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Electoral law and the campaign trail*

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In 2011, the WA parliament legislated to establish four-year fixed-terms in its Legislative Assembly. The first of these, due on 9 March 2013, will align with the current arrangements in the Legislative Council, which sees the composition of that House change on 22 May of an election year. The 13 September 2012 seminar conducted by the WA ASPG Chapter was, therefore, titled 'Electoral Law and the Campaign Trail'. Keynote Speaker Professor Peter van Onselen, a political analyst and contributing editor to the *Australian Newspaper*, focussed on the apparent consequences of fixed term governments in the Australian states and territories and, to a lesser extent, on the impact of compulsory voting. Whilst currently a resident of Sydney, van Onselen did make the significant point that state politics in the west was given a more concentrated focus in the media. In his view, coverage of federal politics in the 'eastern states' is dominant. Four members of parliament responded to the address and added their own observations and experiences of electoral campaigning. First was Vince Catania who, in a short career, has served a term in the Council as a labor representative and then a term in the Assembly, first for labor, then as an Independent, until finally settling with the National Party. WA greens MLC Lynn MacLaren said 'she loved elections' and recounted simultaneously conducting a campaign for both Houses under very different voting systems. McLaren mentioned the importance of public funding for votes in each chamber, whilst another MLC, Michael Mischin, the newly appointed Attorney General, provided a perspective of the election picture as an incumbent government member. Finally, current Father of the House Eric Ripper MLA, reflected upon many state and federal elections and considered the planning and delivery of successive campaigns had been conducted in the context of a 'settled policy' of electoral law. Ironically, his own entry to parliament in a March 1988 by-election was facilitated by a temporary trial of above the line preference voting in the Assembly, to help overcome the problem of informal voting.

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Most Australian states and territories have adopted four year fixed term parliaments. The traditional ‘westminster’ practice of providing the government the opportunity to recommend the general election date, still resides by convention with the federal, South Australian and Tasmanian parliaments. Nevertheless, as van Onselen pointed out, when former premier Alan Carpenter nominated a date for an election six months ahead of the expected time, it rebounded with a predicted electoral victory being converted to narrowly losing office. It was widely believed that the Premier had sought an undue advantage by calling the election so early. In WA, the rarely broken tradition had been for governments to serve their full terms. According to van Onselen, Carpenter was ‘the non-politician’ who ‘politically’ called an early election to supposedly catch off-balance the newly restored opposition leader Colin Barnett. In fact, most of Carpenter’s leadership team (which Eric Ripper confirmed at the seminar), was not informed about the decision and while no electoral momentum could be gained by the government, an effective opposition advertisement campaign asking electors to name three major things labor had achieved in office contributed to the surprise result.

The discussion that followed was both insightful and curious. The Clerk of the Assembly, Peter McHugh, sought elaboration about the advantages and disadvantages of fixed terms, and although van Onselen hypothesised that they tend to lead to near permanent election campaigns, he conceded they do provide the organisational wing of parties the capacity to plan, placing the opposition on a more equal footing. Whilst a supporter of fixed terms, van Onselen said he would prefer the duration to be three years and spoke of the danger of opposition ‘complacency’ in the interim, particularly if a change of government (such as in NSW) was accompanied by the likelihood of two consecutive fixed four-year terms in opposition. Observations were made about the lead-up to the 2013 state election, including that it was ‘a little scary’ that Mark McGowan would be leading his labor party to the next election before Tony Abbott’s likely ascension to the Prime Ministership. The risky decision by Nationals Leader Brendan Grylls to contest the safe labor held seat of the Pilbara, was described by one person as ‘courageous’, a view widely agreed with in political circles. Professor van Onselen’s comments about compulsory voting, invariably supported in public opinion polls, were more limited. He queried the often voiced view that the removal of compulsory voting would tend to favour the liberals, as in his view, labor, with union support, may be better able to mobilise its vote. Voluntary voting would exacerbate the ‘large chunk of the community’ who were disengaged. This led to another consideration in his address whereby he considered that ministers in the Legislative Council, could more tellingly be used as ‘shock troopers’ to assist in the campaigns of Assembly members particularly those in marginal seats. The ministers, with virtual guarantee of their own re-election in a region, had access to resources that could be targeted at marginal district seats.

Vince Catania, with his experience in both Houses, conceded that upper House members can play invaluable roles in lower House elections. What had possibly not been publicly heard before were his comparisons between the ‘workloads’ of

members of either the Assembly or Council. In Catania's opinion 'nothing beats' the appearance of a candidate's photograph on a bill-board and their name on an Assembly ballot paper. Despite a recognition that MLCs work hard, he controversially contended that the workload in the Assembly, with its single member districts, was 50 to 60 per cent higher than he experienced in the Council. He strongly supported the fixed term reform which in his opinion provided an opportunity to plan visits to all sections of the electorate. In rural constituencies it is necessary to travel widely to enhance 'the recognition factor'. In his vast electorate he noted that 'mail outs' to constituents may take weeks to be delivered. Furthermore, he noted the impact of funerals which could mean that a large congregation of aboriginal mourners may travel to another town to temporarily deplete the numbers at a scheduled meeting.

WA green Lynn MacLaren had been a legislator during the historic 'one vote one value' legislation for the Legislative Assembly. Before commencement of her first full term from May 2009 as an MLC, she had also gained considerable experience as a campaigner as she had also worked in the office of former WA greens MLC Jim Scott, federal greens Senator Scott Ludlow and long standing WA green MLC Giz Watson. MacLaren recognised the very different office rules, electoral laws and electoral resources available to federal and state members. The fixed term reform was a measure she described 'as a blessing'. She preferred the March fixed election date to avoid the sometimes long lapse of time between the election and the assumption of office for the Legislative Council seats on 22 May, during which time public sector employment can't be sought. The 'polly in waiting' status has a 'bizarre effect' when personal life 'can go into chaos'. In fact there is both a 'human cost' as well as a 'financial cost.' A key observation made by MacLaren was that greens campaigning was simultaneous for both the upper and lower House. Apart from the likelihood of election to the Legislative Council, green voter preferences often play a significant role in the electoral outcomes for the Assembly. Greens too, in a practical sense were aiming to secure better legislative outcomes rather than gaining government or even opposition. Since the 2007 legislation of public electoral funding, set at over one dollar per vote at the 2008 state election, the green's ability to secure some 11 per cent of the valid vote in each House, meant the planning of electoral expenditures had to be carefully monitored. What has not yet been established for fixed term elections had been the pattern for the expenditure of campaign funds and the new set of timings for announcements. What monies should be held closer to the election?

Like MacLaren, new Attorney General Hon. Michael Mischin, indicted how the electoral law provisions impacted on his entry to politics. He had to step down temporarily from his senior role at the Office of the Director of Public Prosecutions, where in conjunction with employment at the Crown Solicitor's Office, he had served for 24 years. However, election to the Legislative Council in September 2008 meant that he lost permanent salary for 8 months before taking his north metropolitan seat on 22 May 2009. He had earlier foregone salary when he was a Senate candidate in 2007, at which time he also assisted in the House of

Representatives campaign. He indicated he did play a role in the Assembly campaign but more in terms of promoting the Liberal brand than as 'a shock trooper'. Mischin conceded that fixed terms were significant as it does enhance campaign planning, yet he agreed it created a new uncertainty about the timing of campaign announcements, or as he put it, 'when do you let the dogs loose?' Electors, in his judgement, tend to not to be interested in politics unless things are going badly. While noting long campaigns can be 'boring', he warned that massive electronic communication changes were helping to change the face of election campaigns during which much can happen which a party 'can't control'.

Former Deputy Premier and Treasurer, Eric Ripper, made particular reference to the 2005 state election for which his party strategy group met daily for more than three months. His input helped ensure the financial viability of the policy package components. The group attempted to gain favourable media coverage for each of the carefully considered policy announcements, which were made virtually every day for 31 days after the issue of the writs. This meant Premier Geoff Gallop was centre stage, often with 'kids' in the background. A decision was made to apologise for earlier taxation hikes, and so successful was the campaign that by election day, it was calculated that some 100,000 voters, who deserted the Mark Latham brand of labor in the 2004 federal election, came back to the state party. For the 2005 state election, the government had left no stone unturned to avoid power failures which had affected the state on many hot summer days in February 2004. In the meantime, Colin Barnett's liberal campaign had floundered on questions about the viability of his canal proposal from the Kimberley to Perth, which was then exacerbated with the discovery of a typographical costings error during a final press conference on the eve of the election. Ripper also agreed that the introduction of fixed terms would remove the advantage that governments once held to plan the final campaign. Business too, would support the move as most in that sector felt that election speculation was economically damaging. Ripper noted the impact of social media and the challenges it brings for party strategists. His experience led him to warn of the danger of being ambushed by interest groups or the media. However, a major concern was the integrity of the electoral roll, particularly the absence of many potential indigenous voters. In his view there is scope to use data from government agencies to automatically enrol all citizens, young and old.

During the discussion Greg Boland expressed concern that the 'quasi' fixed term meant that, with parliament rising in November, the people's voice would be not be heard at least until the following April. What will happen in the hiatus between the election and the next Legislative Council taking office on 22 May 2013? Interestingly, Notre Dame politics lecturer Martin Drum queried whether the unusually long term of the alliance government, some four and a half years, would mean the electorate may judge that the government has had an opportunity to implement its program and be denied the normal 'fair-go' of a second term. In response Michael Mischin, who felt the demands of being an MLC and Minister were exacting, regarded the 2013 election as another opportunity to test the theory 'that oppositions don't win elections, but governments lose them' ▲