

# **Eleventh National Schools' Constitutional Convention**



**Australian Government**

**Department of Education, Science and Training**

**Governing Australia: Should it be fixed or flexible?**



## **REPORT OF THE ELEVENTH NATIONAL SCHOOLS' CONSTITUTIONAL CONVENTION**

**Old Parliament House  
Canberra**

**29-31 March 2006**

# Eleventh National Schools' Constitutional Convention

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# Eleventh National Schools' Constitutional Convention

## 1. Introduction

1.1 The eleventh **National Schools Constitutional Convention** (NSCC) was held at Old Parliament House in Canberra from March 29–31 2006.

1.2 The National Schools Constitutional Convention seeks to promote understanding and informed discussion amongst young Australians about the Australian Constitution and system of government. Its three main aims are:

1. To provide an opportunity for senior students to explore constitutional issues.
2. To encourage those students who are informed and actively interested in the Australian system of government to pursue this interest.
3. To increase student awareness of key constitutional matters.

## 2. Convention Participants

2.1 One hundred and seventeen student delegates from all Australian states and territories took part in the Convention

2.2 Student delegates from every Australian school in the catholic, government and independent education sectors are given the opportunity to participate in regional and state/territory schools constitutional conventions, where they are either selected or elected to attend the National Convention. The numbers of students selected from each state/territory were as follows:

- Australian Capital Territory 5
- New South Wales 30
- Northern Territory 4
- Queensland 22
- South Australia 11
- Tasmania 5
- Victoria 25
- Western Australia 15

## 3. Convention Program

3.1 As well as the Convention Program providing students with a structured forum within which they could analyse and debate constitutional issues, the three-day program included visits to Parliament House and the High Court of Australia, attendance at two dinners and addresses from politicians, constitutional experts and the New South Wales Young Australian of the Year.

3.2 As part of the Convention program, delegates attended Question Time in the House of Representatives, met with Members of Parliament at afternoon tea and participated in a role play conducted by the Parliamentary Education Office. Student delegates were welcomed to Parliament House by the Hon. Julie Bishop, Minister for Education, Science and Training. Mrs. Matilda House, a Ngunnawal Elder welcomed the students to Ngunnawal country.

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3.3 Students attended an Official Dinner at Anzac Hall in the Australian War Memorial where students were welcomed to Canberra by Michele Bruniges, Chief Executive Officer of the ACT Department of Education who represented Katy Gallagher, the ACT Minister for Education and Training. This dinner was sponsored by the ACT Department of Education and Training. Students were welcomed to the Australian War Memorial by Mr. Andrew Gray and were addressed by Ms. Kate Brennan, New South Wales Young Australian of the Year.

3.4 The Convention was opened by the Hon. Gary Humphries, Senator for the Australian Capital Territory. Prof. John Williams of the University of Adelaide facilitated the Convention proceedings.

3.5 At the conclusion of the Convention, the Deputy President of the Senate, the Hon. John Hogg, Senator for Queensland accepted the Convention Communiqué to convey to the Prime Minister and the Commonwealth Parliament.

Appendix 1 contains an outline of the Convention Program.

## 4. Convention Focus

4.1 The theme for the Convention was *Governing Australia: Should it be fixed or flexible?*. Student delegates were provided with pre-reading and presentations that related to the following two issues:

- Issue 1: Should Parliamentary terms be increased?
- Issue 2: Should there be term limits to parliamentarians?

4.2 Students worked in groups to analyse and reach conclusions about the two issues.

## 5. Convention Processes

5.1 Prior to the Convention delegates were provided with an Issue Paper that addressed the two issues to be analysed and debated by delegates. Appendices 2 and 3 contain the Pre-reading/Discussion Papers.

5.2 A Keynote Address entitled *Fixed Four Year Terms: How the current system works. What are the options for change?* was presented by Dr. Clem Macintyre, University of Adelaide. This address provided perspectives on the advantages and disadvantages of different terms for parliament and of fixed and flexible terms (Issue 1).

5.3 After the keynote speaker had addressed delegates, students were given an opportunity to ask questions to clarify points and to seek further information as well as challenge the views put forward by the keynote speakers. Further input to stimulate delegate's thinking was provided through a panel session.

5.4 Panel members Dr. Clem Macintyre, Mr. Peter Lindsay MP and Senator Kerrie Nettle discussed and responded to questions on the advantages and disadvantages of fixed four year terms (Issue 1). Senator Natasha Stott Despoja and Mr. Michael Danby MP who were unable to join the panel as they were required in the Parliament sent their apologies to the student delegates.

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5.5 Further exploration of Issue 1 was provided by Professor John Williams who facilitated students' Working Group and Soap Box sessions. The Working Groups for Issue 1 were structured around the following questions:

- What is the best length for a Parliament?
- What are the arguments for and against fixing the term of the Parliament? (In considering this question you should consider both the length of the parliament and fixing the date of the election).
- Should the House of Representatives be increased from three to four years?
- If there was to be an increase to the term of the House of Representatives what should be the term of the Senate?

5.6 A ballot was conducted to gain an indication from delegates of their preferred alternative model. The five options used in the ballot were as follows:

<b>Option</b>	<b>Fixed or Flexible</b>	<b>Term of the House of Representatives</b>	<b>Term of the Senate</b>
1	Fixed	3	6
2	Fixed	4	4
3	Flexible	4	4
4	Fixed	4	8
5	Flexible	4	8

5.7 The results of the ballot were tallied to identify the alternative model that was most preferred by delegates.

5.8 Issue 2 was introduced by Mr. Malcolm Mackerras who provided a presentation entitled *Parliamentary Term Limits/Compulsory Retirement Age. Past history, advantages and disadvantages of term limits*. After the keynote speaker had addressed delegates, students were given an opportunity to ask questions to clarify points and to seek further information as well as challenge the views put forward by the keynote speakers. Further exploration of issues was provided by Professor John Williams who facilitated students' Working Group and Soap Box sessions.

5.9 Delegates also participated in a ballot that sought their preferences in relation to various time limits (from 1 to 10 terms) for parliamentarians. The results of the ballot were tallied to identify which time limitation for parliamentarians was most preferred by delegates.

5.10 Both of the parliamentary terms and term limits issues were considered together and the student's views in relation to their preferred alternative model and the current arrangements were again tested through participation in a mock referendum administered by the Electoral Education Centre of the Australian Electoral Commission. The referendum asked delegates to select between the preferred arrangements they identified through the two ballots on parliamentary terms and term limits for parliamentarians and the current model.

5.11 The programme for the National Convention provided the student delegates with a stimulating and challenging experience.

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## 6. Delegates' Perspectives on the Issues

*Issue 1: Should Parliamentary terms be fixed or flexible and should they be increased?*

(Section 28 of the Constitution states that every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General)

6.1 When indicating their preference between the five options, the **vast majority** (106 out of 116) of delegates expressed a preference from amongst the options available for fixed terms for elections.

6.2 The reasons for supporting fixed terms were that:

- it increases Parliamentary stability
- it is less open to manipulation by the incumbent party
- fewer elections will be held as the government cannot go to an election early, which is more cost effective
- it provides greater certainty and thus increases business confidence and enables them to undertake longer-term planning
- voters know well in advance when the elections will be held
- electioneering will be easier to manage for all parties.

6.3 When indicating their preference between the five options, the **substantial majority** of delegates (78 out of 116) were in favour of maintaining the 3 year term for the House of Representatives and a 6 year term for the Senate

6.4 The reasons for supporting a model based on terms of 3 and 6 year terms were that:

- it is consistent with the current pattern in regard to election terms
- it is the smallest change to the status quo, does not require a change in the Constitution and thus is more likely to be agreed to
- it is efficient and simple to administer
- it provides a more immediate mandate than would a Parliament based on terms of greater length (e.g. 4 and 8 years).

6.5 In addition:

- reducing the Senate to a 4 year term would duplicate the House of representatives and is therefore likely to lessen diversity of opinion
- a 6 year Senate is less likely than a four-year Senate to pander to short-term interests and be more inclined to function in the national interest.

6.6 When indicating their preference between the five options, the **minority** of delegates (35 out of 116) were in favour of increasing the term for the House of Representatives to 4 years and reducing the term for the Senate to 4 years.

6.7 The reasons for adopting this position are that it:

- is consistent with the pattern of the lower houses in most of the states and territories

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- provides more time for the government of the day to implement policies
- provides greater stability and thus increases business confidence when undertaking longer-term planning
- is less costly to administer than the current three-year arrangement
- is likely to have widespread support among the community
- provides greater time between elections, thus providing greater opportunity for members to address issues of concern to constituents in their electorate
- best represents the views of the people as it allows for new voices to be heard through more regular elections in the Senate
- 8 years is too long as parliamentarians may become removed from the views of the electorate.

## 6.8 Reasons against adopting this model:

- a 4 year Senate (electing all 12 Senators at an election) would produce greater instability in that Senators would be elected on a smaller percentage of the vote.

## 6.9 Other general points that were raised included that:

- the option of a fixed term with a flexible addition – e.g. 3 years with the opportunity to call an election in the fourth year – provided another option worthy of consideration
- the advantage of a half-Senate election is that there are opinions across a number of years to be found in the Parliament.

6.10 The preferred alternative model identified through this ballot was used as the referendum question in the mock referendum election.

*Issue 2: Should there be term limits for parliamentarians?*

(The Constitution places no limits on the number of terms a parliamentarian may serve.)

## 6.11 Delegates identified the following as possible advantages of limiting Parliamentary terms.

- New people with fresh ideas could be regularly introduced into the Parliament.
- Individuals may be less constrained in their political loyalty given a limited time in parliament.
- There may be a greater urgency to implement policies if one's time in Parliament is limited.
- A limited term could help to ensure that political parties identify candidates more inclined to promote reform.
- There may be greater diversity of political views and experience.
- Fixing parliamentary terms could avoid the problem of the government 'running out of steam' that often occurs after a party has been in power for too long.

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6.12 Delegates identified the following as possible disadvantages of limiting Parliamentary terms.

- Very experienced people could be lost from the parliament.
- Excellent candidates may be dissuaded from putting themselves forward if the term limits were too restrictive.
- A Prime Minister who has become a liability for the party or an ineffective leader is more likely to serve out his/her fixed term rather than being replaced quickly as currently happens without limitations.
- Term limits could produce poor leaders because the candidates for Prime Minister lack sufficient experience.
- Parliamentarians could become lazy and disinterested towards the end of their terms.
- Selection of a term limit would be arbitrary and is unlikely to produce a Parliament made up of outstanding members.
- Younger candidates could be deterred as they would be reluctant to enter a fixed term arrangement until they had the experience to immediately be effective.
- Political parties could be weakened because of the need to regularly identify new candidates.
- Fixed terms for politicians, if set for a relatively short period (e.g. 6 years) could produce economic instability.
- Those politicians with experience would continuously be replaced by people who are less effective because they lack experience.

6.13 Delegates identified the following as possible effects on government and policy generation of parliamentarians had limited terms.

- Experienced parliamentarians could be lost to the parliament.
- There may be more politicians of younger age who are more in-tune with the needs of younger people.
- More effort will be made to identify fresh and talented candidates.
- There may be less continuity in views and that this may destabilise business and the economy.

6.14 It was also noted that simply fixing a term limit to eligibility does not:

- prevent candidates who are well beyond retirement age from being elected
- guarantee that quality candidates will be presented to voters.

6.15 The view was also expressed that:

- voters should be able to determine whether or not a person is fit for parliament, not the Constitution or legislation
- the current system has produced a range of parliaments in terms of age and experience so why change it
- the current system is flexible and can respond to throw out or replace an ineffective politician or Prime Minister

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- an unlimited term enables parliamentarians to leave parliament after several terms, take on new roles and then return to parliament several terms later with broader skills and knowledge
- other professions do not have limitations placed on the term of employment (except judges) and so it is unfair to place limitations on the term for being a politician.

6.16 A ballot was conducted to identify the preferred alternative to the terms of politicians being fixed. The 'preferred fixed term' identified through this ballot was a ten term limitation. This preferred term limit was used as the referendum question in the mock referendum election.

## 7. Mock Referendum Results

7.1 The arrangements for conducting a referendum and the voting patterns that are required to produce a change in the Constitution were explained by a representative of the Australian Electoral Commission.

*Issue 1: Should Parliamentary terms be fixed or flexible and should they be increased?*

7.2 A mock referendum was conducted that required delegates to indicate their approval by writing 'yes' or 'no' in response to the following proposition:

A PROPOSED LAW: To alter the Constitution to allow the term of the House of Representatives be changed to 3 years and the Senate to 6 with a set day of polling.

7.3 The results of this mock referendum were as follows.

- The national tally was 95 for YES and 20 for NO
- New South Wales 25 in favour and 5 against
- Victoria 20 in favour and 5 against
- Queensland 20 in favour and 2 against
- Western Australia 11 in favour and 4 against
- South Australia 10 in favour and 1 against
- Tasmania 3 in favour and 1 against (with one informal vote)
- Australian Capital Territory 3 in favour and 1 against
- Northern Territory 3 in favour and 1 against

7.4 A majority of states (6 out of 6) and a majority of voters (95 out of 116) were in favour of the alteration.

7.5 The referendum for a change in the Constitution was successful.

*Issue 2: Should there be term limits for parliamentarians?*

7.6 A mock referendum was conducted that required delegates to indicate their approval by writing 'yes' or 'no' in response to the following proposition:

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A PROPOSED LAW: To alter the Constitution to allow for the limiting of terms of parliamentarians to a maximum of ten terms.

7.7 The results of this mock referendum were as follows.

- The national tally was 29 for YES and 86 for NO
- New South Wales 3 in favour and 27 against
- Victoria 6 in favour and 19 against
- Queensland 10 in favour and 12 against
- Western Australia 2 in favour and 13 against
- South Australia 2 in favour and 9 against
- Tasmania 3 in favour and 1 against (with one informal vote)
- Australian Capital Territory 1 in favour and 3 against
- Northern Territory 2 in favour and 2 against

7.8 A majority of states (5 out of 6) and a majority of voters (86 out of 116) were not in favour of the alteration.

7.9 The referendum for a change in the Constitution was unsuccessful.

7.10 In essence, having analysed the various options available to them for changing the Constitution, delegates expressed a strong preference for:

- retaining an election period of 3 years for the House of Representatives and 6 years for the Senate and leaving the Constitution unchanged in regard to this issue
- changing from an unfixd to a fixed date for elections and changing the Constitution in regard to this matter
- retaining the current situation of having no limitation on the number of terms a politician can serve in parliament and leaving the Constitution unchanged in regard to this issue.

7.11 A number of territorian delegates expressed concern about the current constitutional arrangements whereby at referendum their opinion is only expressed in the national vote.

## 8. Convention Outcomes

8.1 A Communiqué outlining the Convention programme processes and outcomes was developed and endorsed by delegates.

8.2 At the conclusion of the Convention, the Deputy President of the Senate, the Hon. John Hogg, Senator for Queensland accepted the Convention Communiqué to convey to the Prime Minister and the Commonwealth Parliament.

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## Appendix 1: Convention Program

### DAY 1, WEDNESDAY 29 MARCH 2006

<b>12.00 pm</b>	<b>Lunch and tour of the High Court of Australia</b>
1.15pm	Bus departs for Parliament House
2.00 – 3.00pm	Parliamentary Question Time
<b>3.15 – 4.00pm</b>	<b>Prime Minister's Reception</b> Mural Hall, Parliament House, Capitol Hill <b>Introduction</b> Dr. Trish Mercer Group Manager, Schools Outcomes Group Department of Education, Science and Training <b>Welcome</b> The Hon Julie Bishop MP, Minister for Education, Science and Training on behalf of the Prime Minister  A chance for delegates to met with their local members of Parliament
4.00 – 5.15pm	Role play conducted by the Parliamentary Education Office
<b>5.30pm</b>	<b>Bus departs for Hotel</b>
<b>7.00pm</b>	<b>Bus departs for Australian War Memorial</b>
7.30pm	<b>Official Dinner:</b> Anzac Hall, Australian War Memorial <b>Welcome:</b> Andrew Grey, Australian War Memorial <b>Dinner hosted by:</b> Department of Education and Training, Australian Capital Territory <b>Welcome:</b> Michele Bruniges, Chief Executive Officer of the ACT Department of Education representing Katy Gallagher, Minister for Education and Training, Australian Capital Territory  <b>Dinner Speaker</b> – Kate Brennan, New South Wales Young Australian of the Year
<b>10.00pm</b>	<b>Bus departs for Hotel</b>

### DAY 2, THURSDAY 30 MARCH 2006

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8.15am	Bus departs for Old Parliament House
9.00am	Photographic session (Whole Group)

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<b>9 30 – 10.15am</b>	<b>Welcome:</b> Prof. John Williams <b>Keynote address</b> – ‘Fixed four-year terms: How the current system works. What are the options for change?’ <b>Speaker</b> – Dr. Clem Macintyre, University of Adelaide
10.15 – 10.30am	<b>Question and Answer session on Keynote address</b> Facilitator: Prof. John Williams
<b>10.30 – 11.00am</b>	<b>Official Opening:</b> Senator Gary Humphries, Senator for the Australian Capital Territory <b>Welcome to land:</b> Mrs Matilda House, Ngunnawal Elder
11.00 – 11.30am	Morning Tea
11.30 – 12.30pm	<b>Panel: <i>Fixed Four Year Terms: Debating the advantages and disadvantages</i></b> <i>Facilitator-</i> Prof. John Williams  Senator Natasha Stott Despoja (Unable to participate) Mr Michael Danby MP (Unable to participate) Mr Peter Lindsay MP Senator Kerrie Nettle Dr. Clem Macintyre (Replacement panelist)
12.30 – 1.00 pm	<i>Facilitator-</i> Prof. John Williams <b>Working Group instructions and outline of activities</b>
<b>1.00 – 2.00pm</b>	<b>Lunch</b>
2.00 – 2.45pm	Working Groups Issue 1 Should Parliamentary terms be increased?
2.45 – 3.15pm	Soap Box Session: Issue 1
3.15 – 4.00pm	Working Groups to finalise responses to Issue 1
<b>4.00 – 4.30 pm</b>	<b>Afternoon Tea</b>
4.30 – 5.00 pm	Conclusions and recommendations: Finalise response to Issue 1 (Whole group)
5.00pm	Return to the Hotel
<b>7.00pm</b>	<b>Dinner</b>
<b>DAY 3, FRIDAY 31 MARCH 2006</b>	
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<b>7.00am Breakfast</b>	
8.00am	Bus departs for Old Parliament House

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<b>9.00 – 9.30am</b>	<b>Facilitator-</b> Prof. John Williams <b>Parliamentary term limits/compulsory retirement age: Past history, advantages and disadvantages of term limits</b> <b>Speaker-</b> Malcolm Mackerras
9.30 - 10.15am	Working Groups Issue 2: Should there be term limits for parliamentarians?
10.15 – 10.45am	Soap Box Session: Issue 2
<b>10.45 -11.15am</b>	<b>Morning Tea</b>
11.15 – 12.00 pm	Working Groups Finalise report on Issue 2
12.00 - 12.30 pm	Conclusions and Recommendations on Issue 2
12.30 – 12.45 pm	Electoral Commission – Explanation of Referendum
12.45 – 1.00pm	Referendum: <b>Length of parliamentary terms, limit to parliamentary terms</b>
<b>1.00 – 1.45</b>	<b>Lunch</b>
1.45 – 1.55pm	Electoral Commission – Results of Referendum
1.55 -2.30 pm	Finalising of the Communiqué incorporating referendum results
2.30 – 2.45pm	Review of the 2006 National Schools Constitutional Convention
2.45 – 3.00pm	Presentation of the Communiqué to the Deputy President of the Senate, The Hon. John Hogg, Senator for Queensland

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## Appendix 2: Discussion Paper/Pre-reading 1

### Introduction

The National Schools Constitutional Convention provides an opportunity for students to discuss in detail our constitutional arrangements and to deliberate upon proposed amendments. In 2006 delegates will be considering two distinct, though interrelated, proposed amendments. They are: fixing the terms for the Commonwealth parliament, and limiting the terms of parliamentarians. The following document provides a brief introduction to the issues that will be considered at the Convention. The information provided is to assist you to work within your groups at the Convention. However, please familiarise yourself with it and the attached documents prior to the Convention.

### Working Groups: Day 2 - Thursday 30 March, 2006

#### Issue 1: Fixed Four Year Terms.

On Day Two of the Convention the issue to be considered is whether the parliamentary terms should be fixed. Currently, the Commonwealth Constitution limits the term of the House of Representatives to three years. As section 28 states:

**28.** Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

The Senate, which is elected by the people of the various States and Territories, has a term of up to six years (sections 7 and 13). In the case of the Territory senators the period is three years. In normal circumstances, that is when there is not a double dissolution election, half the Senate is elected on the same day as the House of Representatives. The convention of the election for both the House of Representatives and half the Senate has been the situation for the last 30 years.

When discussing fixed terms two issues arise. It is possible, for instance, to fix the terms (at say 4 years rather than the current three) and allow the Prime Minister to call an early election at any time during that term. A second issue is to both fix the term and the date of the election. Thus for example in the United States presidential elections take place on the first Tuesday in November every four years. Under the South Australian Constitution 'a general election of members of the House of Assembly must be held on the third Saturday in March' every four years (section 28). Keep in mind these two issues when considering fixed terms. During our deliberations delegates will be asked to come up with a preferred model that will be voted upon. The various models might include a fixed period for the Parliament but still allow for flexibility in the date of an election.

Associated with the issue of fixing the length of the House of Representatives is the length of terms of Senators. As noted above the Senators are currently elected for a period twice the length of the lower house, that is 6 years. If the House of Representatives was extended to 4 years should the Senate become 8 years or should it also be four years?

The attached reading canvasses in detail the options and arguments for and against fixing the terms of the Commonwealth Parliament. In considering any change it is

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clear that the Constitution itself will need to be changed by referendum in order to entrench a new scheme. In your discussions with your working groups you may wish to consider the following issues:

1. *What is the best length for a Parliament?*
2. What are the arguments for and against fixing the term of the Parliament? (In considering this question you should consider both the length of the parliament and fixing the date of the election).
3. Should the House of Representatives be increased from three to four years?
4. *If there was to be an increase to the term of the House of Representatives what should be the term of the Senate?*

## A Preferred Model

The National Schools Constitutional Convention will operate like an experts group when considering the issue of the fixed term. At the end of our deliberations delegates will be asked to put forward a preferred model to be tested against the status quo at referendum. Even if your ultimate decision is to retain the current system individuals should consider what would be their preference from the various models on offer. In general the options available (other than the status quo) would be to **Fix** the term of the Parliament AND the date of the election or **Fix** the term of Parliament AND leave **Flexible** the date of the election. The following table outlines the various standard options.

Option	Fixed/ Flexible	Term of the House of Reps	Term of the Senate
1	Fixed	3	6
2	Fixed	4	4
3	Flexible	4	4
4	Fixed	4	8
5	Flexible	4	8

In light of all the discussions which is the model which you as an individual prefer?

*At the end of this session you will be given a ballot where you will be asked to express your preference.*

## Working Groups: Day 3 - Friday 31 March 2006

### Issue 2: Should there be Term Limits for Parliamentarians?

Under the Commonwealth Constitution there is currently no limit on the number of terms a parliamentarian may serve. There is also no retirement age. This can be contrasted with High Court justices who must retire upon reaching the age of 70.

In the United States the Constitution was amended in 1951 to limit the number of terms of the President. That article states that:

#### AMENDMENT XXII

##### Section 1.

No person shall be elected to the office of the President more than twice, and

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no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

In Australia there have been many politicians who have had long and distinguished careers. For instance the longest serving Commonwealth parliamentarian was the Rt Hon. William 'Billy' Hughes who was elected at the first federal election in 1901 and served until 1951. He was elected at 21 general elections. The longest serving Prime Minister (to date) has been Sir Robert Menzies. He held the office twice, from 1939 to 1941 and from 1949 to 1966. Altogether he was Prime Minister for over 18 years.

There are a number of arguments that have been raised in relation to the adoption of 'term limits' in the Australian context.

The arguments in favour include the injection of new and energised people into the parliament on a regular basis. Individuals may be less constrained in their political loyalty given a limited time in parliament. This may or may not be seen as an advantage. Alternatively there are important counter-arguments to be considered. For instance many parliamentarians serve a long apprenticeship before taking on ministerial or prime ministerial office. The current Prime Minister, the Hon John Howard was first elected to the Parliament in 1975 and did not become Prime Minister until 1996.

Thinking about the issue of limiting Parliamentary terms as discussed during the keynote address and during your working group:

*What are the advantages and disadvantages of such a proposal?*

*What do you think would be the effect on government and policy generation if parliamentarians had limited terms?*

*What should be the preferred term if such a change was to be accepted (2 terms, 3 terms, etc)?*

At the end of this session you will be given a ballot where you will be asked to express your preference.

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## Appendix 3: Discussion Paper/Pre-reading 2

### The 2004 Federal Election

Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto  
Joint Standing Committee on Electoral Matters, September 2005, Canberra.

### Parliamentary terms

7.1 This chapter examines the history, arguments in favour of, and options for, a shift to four-year terms for the Federal House of Representatives. There have been a number of detailed publications on the history of the issue of four year terms. *Four-Year Terms for the House of Representatives?* (September 2003) by Scott Bennett of the Parliamentary Library provides a comprehensive overview, and is regularly referred to throughout this chapter.

### Introduction

7.2 The Constitution provides that terms for the House of Representatives continue for a maximum of three years from the first meeting of the House subsequent to an election. The House may also be dissolved sooner than the three-year term by the Governor General.<sup>1</sup> This means that a Federal Election for the House of Representatives may be called at any time in the three-year period following the first sitting of the House.

7.3 There have been almost continuous calls over recent years for reconsideration of the appropriateness of this three-year maximum term for the efficient governance of the country. Specifically, the question has been often asked whether the term of the House of Representatives could be extended to four years.

7.4 Recent calls for this extension of the parliamentary term have attracted widespread and cross-party support.<sup>2</sup>

7.5 Any change to the term of the House will, most likely, necessitate amendment to the existing terms for the Senate. This raises a number of complex issues, which are outlined later in this chapter.

7.6 Finally, this issue is further complicated by the need to amend the Constitution in order to change the duration of the House of Representatives. There are also other electoral issues that would be affected by the introduction of a longer term. These matters are also discussed throughout the chapter.

### History

7.7 The issue of parliamentary terms has been on the national agenda since the first Constitutional Convention in 1891. Since that time, the question of the appropriateness of the three-year House of Representatives term has been asked in various public forums no less than 12 times.<sup>3</sup>

### The Constitutional conventions

7.8 The colonies initially had five-year parliamentary terms, which they inherited from the British parliamentary system. By the 1890s, however, the colonies had moved to three-year terms, with only Western Australia having a four-year term.

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7.9 Not surprisingly, therefore, the various draft constitution bills throughout the 1890s showed a clear preference for three-year terms.

7.10 The four-year term option was, however, canvassed in at least one draft constitution, upon the recommendation of a Constitutional subcommittee in 1897. This subcommittee included two future prime ministers, Edmund Barton and Alfred Deakin, who were clearly looking beyond the changing parliamentary landscape of the time to a point in the future where parliaments would have more stability and would benefit from longer terms.

7.11 The Western Australia Premier and Legislative Assembly also argued strongly in favour of the four-year term throughout the Federation Conference, citing a belief that the three-year system was too short.<sup>4</sup>

7.12 The four-year term proposal, however, was defeated during debate in the Australasian Federal Convention in April 1897, and the three-year House of Representatives term became enshrined in the Constitution in 1900.<sup>5</sup> This decision was arguably influenced by a desire to harmonise the House terms with the already settled six-year term of the Senate, rather than by any serious objection to four-year terms in principle.

7.13 This decision ensured consistency with the three-year terms of the states at the time.

7.14 The original aim of consistency has now been lost. All of the States and Territories (with the exception of Queensland which has a unicameral Parliament) have now moved to four-year terms.

7.15 The original consistency argument therefore now demands a shift to four-year federal terms to align with the states.<sup>6</sup>

## **Further reviews of parliamentary terms**

7.16 There have been numerous calls to increase the House of Representatives term since 1900 in a wide range of forums.

7.17 The Royal Commission into the Constitution (1927–1929) was the first major opportunity to revisit the operation of the Commonwealth Constitution. The Commission strongly recommended that the life of the Parliament be increased to at least four years.<sup>7</sup> No action was taken on this recommendation at this time, so the parliamentary term continued to run for three years.<sup>8</sup>

7.18 In more recent times, Parliament's Joint Standing Committee on Electoral Matters has given its unanimous support to the idea of four-year terms in the House of Representatives via its investigations into the 1996, 1998 and 2001 Federal Elections.<sup>9</sup>

7.19 Further, both the Prime Minister and the Leader of the Opposition have been open to review of the length of parliamentary terms. Prime Minister Howard stated that he thought it “a good idea to have a longer period of time to deal with medium and long term issues”.<sup>10</sup>

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## **Past attempts to change parliamentary terms**

7.20 In 1983, the four-year term option was again recommended at an Adelaide session of the Australian Constitutional Convention.<sup>11</sup> The Commonwealth Parliament passed the necessary legislation (*Constitution Alteration [Simultaneous Elections] Act 1983*) to bring this change to a referendum in February 1984.<sup>12</sup>

7.21 While there was widespread community support for this change, a difference of opinion between the Hawke Government and the Senate of the day led to the referendum being delayed indefinitely.<sup>13</sup>

7.22 The proposal to increase the House of Representatives term from three years to four years has, therefore, only been presented to the electorate on one occasion in 1988, where it was defeated with the lowest 'YES' vote in any referenda since 1900.<sup>14</sup>

7.23 While there appeared to be significant and widespread community support for an increased House term, the 1988 proposal was combined with other more contentious proposals (including the reduction of Senate terms to four years) without the option for voters to choose 'YES' for only one element of the package.<sup>15</sup>

7.24 It is therefore arguable that the "NO" vote in this referendum did not reflect the true feelings of the electorate, and so does not preclude future support for the extension of the House of Representatives term.

## **Length of parliaments since Federation**

7.25 The primary factor which determines the length of the House of Representatives term is the Governor General's discretion to call elections any time in that three-year period, arguably when it is politically judicious to do so.

7.26 The study "Four-Year Terms for the House of Representatives?" contains a comprehensive analysis of the length of House of Representatives terms of 38 completed parliaments between 1901 and 2003. It shows that, as a result of the operation of the Prime Minister's discretion, parliaments have ranged from under one year to over three years, with an average length of 30.7 months, or 2.5 years per parliament.<sup>16</sup>

7.27 Whilst that research may indicate that parliamentary terms have been shortening over the long term, the experience of elections in the 1990s reveals an average parliament length of 34.5 months,<sup>17</sup> so there is no discernible trend in the time between elections.

## **Comparison with other systems**

7.28 A comparison between Federal parliamentary terms reveals some disparity with jurisdictions throughout Australia and other bicameral systems throughout the world. Generally speaking, three-year terms are not the norm, with some jurisdictions adopting either four-year or five-year terms.

7.29 There is also some difference arising from whether the term is a "maximum term" (where an election must be called before the expiration of this term) or a "fixed term" (where the election is fixed on a certain date for the future).

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7.30 The following sections outline current practice in both Australian States and Territories and overseas.

## Australian States and Territories

7.31 There has been a recent trend towards four-year terms in State lower houses, with only Queensland and the Commonwealth House of Representatives retaining three-year terms. Responding to recent calls to extend the Queensland parliamentary term to four years, the Queensland Premier, the Hon. Mr Peter Beattie MP, stated that he would prefer that any change to the state's system occur in conjunction with amendments at the Federal level.<sup>18</sup>

7.32 As illustrated in Table 7.1, below, not all Australian jurisdictions employ fixed parliamentary terms.

**Table 7.1 Parliamentary terms: Australian lower house terms**

Parliament	Term	Fixed term?	Date of change to 4 years	Mechanism for change
Commonwealth	3 years	Nil	-	<i>(Referendum)</i>
NSW	4 years	4 years	1981; fixed 1995	Referendum
Victoria	4 years	4 years	1984; fixed 2003 <sup>19</sup>	Legislation
Queensland	3 years	Nil	-	<i>(Referendum)</i>
Western Australia	4 years	Nil	1987	Legislation
South Australia	4 years	4 years	1985	Legislation
Tasmania	4 years	Nil	1972	Legislation
ACT	4 years	4 years	2003	Legislation
Northern Territory	4 years	Nil	Always 4 years	<i>(Legislation)</i>

*Source: Adapted from Bennett S., "Four-Year Terms for the House of Representatives?", September 2003, and Sawyer M and Kelly N, 'Parliamentary Terms', Democratic Audit of Australia, February 2005, <sup>20</sup>*

## Overseas jurisdictions

7.33 A significant majority of democratic jurisdictions throughout the world employ either four-year or five-year terms for the lower houses of their parliaments, with just over half having a parliamentary term of five years.

7.34 Table 7.2 summarises term durations for countries which, like Australia, employ a bicameral system for their national government. The United Kingdom's parliamentary system, the model for the Australian Federal electoral system, employs a maximum term of five years.

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**Table 7.2** Parliamentary terms: International lower house terms (bicameral systems only)

Length of parliamentary term	Number of countries	% of total	Comments
2 years	1	1.4%	USA
3 years	3	4.2%	Australia, Philippines, Mexico
4 years	26	36.6%	
5 years	40	56.4%	a) In India the <i>Lok Sabha</i> can be extended in 1 year increments upon the expiry of the original 5-year term, b) Burundi is currently in a period of transition c) Italy had 52 elections in between 1945 to 1993 (a period of 48 years)
6 years	1	1.4%	Yemen
TOTAL	71	100%	

Source Inter-Parliamentary Union<sup>21</sup>

## Constitutional requirements for parliamentary terms

7.35 As outlined above, the Constitution sets out the requirements for the length of the parliamentary term. The wording of these requirements is very specific: the House of Representatives can continue for no longer than three years from the first meeting of the House. This means that any reform to existing parliamentary terms will require the words of section 28 of the Constitution to be amended to allow for a four-year term.

7.36 Senator Andrew Murray pointed out that the introduction of a fixed three-year term for the House of Representatives may be possible via legislative change, rather than requiring a referendum.<sup>22</sup>

7.37 Section 7 of the Constitution provides that Senators will be chosen for a term of six years, with the places of senators becoming vacant at the expiration of six years from the beginning of the term of service. The terms of half of the senators expire every three years, so an election for the vacancies must occur within a year prior to the places becoming vacant.<sup>23</sup>

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**Table 7.3** Parliamentary terms: Australian upper house terms

Legislature	Date
Commonwealth Senate	The Senate has fixed six-year terms, and half the Senate is elected every three years (generally simultaneously with the House, but constitutionally there could be two separate elections). The exception is three years for Territory Senators. If there is a double dissolution all the Senate is elected at the same time as the House members.
New South Wales Legislative Council	The NSW Legislative Council has a fixed eight-year term, with half the members being elected at every general election. Elections are held on the fourth Saturday in March every four years.
Queensland	Unicameral
Victoria Legislative Council	The Legislative Assembly and Council now both have fixed four-year terms. Elections are to be held on the last Saturday in November every four years, commencing in 2006.
South Australia Legislative Council	The Legislative Council has a fixed eight-year term, with half of its members being elected at each general election. Elections are to be held on the third Saturday in March every four years, commencing in 2006.
Western Australia Legislative Council	The Legislative Council has a fixed term of four years from the time members take their seats on the 22 May following the date of their election. The election date is not fixed.
Tasmania Legislative Council	Legislative Council members have fixed six-year terms with an election for two or three of the 15 being held on the first Saturday every May, on a six-year periodic cycle.
Australian Capital Territory	Unicameral
Northern Territory	Unicameral

7.38 Note that sections 43 and 54 of the *Commonwealth Electoral Act 1918* (CEA) require that an election of Senators and members of the House of Representatives for each Territory must be held at the same time as each general election. Senators from the Territories, therefore, serve only a three-year term.

7.39 Any attempt to change the Senate term, therefore, would also require constitutional amendment via a referendum.

7.40 Finally, the Constitution also provides mechanisms where the Senate twice rejects or fails to pass a bill passed by the House of Representatives within a three-month period. If this occurs, the Governor General may dissolve the Senate and the House of Representatives simultaneously, but not within six months before the next general election is due.<sup>24</sup>

7.41 If a bill is rejected or remains unpassed after such a dissolution, the Governor General may convene a joint sitting of the members of the Senate and the House of Representatives. If an absolute majority of members of both Houses affirm the bill, it is then taken to be duly passed by both Houses of Parliament.<sup>25</sup>

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7.42 As discussed below, a number of commentators have suggested amendment to the double dissolution provisions in the Constitution. Such a change would also require a referendum to become effective.

## **Arguments in favour of a four-year parliamentary term**

7.43 In the earliest discussions about the length of the term of the House of Representatives, the three-year term was felt to be inadequate considering the large area of the country and some electorates and the large number of important issues confronting the young Parliament.

7.44 These concerns have largely evaporated with the passage of time, but one significant argument against the three-year term remains: the three-year period is seen as providing insufficient time between electoral contests.<sup>26</sup>

## **Advantages of longer terms**

7.45 The Committee reviewed a range of opinions supporting a move to a longer term for the House of Representatives:

- improved policy-making;
- increased business confidence;
- reduced cost of elections;
- improved debate; and
- voter dislike of frequent elections.

## **Improved policy-making**

7.46 Mr Tony Smith MP expressed a common argument throughout the debate in favour of longer parliamentary terms:

Government would gain a greater capacity to implement policies with a focus on the longer-term issues facing the nation over the shorter-term electoral considerations.<sup>27</sup>

7.47 It is thought that a government spends the first twelve months of their term settling in and only starts taking significant policy steps in the second year, before attention focuses on the election campaign in the third year<sup>28</sup>

7.48 It is for this reason that governments in short-term systems are accused of focusing on making politically expedient decisions during their term, rather than pursuing policy that is in the national interest. A four-year term would potentially allow governments the extra time required to make the difficult policy decisions, without politics being the primary driver.

7.49 In the United States, the term of the government (namely the President), accords with international norms. The President is elected for a four-year fixed term with a pre-set election date.

7.50 Nevertheless, the re-election of the United States Congress every two years provides a good example of what can happen when a parliamentary term is short and fixed. In that system, congressional elections are held in November every two years, so while voters know when an election is pending, the election campaign tends to start early in the second year of the term. Incumbent representatives thus are almost constantly running for re-election, creating the perception that they will consider only what is best for their electoral fortunes, rather than the good of the nation.<sup>29</sup> This can

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create a form of "policy gridlock", where there is little willingness to take policy action that may be in the best interest of the country.

7.51 There is, however, a contrary view that the shorter the parliamentary term, the greater the motivation for prompt legislative change. Further, there is nothing to say that the extension of the term by one year will ensure the same government is in power when one of their reforms is implemented. The shift to a longer term, according to this view, should not demonstrably improve the policy making activities of any given government.<sup>30</sup>

7.52 On a related point, Jim Snow (former Member of the House of Representatives) believes that the brevity of the three-year period means that members cannot effectively represent their electorate.<sup>31</sup> The majority of this time may be taken up with local campaigning, rather than agitating for solutions to long term problems in their local electorate.

## **Increased business confidence**

7.53 The private sector has long complained that the short Federal election cycle has a negative impact on long term business planning, and therefore the national economy.<sup>32</sup> The evidence commonly used to support this claim is that retail sales tend to drop in the period leading up to an election as people become more cautious about their spending.

7.54 A longer period between Federal Elections would provide greater certainty for the business community when making investment decisions.<sup>33</sup> Further, Gary Banks, the Productivity Commissioner, supports the extension of the Federal parliamentary term to four years, as he feels that the current three-year electoral cycle is the "major obstacle to reform with long-term pay-offs".<sup>34</sup>

7.55 Some claim, however, that this criticism from industry may be motivated by a disinclination to lobby the political party in power.<sup>35</sup>

## **Reduced cost of elections**

7.56 Perhaps the most tangible benefit identified about the introduction of a longer parliamentary term is the reduction of costs associated with holding less frequent elections. Mr Michael Wilson stated:<sup>36</sup>

The longer the period between elections, the greater the saving for the taxpayers forced to foot the election bill.<sup>37</sup>

7.57 The cost of the 2004 Federal Election was approximately \$117 million (Table 1.10). Averaged over the current expected three-year term this equates to \$39 million. Were the term of the House of Representatives to be extended to four years, the per annum cost would drop to approximately \$29 million, effectively drop by up to 25 per cent.

7.58 Note, however, that for this benefit to be realised, the election cycle for the Senate must also fit into an expanded cycle (for example, by having four-or eight-year terms). This issue is discussed in further detail below.

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## **Improved debate**

7.59 The Australian Constitutional Convention in 1982 raised one, perhaps more tenuous, benefit of a longer period between elections: <sup>38</sup> greater time between elections could allow a greater chance for a genuinely cross-party discussion of policy issues without the spectre of the election hanging over discussions. This, arguably, would raise the standard of political debate in this country.

## **Voter dislike of frequent elections**

7.60 A small number of commentators believe that Australians show a marked dislike for frequent elections, perhaps linked to distaste for the highly adversarial nature of Australian party politics.<sup>39</sup>

7.61 There is a view in the general community that once a government has been elected, it should focus on the business of governing the country, rather than being concerned by an impending election. This might be alleviated by fewer elections under four-year terms, where the government could focus on making mid and long-term policy decisions rather than simply focusing on what may be politically expedient.

7.62 Nevertheless, a number of arguments against changing the existing three-year term were put to the Committee.<sup>40</sup> The most commonly cited reason was that any attempt to extend the life of a Parliament offends the principles of democracy.

7.63 The historian Geoffrey Blainey argued that lengthening the parliamentary term would reduce the right of the Australian electorate to dismiss an incompetent or underperforming government at the earliest possible opportunity.<sup>41</sup>

## **The Committee's view**

7.64 As Table 7.2 showed, more countries with bicameral systems have five-year parliamentary terms than any other length of term. As a result, some have suggested that the Commonwealth consider extending the federal parliamentary term to five years. The introduction of a five-year term could have significant ramifications for the operation of the Senate, which is discussed in further detail below.

7.65 Independent of the implications for the Senate, there were, however, pragmatic reasons for pursuing a four-year term.

## **Advantages of a four-year term**

7.66 When examining the option of a four year period two factors assume importance: electoral consistency across jurisdiction; and voter acceptance.

## **Electoral consistency across jurisdictions**

7.67 As shown in Table 7.1 above, all Australian lower houses, apart from the Commonwealth House of Representatives and the Queensland Legislative Assembly, have a term of four years. Were the term of the House of Representatives to change to four years, it would be consistent with other election cycles throughout the country.

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## **Voter acceptance**

7.68 It has been argued that the shift from three-year to five-year terms may be too great for the electorate to accept, even if they would potentially provide greater stability and efficiency for government.<sup>42</sup> This view is also supported on the grounds that a five-year term could lead to a ten-year Senate term (on the presumption that the Senate term would be twice the length of the House term), which could be unpalatable to the electorate.<sup>43</sup>

## **The Committee's view**

7.69 The Committee concluded that a four-year term was appropriate as a compromise between the overly short three-year term and the dramatic change associated with a five-year term. This is particularly important in light of the fact that voters are comfortable with four-year terms in the States, so a change to four-year terms in the Federal sphere would not represent a significant change for voters.

## **A fixed term**

7.70 Some of the identified benefits of a fixed term Parliament include: the protection of the Government through guaranteed tenure; assuring the requisite amount of time for effective governance and in-depth analysis of complex policy issues; more systematic servicing of the electorate by local members; a reduction in the number of elections and ancillary costs (both monetary and administrative); and more effective planning of the parliamentary timetable.<sup>44</sup>

7.71 Further, members of the business community are in favour of fixed term elections as they provide a more certain environment within which to make long term business decisions.<sup>45</sup> The introduction of fixed terms would mean that business were not in 'an electoral cycle of uncertainty every two or so years'.<sup>46</sup>

7.72 There are, however, a number of issues associated with fixed terms that arguably preclude its successful operation in the Australian Federal system.

7.73 Most importantly, fixed terms are often supported because it is argued that they minimise the opportunity for political manoeuvring.

7.74 A shift to a fully fixed term Federal Parliament in Australia would change the character of the Parliament.

7.75 It is also argued that fixed term elections could help reduce the cost of campaigning, because there would be a clearly defined period for campaigning.<sup>47</sup> There are suggestions, however, that flexible election dates result in shorter and cheaper election campaigns.<sup>48</sup> For example, the final year of the fixed Presidential term in the United States system appears to be characterised by significant formal campaigning for a long period of time. This is in contrast to the Australian experience, where formal election campaigning does not commence until the election is called, allowing only six weeks of intensive campaigning.

## **The Committee's view**

7.76 Consideration of the foregoing led the Committee to conclude that there are a large number of possible parliamentary term models that may potentially work within

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the Australian system. Yet, whilst there is some support for fixed-term parliaments, it is not bi-partisan.

7.77 The Committee therefore decided to consider in detail only those options that it sees as feasible in the current climate and capable of achieving broad community support.<sup>49</sup> In doing this, the Committee sought options which were simple to understand and would not require a major change to implement.

## Potential House terms

7.78 The options the Committee believes likely to achieve widespread support are:

**House Option 1:** increase the maximum term for the House of Representatives to four years, retaining the existing power for the Prime Minister to call an election at any point before the expiration of that period; and

**House Option 2:** increase the maximum term for the House to four years, but introduce a fixed three-year period where an election could not be called until the third anniversary of the first sitting date of the House of Representatives had passed, except where there is a constitutional crisis.<sup>50</sup> This hybrid option would retain flexibility for the Prime Minister to call an election at any time in the fourth year, consistent with Westminster conventions, while also introducing three years of certainty to the parliamentary term.<sup>51</sup>

## House Option 1

7.79 The advantage of an extension of the current three-year maximum term to four years is that the election process would be largely similar to existing processes. The public would know that discussions about the Federal Election would generally start at some point in the fourth year of the term, so even though more time would pass between elections, the lead up to the calling of an election would remain the same. The Prime Minister would be able to call on the electorate at any time within this four-year period, retaining a key element of the current system.

## House Option 2

7.80 This model has the same benefits as outlined for House Option 1, but would, in fact, provide a higher level of certainty around when an election could take place. Again, the Prime Minister would retain the power to call an election before the expiration of the four-year period, but there would also be increased stability of government as an election would not be possible in the first three years of the term. This limits the uncertainties attached to an indefinite campaigning period to only the final of the four years.<sup>52</sup>

7.81 This option would provide more certainty than the current maximum term without the restrictiveness of the fixed term option.

## Constitutional ramifications

7.82 The two options outlined above would require a referendum to amend section 28 of the Constitution to extend the maximum term of the House of Representatives to four years. It is worth noting that the complexity and history of the referendum process could prevent this reform coming to fruition. In addition to the Government securing the support of the opposition,<sup>53</sup> a majority of states must vote 'YES' to any proposal to change the parliamentary term.

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7.83 Confusion about the introduction of such options can be overcome if the proposal is simple and clearly drafted. Further, concerns that these options may be self-serving for an incumbent government will be avoided if the implementation of the proposal were delayed.<sup>54</sup>

7.84 One option in the current political climate, therefore, would be to undertake any change in two distinct stages:

hold the referendum to give effect to the constitutional change at the next Federal Election for the 42nd Parliament (which is due by January 2008); but

delay the introduction of the longer parliamentary term until the commencement of the 43rd Parliament in 2010.<sup>55</sup>

## **Impact on the operation of Senate terms**

7.85 The term for Senators is a fixed term of six years, and runs from 1 July to 30 June six years later. The Governor General, however, may dissolve the Senate in the circumstances outlined in section 57 of the Constitution.

7.86 Working on the presumption that either of the options for the House of Representatives term above is implemented, and that change to the Senate is necessary as a result to keep election timetables in step and to avoid unnecessary confusion amongst the electorate, there are a number of options for the length of the term of the Senate.<sup>56</sup>

7.87 Note that the term of Senators from the Territories is only three years long, as mentioned above.<sup>57</sup> This means that any proposal to change the length of the Senate term should take into account the length of this distinct Senate term and whether any amendment to the CEA is required.

## **Potential Senate terms**

7.88 As with the length and character of the term for the House of Representatives, a number of possible models have been suggested for application to the Senate. These range in length from four to eight years and can be either fixed or maximum terms. Some of these models are discussed below.

7.89 Some have argued that a six-year maximum term, regardless of the length of the House of Representatives term, would allow the Senate to stand alone and have a higher public profile:<sup>58</sup> Madden stated:

[r]emoving the Senate electoral race from the partisan prime ministerial election process would help to focus more attention on individual Senate candidates rather than political parties. This would in turn help to increase the independence and prestige of the Senate and ultimately, its effectiveness.<sup>59</sup>

7.90 Others suggest a maximum four-year term, where the Senate and the House of Representatives would have identical terms, and all seats in the Senate would be vacated at the same time as the House. This model would have the advantage of allowing the composition of the Senate to more accurately reflect the views of the electorate.<sup>60</sup>

7.91 The six-year model would result in a higher number of elections, as simultaneity would be rare if the House had four-year terms. Further, the existing difficulty

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associated with a delay between an election and the commencement of the Senate term would be exacerbated—where the House of Representatives would be placed in the unenviable position of having to wait until an election subsequent to the first sitting of a new Parliament to start enacting their mandate.<sup>61</sup>

7.92 The four-year model is criticised because it would result in the demise of half-Senate elections, which have always been a feature of the Australian parliamentary system. The benefit of the current arrangement, where only half of the Senate seats at vacated at each election for the House of Representatives, is that the composition of the Senate does not necessarily reflect that of the House, arguably allowing more robust review of the actions of the government.

7.93 Under a four-year model, if the current half-Senate election system were retained, the Australian public would be required to vote at a Federal Election every two years.<sup>62</sup> This would cause a dramatic increase in the number of elections held, when one of the benefits, however, of shifting to a four-year term for the House of Representatives is that there would be fewer elections, not more. In order to realise this benefit it is likely, therefore, that simultaneous elections would be held, meaning the end of the half-Senate election and its associated benefits.

7.94 If the House term is extended to a four-year maximum term via either option outlined above, there are, therefore, only two plausible options for amending the Senate term, regardless of whether there is a fixed component. Both of these options would require a referendum to amend the Constitution to take effect. These are:

**Senate Option 1:** increase the fixed term of the Senate to eight years, being from 1 July to 30 June eight years later;

**Senate Option 2:** increase the term for the Senate so it is the length of two House terms, with half-Senate elections simultaneous with House of Representatives elections. This option would remove the fixed-term component, so the precise length of this term would not be known until an election was called.

## Senate Option 1

7.95 This option would increase the existing six-year maximum term to an eight-year fixed term.<sup>63</sup> The benefit of this system is that it essentially maintains the existing arrangements with simply an extension of time, as the Senate has traditionally been a fixed-term body. This may make this option more palatable to commentators concerned about the powers of the Senate.<sup>64</sup>

7.96 Voter opposition may act as an obstacle to the introduction of eight-year terms for Senators:<sup>65</sup> a move to extend the Senate term could be seen as self-serving by the general public.<sup>66</sup> Further, an eight-year term can raise issues of the currency of the mandate issued by the electorate to the Senate.<sup>67</sup> However, even greater criticism is likely to be raised at what would effectively be a double dissolution every four years.

7.97 Any discussion of the longer House of Representatives terms raises the important question of how such terms would be coordinated with Senate elections. Simultaneous elections are not a Constitutional requirement, but they are cost effective and administratively more efficient. Only six of the 40 House of Representatives elections have been held alone, and the last was over 30 years ago in 1972. The Australian experience has therefore been that the three-year House of Representatives/six-year

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Senate model makes it relatively easy to hold elections for both houses on the same day.

7.98 If the House of Representatives terms became four years with no alteration to the Senate terms it would be necessary, as a matter of practicality, to extend the duration of Senate terms to maintain the synchronicity of half-Senate and House of Representative elections.

7.99 In addition, Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre stated:

to the extent that people are aware that government is created in the lower house—the House of Representatives—and that the Senate's role is, while important, limited, what is more important is to create an effective mechanism to enable governments to govern for longer and keep us out of the electoral cycle for longer. It will not necessarily be seen as such a disastrous outcome to have people for eight years in the Senate. While...eight years will ring alarm bells for some people, a significant percentage of the population, through awareness that in effect government is the lower house, will be more concerned to give that stability to government than be concerned about the way the Senate operates.<sup>68</sup>

7.100 It is also questionable whether the major parties would support a situation where a Senator from a minor party would be able to hold a seat in the Senate for such a long time, even though they had only received a very small share of the vote: this situation arose after the 1999 New South Wales election.<sup>69</sup> The electorate, too, might have similar qualms.

7.101 A further disadvantage of this option is that the current difficulties associated with a delay between the election and the commencement of the Senate term would continue. In the 2004 Federal Election, for example, new Senators were elected on 9 October 2004, but had to wait until 1 July 2005 to take their seats to give the Government a majority in the Senate. This meant that the Government could not act to implement its legislative program for eight months after they received the electoral mandate to do so.

## Senate Option 2

7.102 This option would extend the term of the Senate to equal the length of two terms of the House of Representatives. In practice, this would result in the Senate term being somewhere between six and eight years long. Elections would be simultaneous, meaning that a half-Senate election would be held at the same time as every House of Representatives election. The Senate would, therefore, retain its current continuity through the life of two Parliaments.

7.103 If the first three-years of the House term were fixed, neither the Prime Minister nor the Senate could force an election in this period, unless the Parliament became completely unworkable. This option would also effectively retain the status quo for the Senate, as senators would serve at least a six-year term, and perhaps more. It would also reduce the number of elections held.<sup>70</sup>

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7.104 The option would have the benefit of allowing senators to take their seats in the Senate at the same time as the first sitting of the House of Representatives. This would mean that there would be no delay that could impede the Government's ability to implement its legislative mandate. This model, therefore, arguably has a better capacity to reflect the will of the electorate.

7.105 One problem with this option is the uncertainty about the constitutional position of the Senate which would result. At present, with the exception of double dissolution elections, the Senate is a "continuous chamber"; that is, unlike the House of Representatives, it never dissolves. Under the current system there is no prorogation before a half-Senate election. Senators who retire or who are defeated at the half-Senate election continue to serve until the following 30 June, and the functions of the Senate (including its committee functions)<sup>71</sup> continue unaffected.

7.106 Arguably, the expiry of the retiring Senators' terms at the same time as the expiry of the terms of the members of the House of Representatives would alter its constitutional character so that it would cease to be a continuous chamber. The counter-argument is that, by reason of the continuity of the non-expiring Senators, its character as a continuous chamber is unaffected.

7.107 The Committee does not have a clear view of the legal position, but is concerned about the potential problem which arises. One possible solution would be to deem the term of retiring Senators to continue until the swearing-in of the new members of the House of Representatives. If that course were adopted, the "old" Senate would have a continuous existence beyond the Election, but only for a brief period.

### **The Committee's views**

7.108 The Committee welcomed the existing cross-party contemplation of proposed alterations to the parliamentary term and considered that this was a sound basis for further public debate about the introduction of a four-year maximum term for the House of Representatives and extended term for the Senate.

7.109 The House and Senate Options outlined earlier in this chapter are those that appear to have widespread support in both the general community and in political circles. These options would result in the minimal amount of systemic change that could potentially confuse the electorate, but still give effect to important reforms to the parliamentary term system.

7.110 Recent public debate highlights the initial cross-party nature of support for these proposals. The Prime Minister, the Hon. John Howard MP, has supported calls for a referendum to extend the House of Representatives term to four years.<sup>72</sup> The Leader of the Opposition, the Hon. Kim Beazley MP, stated that while he is still of the view that a fixed term would be better, he was prepared to consider supporting an extension of the House term to four years. The Leader of the Opposition stated: I'm not going to stand up a sensible reform because it's not perfect...if they are putting [flexible four year terms] forward between now and the next election, I wouldn't rule out supporting it.<sup>73</sup>

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7.111 Others in Federal Parliament have, however, expressed support for fixed term elections.<sup>74</sup>

7.112 The Committee is of the view that this is an opportune time to raise the issue of Federal parliamentary terms to allow sufficient time over the next two years for broad discussion to inform government consideration of this issue before the next scheduled election. This would also allow for sufficient time for the necessary referenda legislation to pass through Parliament before the next election.

7.113 The Committee believes that for any change to federal parliamentary terms to be implemented, there must be cooperation and a broad willingness to change from the major political parties. The Committee considers it is unreasonable for the Government to proceed with reforming parliamentary terms without clear support from the Opposition.

7.114 If multi-party support is obtained for potential models for both the House and the Senate, the Government could hold a referendum at the next Federal Election, with a view to implementing the new parliamentary terms following the Federal Election due in 2010. The Parliament elected at the 2007 election, therefore, would continue under the current system.<sup>75</sup>

## **Recommendation 32**

7.115

**The Committee recommends that there be four-year terms for the House of Representatives.**

## **Recommendation 33**

7.116

**The Committee recommends that the Government promote public discussion and advocacy for the introduction of four-year terms during the remainder of the current Federal Parliament.**

## **Recommendation 34**

7.117

**The Committee recommends that, in the course of such public discussion, consideration be given to the application of consequential changes to the length of the Senate term, and in particular, Senate Options 1 and 2, as set out in this chapter.**

## **Recommendation 35**

7.118

**The Committee recommends that proposals be put to the Australian public via a referendum at the time of the next Federal Election. If these proposals are successful, it is intended that they come into effect at the commencement of the parliamentary term following the subsequent Federal Election.**

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