**Politics and Law 3X**

**Parliamentary Reform**

Coghill & Wright, The Australian Collaboration, 2012

1. The Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008 was introduced to the Senate by Senator Bob Brown in May 2008; following the 2010 elections, it was reintroduced in September 2010. **The Bill would replace current above-the-line single box** selection with nomination of preferences to parties by the voter. Senator Brown argues this forces the transparency of preferences, while voters may still number all candidates below the line if they choose. The Bill was referred to the Joint Standing Committee on Electoral Matters, which tabled its report in parliament in June 2009. The Committee declined to make recommendations on the Bill, but proposed further discussion. It cited concerns that the increased complexity of voting would decrease the proportion of valid votes.

As part of the ALP and Greens agreement in September 2010 in which the Greens agreed to support a Gillard minority government, the ALP agreed that the Greens would reintroduce Senator Brown’s 2008 above-the-line voting amendments, and that the ALP would consider the Bill and work toward an agreement on reform.

Implicit in all of these proposed alternatives is recognition that the current system lacks transparency, distorts voters’ intentions, and thus needs change.

2. Fixed electoral terms (fixed dates on which elections must be held), and the extension of current national electoral terms from three to four years, are often discussed as if they are inextricably linked. This is not the case. There is no reason, in principle, why the current three-year electoral term for members of the House of Representatives, and a six-year term for Senators, should not continue to apply, with fixed electoral terms; nor why four-year terms for both the Senate and the

House of Representatives should not be introduced, together with a fixed date for elections; nor why other options should not be considered.

The current prerogative of an incumbent Australian Prime Minister and federal government to set election dates (within constitutional limitations) is an anomaly among Australian state and federal parliaments, and international democracies.

Currently, New South Wales, Victoria, South Australia, Western Australia, the Northern Territory and the Australian Capital Territory parliaments operate with fixed terms, as do the United States, Canada (subject to certain provisions for early elections), and the European Parliament.

Four-year terms are standard practice in many other jurisdictions and enhance good government by allowing greater opportunity for the implementation of government policies. They also reduce the overall time devoted to campaigning.

There are, however, arguments for and against a change to fixed-term and four-year parliaments. Drawing upon some of the points made by Sawer and Kelley, the arguments may be summarised as follows. **The two key benefits** of fixed terms are

1. that they remove the opportunity for a sitting government to gain political advantage from the timing of an election and, second, that there is certainty about electoral terms for the government, other political parties, the private sector and the community; and
2. fixed terms can also improve access to the electoral roll for legitimate voters.

Arguments against fixed terms include:

1. they may lead to longer election campaigns (but they can also serve to limit the campaign period if they provide for a short period between dissolution of the parliament and election day); and
2. they may restrict the ability of minority governments to call an election to establish a clear mandate, or solve a political crisis.

Four-year terms reduce the average annual cost of elections and of campaigns, and they facilitate better economic and policy planning for the private and public sectors. They give the government greater scope to concentrate on policy and program delivery without the distraction of imminent elections. The key argument against four-year terms is that they reduce voter control over governments because they give them the opportunity to vote every four, rather than three years. There is also concern that both fixed and four-year terms could lead to political instability, by prolonging an unstable government if the government loses its majority in the lower house. This could be dealt with by:

1. introducing an explicit provision that the Governor-General should call an election if a government loses its majority in the House of Representatives; and
2. retaining the opportunity for a double dissolution of the parliament if government bills are defeated twice.

3. Resources, such as electorate offices, made available to parliamentarians to carry out their parliamentary duties, should not be under the administration of a government department, subject to the direction of a government minister.

That offends the separation of legislative and executive powers; it is wrong in principle, and is open to manipulation for partisan purposes. All facilities provided for parliamentary purposes should be under the budget and administration of the parliament.

**Establishment of a Parliamentary Budget Office** has been funded in the 2011–12 Budget, which will further expand parliament’s capacity for effective monitory democracy.

4. Opportunities for public involvement in the legislative process are a relatively under-developed feature of the Australian Parliament, notwithstanding noteworthy progress in recent times, especially more frequent reference of bills to committees for investigation ahead of substantive debate in one or both Houses. Where the opportunities are well-developed (in New Zealand, for example), bills are routinely referred to a parliamentary committee related to the portfolio area, submissions are invited and public hearings conducted, before a report which may recommend amendments.

Public participation offers benefits to the parliament and to the community. For parliament, comment may come from interested members of the public, people and organisations directly affected, and experts with specialist knowledge. There is the potential for valuable suggestions to address oversights, unintended consequences, or other ways to improve the drafting of legislation. It creates opportunities for greater interaction between the government and its constituents, and submissions can build on each other’s inputs as they seek to inform and influence the parliament. Such interactions were previously identified as a key to improved operation of a political system (p. 18). Also, as mentioned earlier in this book, within the community there is better acceptance of decisions where people have had the opportunity to influence those decisions.

**The Australian Parliament should adopt a standard practice** of referring each bill to the appropriate policy or portfolio area parliamentary committee, inviting submissions, and conducting public hearings before issuing report recommending any amendments. The procedure would be automatic, being bypassed only where the House so determines due to the non-contentious, technical or genuinely urgent nature of a bill.

5. The most public monitory function is Q**uestion Time** (each sitting day’s period for asking ministers questions without notice). Its purpose is to make the government accountable for its actions. In Australia, question time has developed as a fundamental parliamentary institution in a form that is home-grown rather than inherited from Britain’s Parliament at Westminster. Question time provides members of the House (of either the House of Representatives or the Senate) with the opportunity to seek information from ministers in that House, relevant to their responsibilities.

However, both the government and the opposition frequently subvert this purpose. Opposition leaders and shadow ministers regularly use question time to make newsworthy assertions and attacks on government personalities and policies, rather than seek information related to ministers’ executive responsibilities. In their turn, prime ministers and ministers do the same in their replies, none of which are relevant to their executive responsibilities.

This perverted use of question time has its origins in the original 1901 Speaker’s Ruling permitting questions without notice:

There is no direct provision in our Standing Orders for the asking of questions without notice, but as there is no prohibition of the practice if a question is asked without notice and the Minister to whom it is addressed chooses to answer it I do not think I should object.

This ruling allowed ministers to be questioned, but did not require them to answer. It established and entrenched a fundamental flaw that subverts accountability and frustrates oppositions.

Contests of ideas and leadership are a dramatic and inevitable feature of parliament; question time cannot and should not be reduced to polite, formal debate. Nevertheless, question time should not descend into an unedifying shouting match between government and opposition parliamentarians, damaging the legitimacy of the parliament and system of government.

In summary, the **weaknesses** of question time include:

• the failure to reply to the question

• waffle and obfuscation

• when government backbenchers ask prepared questions to which ministers give prepared answers, favourable to the government (otherwise known as ‘Dorothy Dixers’).

These misuses do not serve democracy well. Serious reform should require:

• a review of questions from government backbenchers

• greater use of written questions, on notice, to enable questions in the house to concentrate on more detailed probing of responses

• strict time limits for primary questions

• the use of supplementary questions, also subject to strict time limits

effective enforcement of these rules by speakers and presidents.

In the case of written questions on notice, delays in replies to written answers beyond a reasonable specified time should be eliminated.

A restructured question time in the Senate with revised rules has applied since November 2009. The following rules apply:

• Questions are without notice (as before).

• Primary questions are limited to one minute and responses to two minutes.

• Two supplementary questions are allowed to each questioner, each limited to thirty seconds and the responses to one minute.

• Answers are to be directly relevant to each question. Notwithstanding this reform, opposition senators still challenge answers as not being relevant.

Following the formation of the minority Gillard government after the 2010 elections, the government, Greens and independent MPs reached agreement on the following reforms of question time:

• Individual questions limited to forty-five seconds and answers to four minutes.

• A proportion of question time allocated for questions by independent and minor party members.

• Time made available for debating independent and minor party members’ bills.

The ALP and the Greens agreed to immediately implement these reforms and corresponding amendments were made to Standing Orders:

(a) An answer must be directly relevant to the question.

(b) A point of order regarding relevance may be taken only once in respect of each answer.

(c) The duration of each answer is limited to 4 minutes.

These reforms have been particularly strongly enforced by Speaker Slipper, although any change in the tone of question time excerpts, as reported in TV news broadcasts, has been difficult to discern.

More, far-reaching reforms were issued in the Victorian Legislative Assembly in 1992 by Ken Coghill when he was Speaker. They included:

• Questions and answers must relate to government administration or policy and should be directed to the minister most directly responsible, or answering on behalf of such minister in the other House.

• Questions to the premier (this would be prime minister in the House of Representatives or government leader in the Senate) may relate to matters within his or her portfolio and to general matters of government policy and administration, but questions concerning detail affecting another portfolio should be directed to the responsible minister.

• Questions should not seek an expression of opinion, seek a legal opinion or ask whether statements reported in the media are accurate or correct.

• Questions should not seek a solution to a hypothetical proposition, be trivial, vague or meaningless.

• Questions should not contain epithets or rhetorical, controversial, ironical, unbecoming or offensive expressions, or expressions of opinion, argument, inferences or imputations.

Questions should not raise matters which are subjudice or anticipate debate on a question or bill already listed for debate that day.

• Where a question relates to an allegation, assertion, claim, imputation or similar matter, the member is responsible for the accuracy of the facts. Where the facts are of sufficient moment the member may be required to provide prima facie proof to the speaker before the question is admitted.

• Questions cannot reflect on the character or conduct of members of either House and certain other persons in official or public positions.

• Where a question seeks information which is too lengthy to be dealt with in an answer, or otherwise invites a ministerial statement, the speaker may disallow it and suggest that the minister to whom it is directed consider making a ministerial statement (i.e. formal statement to the House, open to debate) following question time.

• Questions which breach the guidelines are out of order and there is no right to immediately rephrase or repeat questions which have been disallowed.

• Answers must comply with the same rules and practices as apply to the asking of questions.

• Answers must be directly responsive, relevant, succinct, and limited to the subject matter of the question.

• Answers may provide statements of policy or the intentions of the government, including information on examinations of policy options and other actions which the minister has had undertaken, but must not debate the matter. (Answers to questions should be limited to two minutes and an absolute maximum of five minutes actual speaking time.)

An answer may be refused on the grounds of public policy, for example:

– answering may jeopardise criminal investigations or may be against the public interest

– the information is not available to the minister, in which case it may be requested that it be placed on notice

– the minister intends to make a ministerial statement on the subject matter in the near future.

Later speakers have not applied these reforms. If applied and enforced, such reforms could radically change and improve the conduct and effectiveness of question time. Similar reforms should be adopted and enforced in each House of the Australian Parliament.

The Senate has an important role in Australian democracy as a house of advice, review and consent, as the electoral system renders it uncommon for the government or opposition to have a Senate majority. As a result, it is difficult for either government or opposition parties to manipulate the Senate or its committees for partisan advantage. The role of the Senate has developed beyond the review of legislation to the in-depth consideration of policy issues and legislation. The Senate committee system provides that review, and the opportunity for the parliament to hear expert advice from individuals and organisations in a public arena. Senate committees can take a long-term view of policy debates and consider a wide range of issues.

The strength of the parliament, especially the committee system and public inquiries, could be greatly enhanced by three additional reforms:

• Increased funding, appropriated independently of the Executive, would allow a broader and longer-term scope for committees.

• A committee dedicated to reviewing the budget and economic strategy, complementing the new

Parliamentary Budget Office, would be an ideal forum to harness bipartisan ideas and long-term planning. A strong committee covering these areas would raise the status of all committees.

• The introduction of a system for public inquiries into long-term issues with membership of Senators and external experts (similar to the UK Parliamentary Office of Science and Technology [POST] and German Bundestag Study Commissions).

One of the most important monitory features of the Australian system of government is the ability of the parliament to scrutinise the Executive. **As discussed, both question time and Senate committees are key tools in this endeavour, but their effectiveness is compromised by the use of question time for statements and attacks on political opponents, and by Executive control of the parliament’s budget.** Changes to the funding and committee models of parliament, including increased opportunities for public participation, are necessary, as is strengthening regulation of question time in both houses.