. Without compulsory voting, political, industry and societal elites could have more influence and power in such matters.⁶

One of the strengths of compulsory voting is that it ensures a government is elected on the basis of the support of the majority of the population.⁷ This may be contrasted with countries with voluntary voting systems where low voter turnout can affect the confidence, even the legitimacy, of a government to proceed with implementing its election platform.⁸ Indeed, countries with voluntary voting systems frequently lament the fact of their low voter attendance.⁹ On the other hand, the advantages of

⁵ Australia 2020 Summit Governance, April 2008, p. 2. Source:
<[http://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Hot+topics+-+2020+governance/\\$FILE/governance\[1\].pdf](http://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Hot+topics+-+2020+governance/$FILE/governance[1].pdf)>

⁶ Electoral Reform Green Paper – Strengthening Australia’s Democracy, September 2009, p. 179. Source:

<http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/docs/strengthening_australias_democracy_11.pdf>

⁷ Ibid, p. 179. Widespread popular support helps to strengthen the claim of a government to possess a mandate to implement its stated election platform.

⁸ Ibid, p. 179

⁹ For example, prior to the 2005 British election it was predicted that voter turnout could fall to a century-low 53 percent (refer: <www.csmonitor.com/2005/0425/p07s01-woeu.html>).

compulsory voting include that it encourages voter buy-in of the process and result. Also, it fosters a sense of community, with citizens participating in the same activity together.

As the Discussion Paper notes, compulsory voting was introduced first in Queensland, in 1915 and then in the Commonwealth, in 1924, to combat the low voter turnout that was being experienced (p. 35). If compulsory voting was replaced with voluntary voting, an unintended consequence of doing so could be the re-emergence of low voter turnout and its attendant problems.

Australians are long used to, and have widely accepted, the current system of compulsory voting.¹⁰ Unless the current system is demonstrably “broken”, there would likely be great reluctance on the part of many to see a return to a system of voluntary voting that did not serve our democracy well in the past nor indeed has it been entirely successful in other countries where it is used.

In his forward to the Discussion Paper the Attorney-General wrote, “*The Queensland Government is committed to ensuring Queensland has an electoral system that meets high standards of integrity and accountability, with fair and effective electoral laws that promote participation in our democracy through political representation and voting*” (p. 2). Given the less than satisfactory track record of voluntary voting, the Government’s policy objective of promoting “participation in our democracy through voting” is far more likely to be achieved by retaining the current system of compulsory voting. Indeed, any move to replace the current system with voluntary voting could inadvertently subvert the Government’s policy objective.

Voting system

The Discussion Paper asked whether the current OPV system should be changed. The paper notes that OPV has the potential to become a de facto ‘first past the post’ system, unduly impacting on democratic outcomes (p. 37). This point has also been recognised by others.¹¹ While the paper proposes a return to Full Preferential Voting for Queensland elections, consideration should also be given to whether Proportional Representation (PR) could be introduced particularly in light of Queensland’s unicameral parliamentary arrangements. One of the arguments in favour of PR is that it more clearly represents the voters’ wishes as expressed at the ballot box thereby reducing the possibility of a single-party ‘elective dictatorship’ from arising.¹² With a single parliamentary chamber any measure to ensure that government in Queensland remains accountable and power is exercised appropriately should be fully explored.

¹⁰ Surveys have found that many Australians support compulsory voting (for example, refer: <www.smh.com.au/news/Opinion/Voluntary-voting-may-not-favour-the-Liberals/2005/03/28/1111862319506.html?oneclick=true#>>).

¹¹ For example Wanna, J., 2004, *Democratic and Electoral Shifts in Queensland: Back to First Past The Post Voting*. Source: <[http://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/ITS+-+local+gov+article+Wanna/\\$FILE/local+gov+article+wanna.pdf](http://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/ITS+-+local+gov+article+Wanna/$FILE/local+gov+article+wanna.pdf)>

¹² “Proportional Representation”. Source: <http://www.historylearningsite.co.uk/proportional_representation.htm>

Any other matter

The Discussion Paper invited comments on any other options for improving Queensland's electoral laws (p. 38). In this regard I would like to provide comments on the following two issues.

Length of parliamentary terms

In most Australian jurisdictions the length of the parliamentary term is four years. The length of local government terms in Queensland is also four years. The exception is at the state level in Queensland and the Commonwealth where the parliamentary term is a maximum of three years.

Over the years calls have been made for four year terms to be introduced in Queensland and the Commonwealth, although in both these jurisdictions any such move would first require a successful referendum being held. While the history of successful referenda in Queensland and the Commonwealth has not been bright, it is nevertheless important to understand the reasons why both jurisdictions have three year parliamentary terms.

At the Commonwealth level, it was decided during the constitutional conventions of the 1890s to introduce three year terms into the Commonwealth Constitution because shorter rather than longer terms were regarded as the "*democratic desideratum*."¹³ Similarly, in Queensland during the 1890s the then five year parliamentary term was reduced to three years to facilitate greater governmental accountability and responsiveness to electors.¹⁴ Later, Queensland's upper house was abolished on the proviso that the system of three-year parliamentary terms would remain in place to ensure that unicameralism posed "*no danger to the interests of the people*."¹⁵

According to the renowned constitutional scholar A V Dicey, citizens are the true political sovereigns of the state.¹⁶ The most tangible way for citizens to exercise their sovereignty is through the ballot box. Yet by definition, any increase in the length of the current parliamentary term would involve a reduction in the number of opportunities for that sovereignty to be exercised.¹⁷ It may be questioned how holding fewer elections would serve to advance the political sovereignty of citizens and the responsiveness and accountability of government let alone promote public participation in the electoral process and ultimately, democracy itself. While longer parliamentary terms may exist in other Australian jurisdictions, the concern has long

¹³ Sawyer, M. (Ed) 2001, *Elections Full, Free & Fair*, The Federation Press, Sydney, p. 24

¹⁴ Hansard, Queensland Legislative Assembly, *Constitution Act Amendment Bill*, 17 July 1890, pp. 274 – 286 and 31 July 1890, pp. 434 – 438; Hansard, Queensland Legislative Council, *Constitution Act Amendment Bill*, 16 September 1890, pp. 79 – 81

¹⁵ Fitzgerald, R. 1984, *From 1915 to the Early 1980s – A History of Queensland*, UQP, Brisbane, pp. 26 – 27; Murphy, D., Joyce, R. & Cribb, M. (Eds) 1990, *The Premiers of Queensland*, UQP, Brisbane, p. 322

¹⁶ Cited in Funnell, W. 2001, *Government by Fiat*, UNSW Ltd, Sydney, p. 2

¹⁷ The point that longer parliamentary terms would mean fewer elections is also recognised in: Legal, Constitutional and Administrative Review Committee, Report No 27, July 2000, pp. 16-17; Joint Standing Committee on Electoral Matters, 2005, p. 168

been expressed that lengthening the term tends to weaken the control of electors over Parliament.¹⁸

Despite the historical, accountability and public participation arguments in support of three year parliamentary terms, some have contended that increasing the length of the term to four years would bring benefits such as to business and the economy. Apart from the fact that the difference in terms of any benefits between three- and four-year parliamentary terms may be “*quite marginal*”,¹⁹ the reality is that the perceived benefits may not actually exist. In this regard it has been observed:

One difficulty with moving from the three-year term is the lack of evidence that such a change would actually bring the benefits that are claimed. Surprisingly, there appears to have been no research undertaken on the consequences of the change to four-year terms that occurred in four of the States in the 1970s and 1980s. There is, in fact, a lack of international evidence in regard to this aspect of legislative behaviour, no doubt because political scientists have regarded it as a settled question in most countries. Even were research to be done, however, the findings could only be speculative. Claims are made about the deleterious impact of three-year terms upon the Australian economy, but as far as can be ascertained there is no methodologically sound study that establishes, without doubt, that economic performance has been materially affected by a legislative term.

A second problem relates to the contention that the existing term has a deleterious impact upon the legislative performance. Critics point to the rush to legislate before the end of a parliament, but seem not to consider the possibility that the shorter term acts as a strong motivating instrument to get planning under way and legislation passed promptly. In addition, extending the House term to four years will not necessarily see the improved pursuit of medium- and long-term planning strategies. In many cases lengthy periods may be required after the passage of legislation before policies are seen to be producing results. The required lead-time may be far longer than four years and the difference between three and four year terms may therefore be quite marginal.

*In summary, although there is a lot of sentiment in favour of the four-year term, it is all based on speculation rather than hard evidence...*²⁰

It is possible that some respondents to the Discussion Paper may argue for the introduction of four year parliamentary terms in Queensland. However, given the Government’s commitment to ensuring “... *high standards of integrity and accountability, with fair and effective electoral laws that promote participation in our democracy*” (Discussion Paper, p. 2), the preceding discussion has highlighted how any move to increase the length of Queensland’s parliamentary term could jeopardise this objective being achieved.

¹⁸ Should the three-year maximum term be retained?”, Parliament of Australia Library Research Paper 2 2003-04, *Four-year Terms for the House of Representatives?* (September 2003). Source: <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0304/04rp02>

¹⁹ Ibid

²⁰ Ibid

Fixed parliamentary terms

Calls have occasionally been made for the introduction of fixed parliamentary terms. While there may be some advantages to fixed parliamentary terms, such as the removal of the ability of the prime minister or premier of the day to choose an election date to suit party political purposes, a number of disadvantages have also been identified such as the following:²¹

- they may detract from frequent opportunities for accountability to voters;
- longer, more expensive election campaigns may result;
- an early election can solve a political crisis if a government loses its majority in the Lower House;
- trust in the inherent wisdom of voters is only relevant once every three or four years (whichever is the case);
- members of parliament obtain a greater security than normal;
- the public may have to endure a longer period of a government that may have lost popular support;
- does not change the promotion and manipulation of candidates in the period before the election;
- instability may be prolonged where the government is reliant on crossbenches for support;
- a government with a small majority facing competing demands does not have recourse to an election to establish a clear mandate; and
- a fixed date may prove to be inconvenient due to unforeseen circumstances.

Despite such disadvantages, if consideration was ever given to introducing fixed terms for the Queensland Parliament, consideration would certainly also need to be given to including provision for an early election to be called in exceptional circumstances, such as in the event that the government of the day lost its support on the floor of Parliament.

I trust that the above comments and observations will assist you in your deliberations.

Yours faithfully

Don Willis

²¹ Sawyer, M. & Kelly, N. 2005, *Parliamentary Terms*, Democratic Audit of Australia. Source: <http://democratic.audit.anu.edu.au/papers/20050702_sawer_kelly_parl_terms.pdf> (cited with minor adaptation)