

Caught in a bind: Fixed Term Parliaments in Tasmania

I. Introduction

Stability is one of the central political concerns in Tasmania. The Hare-Clark system of proportional representation leads to frequent minority parliaments, with 16 out of the last 37 parliaments not having a majority or falling into minority during the course of the term.¹ While not entrenched, Hare-Clark has a representative character that makes it unlikely to be altered.

The most recent period of instability has seen four elections in seven years, with the last three elections being called early. The 2025 election was triggered following the success of a no confidence motion in the minority Rockliff government. A near identical parliament was subsequently elected.²

This has led to calls for qualified fixed terms to be introduced for the House of Assembly, with claims that this will improve stability by removing the prerogative of dissolution, forcing the parliament to act in a more collaborative manner and creating an expectation that a parliament will run full term.³

Fixed terms have taken on a near normative function in Australia with Peter Congdon arguing that the High Court found in *Re Patterson; Ex parte Taylor* that “qualified fixed term parliaments in state constitutions now underlie responsible government in Australia.”⁴

Tasmania is currently the only state parliament without fixed terms for their lower house. However, in 1992 a fixed term was introduced in Tasmania in the hope of providing stability.

This paper will look at that term and situate it in the broader context of attempts to provide stability, while looking at the issues that arose and the impediments that prevented its longer-term adoption. This will encompass a discussion of reserve powers, the prerogative of dissolution, the doctrine of confidence, and the tension between representative and responsible government.

¹ This is since the full introduction of Hare-Clark in 1909.

² Adam Langenberg, ‘A no-confidence motion, an election and now another no-confidence motion. What happens next?’. *Australian Broadcasting Corporation News*, 10 August 2025. Accessed at: <https://www.abc.net.au/news/2025-08-10/when-will-tasmanians-know-who-will-govern-july-2025-election/105632474>

³ Meg Webb, ‘Call for Assembly to Introduce Fixed Four Year Terms’. *Press Release*, 23 July 2025; Richard Herr, ‘Fixed Terms Needed to Bring Stability and Belief to a System that is Losing Integrity’. *Mercury*, 30 July 2025.

⁴ Peter Congdon, ‘In a Fix: Fixed-Term Parliaments in the Australian States’. *Federal Law Review*, 41(2) 2013, p. 282, paraphrasing *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391, 460 (Gummow and Hayne JJ).

II. Historical and conceptual Issues

Current Legislative Framework

The Tasmanian House of Assembly has maximum 4-year terms under section 23 of the *Tasmanian Constitution Act 1934*. This was introduced in 1972 after a political compromise between the House and the Legislative Council.⁵ This is the only section of the Constitution that is currently entrenched, with section 41A stating that section 23 can only be amended by two-thirds of the members of the Assembly. However, section 41A is not itself entrenched, so can be amended or repealed with a simple majority.⁶ Section 23(2) states that the Assembly shall continue “unless it is sooner dissolved by the Governor.” Falling under section 41A this entrenches the Governor’s dissolution powers to the same degree that 4-year terms are entrenched.⁷

Currently, the Governor dissolves the House of Assembly “whenever he shall deem it expedient so to do” following the Premier’s advice under section 12(2) of the *Constitution Act*. The Legislative Council, however, cannot be dissolved with section 12(2) going on to state that the Governor “shall not have the power to dissolve the Council.” The Council has a periodical system of elections, which are fixed and have a term of six years as seen in section 19 of the *Constitution Act*. This makes the Council a powerful chamber as it never faces the electorate *en masse* and there is no mechanism for its dissolution.

Representation, responsibility and confidence

The tension between representative and responsible government goes to the heart of parliamentary democracy.⁸ To what extent does the parliament, once elected have the right to behave autonomously from the electors that have placed them there? Under responsible government the executive must be accountable to the parliament, but to what extent does the parliament act as an expression of the electorate?⁹ This dilemma is perhaps magnified in a system of proportional representation such as Hare-Clark

⁵ The House has changed the length of terms seven times since responsible government in 1856. It had variously been 5 or 3 years until 1972 when Premier Eric Reece claimed a mandate after winning an election to change the term length from 3 to 5 years. The Legislative Council amended the Bill to grant him 5 years for the current term, but to make subsequent terms 4 years. See Terry Newman, *Representation of the Tasmanian People*. Hobart: Tasmanian Parliamentary Library, 1994, p. 47.

⁶ This goes to the issue of parliamentary sovereignty and the right of parliaments to bind their successors. Trethowan was a notable case in the Australian context. *Attorney-General (NSW) v Trethowan* 44 CLR 394.

⁷ Congdon, ‘In a Fix’, p. 266

⁸ See Benjamin B Saunders, *Responsible Government and the Australian Constitution: A Government for a Sovereign People*. Oxford: Hart Publishing, 2025, particularly the discussion at page 182. This follows Dicey’s concepts of legal and popular sovereignty.

⁹ In *Egan v Willis* the majority stated that “A system of responsible government traditionally has been considered to encompass ‘the means by which Parliament brings the Executive to account’ so that ‘the Executive’s primary responsibility in its prosecution of government is owed to Parliament’” *Egan v Willis* (1998) 195 CLR 424, 42 (Gaudron, Gummow and Hayne JJ).

where individual members are elected to represent various opinions and interests, but is prone to defections to the crossbench or to another party. Are these members still representing those interests, and if their legitimacy is questioned can an appeal to the electorate through fresh elections be made? This raises the issue of confidence.

Dicey outlines the doctrine of confidence in relation to the dissolution of parliament in a *An Introduction to the Study of the Law of the Constitution*:

The reason why the House can in accordance with the constitution be deprived of power and of existence is that an occasion has arisen on which there is fair reason to suppose that the opinion of the House is not the opinion of the electors.¹⁰

In Westminster tradition confidence means that the parliament has the right to withdraw support for the executive and seek an alternative government, which may result in an election, while the executive has the prerogative to advise the dissolution of the parliament to the Crown, precipitating an election.¹¹

A fixed term parliament effectively removes one of these limbs, so that the executive prerogative to advise a dissolution is no longer extant. This also constrains the Governor's reserve powers, if the Premier can no longer ask for a dissolution when they consider that the House has strayed from the opinion of electors, then the Governor cannot exercise discretion relating to the ongoing viability of the parliament.¹²

The right for the parliament to pass a motion of no confidence in the Premier and other ministers is unfettered by a fixed term, although it narrows the scope of any motion of confidence. It also places the onus on the mover of the confidence motion to nominate a replacement Premier if they do not wish the parliament to be dissolved and elections to be called. In the case of the 2025 no confidence motion, this could have been enough to forestall the success of the motion.¹³

III. Fixing for a fight: attempts at instituting fixed terms

¹⁰A.V. Dicey, *An Introduction to the Study of the Law of the Constitution*. London: Macmillan, 1915, p. 428.

¹¹ Robert Craig, 'The Fixed-term Parliaments Act 2011: Out, Out Brief Candle', in R. Johnson & Y. Y. Zhu (eds), *Sceptical Perspectives on the Changing Constitution of the United Kingdom*. London: Bloomsbury, 2024, pp. 125-150. Craig argues that the balance achieved by this doctrine was put in jeopardy by a fixed term, making parliament less democratic as the electoral mandate delivered under representative government was being stymied by the demands of responsible government.

¹² Twomey notes that in section 24B(1) of the *Constitution Act 1902 (NSW)* the word "may" rather than must is used when referring to the Governor's ability to dissolve the Assembly if the conditions under section 24B(2)-(4) are met. She states that this leaves the Governor with some residual discretion regarding a dissolution. Identical wording was used in the Tasmanian legislation of 1992. See Anne Twomey, *The Constitution of New South Wales*. Sydney: Federation Press, 2004, pp. 655-658.

¹³ In 2025 the motion of no confidence was in the Premier. It has been opined that this was an attempt to remove the Premier and precipitate a change of leader. The government decided to dissolve the parliament and face an election rather than change leader and continue governing.

The 1989 Accord: fixed terms as a key platform for stability

In 1989 the Gray Liberal government fell on the floor of the Tasmanian House of Assembly to a no-confidence motion following an election. The ALP with 13 seats and Green Independents with five seats signed an accord to enter into minority government, while Gray sought fresh elections from the Governor. Governor Bennett, after seeking assurances from each of the Greens members that they would abide by the accord, dismissed Gray's plea and commissioned Michael Field as Premier.

The accord presented five points to which the parties agreed, the first of which was the maintenance of stable government. Defining how stable government would be achieved clause 1(a) stated that the ALP would introduce a "fixed four-year parliamentary term" in its first year of office.¹⁴ Clause 1(b) stated that the Green Independents would provide confidence and supply in return. The accord went on to outline administrative arrangements and policy positions including a significant reform agenda.

In commissioning the government Governor Bennett was wary regarding the prospect of fixed-four year terms, stating that this was not a position taken to the electorate during the election and could therefore not be the legitimate basis for the accord.¹⁵ Field countered that this position was to be found in policy documents from both the ALP and the Green Independents taken to the electorate and were bedded in the democratic concepts of accountability of the executive and stability.

Bennett's alarm increased when the *Constitution Amendment Bill 1989* was brought before parliament. Clause 2A stated:

The Governor has no power to dissolve the Assembly unless –

- (a) a period of 3 ½ years has elapsed since the day of its first meeting after a general election; or
- (b) the parliament rejects a Bill which authorizes the issue and application of any money from the Consolidated Fund to meet the cost of the ordinary annual services of the Government; or
- (c) the Assembly has passed a resolution expressing a lack of confidence in the Premier and the other Ministers; or
- (d) no member of the Assembly can command sufficient support to provide stable government.

Bennett argued forcefully that the proposed legislation fundamentally altered the constitutional relationship between the Governor and the Parliament as outlined in

¹⁴ *The Green/ALP Accord*, 29 May 1989, Historic Agreement Between Five Independents and the Australian Labor Party Tasmania.

¹⁵ Phillip Bennett, *Summary of Constitutional Events Involving His Excellency the Governor of Tasmania Concerning the Dissolution of the House of Assembly on 18 April 1989 and the Subsequent General Election on 13 May 1989*. Tasmania: House of Assembly Paper No 21, 1990, p. 6.

section 10 of the *Constitution Act 1934* which states that “The Governor and the Legislative Council and House of Assembly shall together constitute the Parliament of Tasmania.” Bennett wrote to Field that “the House of Assembly has no right to assert its sovereignty on authority over the Governor any more than it can over the Legislative Council” and that “the legislation not only fundamentally restricts the Governor’s Prerogative but completely negates it.”¹⁶

When the parliament was prorogued in February 1990 the Bill lapsed and once parliament resumed another version was introduced, the *Constitution (Parliamentary Terms) Bill 1990*. This version took into account the Governor’s protestations and placed the onus on advice given by the Premier. It maintained the Premier’s option to advise the Governor to dissolve the parliament if it had become unworkable, clause 3 stated:

24A - Advice to dissolve the Assembly within 3 ½ years after the holding of a general election of Members of the Assembly shall not be given to the Governor unless –

- (a) the Assembly has passed a resolution expressing a lack of confidence in the Premier or the Government; or
- (b) effective government does not appear possible without another general election.

The bill was not passed and Field’s government fell in February 1992 after surviving the dissolution of the accord in 1990.

Fragile binding: a single fixed term 1992-96

The Groom Liberal government came to power with a majority in 1992 and introduced the *Constitution (Fixed Term Parliament) Special Provisions Bill 1992* in April and it received royal assent in December 1992. This bill only fixed the election date for one term of parliament after Governor Bennett again expressed concerns relating to his reserve powers.¹⁷

In this instance the Act stated that the Governor could only dissolve the Assembly if “a motion of no confidence in the Premier and other Ministers is passed by the current Assembly” and a motion of confidence isn’t passed in the Premier and other Ministers or in an alternative government within 8 days. Prorogation could not occur during this period. A further section stated that a rejection of a money bill by either House would be

¹⁶ Facsimile of Governor Bennett’s objections to the Bill dated 31 August 1989 as reproduced in Julian Green, *A Legal History of Tasmania: An Historic Perspective on the Development of the Tasmanian Constitution and Law in Tasmania*, Volume 3. Hobart: Julian Green, 2020, p. 209.

¹⁷ Michael Lester, *Strategies for Minority Government Formation: Legacies and Learning in Australia*. PhD Thesis, University of Tasmania, 2021, p. 147. Lester cites an unpublished interview with Groom in which he states that the single term was legislated to satisfy Bennett’s concerns about the fettering of reserve powers.

taken as a vote of confidence. The was far closer in its wording to the *Constitution (Fixed Term Parliaments) Special Provisions Bill 1991 (NSW)* that was being considered in NSW at the time.

Premier Groom stated that this was the fulfilment of an important election promise.¹⁸ He claimed that the government had been elected on the basis of stable government, characterising the security and certainty of his administration in contrast to the chaos and instability of the accord years. The legislation was passed with tripartite support, although questions were raised in both houses as to why it was only for the term of the current parliament and why no mode of entrenchment was being sought.¹⁹ Groom's reasoning was that the parliament had to see how the fixed term operated before legislating further.²⁰

It was widely speculated that the promise and fulfilment of the single fixed term was a projection of strength by the Groom government to the electorate, signalling stability after the accord, although without a clear means of commanding ongoing durability.

The 1992 legislation demonstrated that fixed term parliaments were a palatable stability mechanism to the Tasmanian parliament. The major impediment came from the perceived intrusion into the reserve powers, rather than any concerns over the impact on the balance of responsible and representative government. However, this mechanism was to be left aside as an alteration to the number of elected representatives was pursued as a more politically advantageous stability mechanism at the expiration of the term.

Minor threat: reduction of the House 1998

When the fixed term expired in 1996 elections again returned a minority parliament. The Liberal party was able to retain government after a change of Premier and with the support of the Greens. However, there was no accord signed and Premier Rundle relied on an informal arrangement.²¹

In 1998 and with 18 months left of the term Rundle declared that "this hung parliament has reached its use by date. It has done a lot but can do no more."²² Before the parliament was dissolved it was recalled so that the *Parliamentary Reform Act 1998 (Tas)* could be passed which reduced the numbers of the House of Assembly from 35 to

¹⁸ Ray Groom, Tasmania, *Parliamentary Debates*, House of Assembly, 10 November 1992, p 84.

¹⁹ Michael Field and Julian Amos were vociferous on this point in the debate. It was also raised in the Legislative Council by Athol Meyer and Reginald Hope, Tasmania, *Parliamentary Debates*, Legislative Council, 3 December 1992, p. 21-24.

²⁰ Groom, *Parliamentary Debates*, 10 Nov 1992, p. 85

²¹ Richard Herr, 'Learning from History: The 1989-92 Minority Government' in Kate Crowley (ed), *Minority Government: the Liberal Green Experience in Tasmania*. Hobart: University of Tasmania, 2012, pp. 41-58.

²² Tony McCall, 'Political Chronicles: Tasmania June-December 1998'. *Australian Journal of Politics and History* 45(2) 1999, p. 292.

25. This resulted in an increase in the quota needed for election from 12.5% to 16.7%. The rationale was that there would be fewer minor party candidates elected and thus less likelihood of minority government.²³ The 1998 election resulted in a large majority for the ALP and relative stability lasted until the 2010 election.

Introduction of fixed term bills since 1998

Opposition Leader Will Hodgman introduced the *Constitution (Fixed Term Parliament) Amendment Bill 2006* indicating a renewed interest in fixed terms as a stability mechanism.²⁴ In 2008 in the face of waning popularity Premier Lennon stated that he would introduce legislation on the matter.²⁵ Lennon resigned later that year and incoming Premier David Bartlett stated that fixed-term parliaments would be pursued with tripartite support. In 2009 he announced that the government would be introducing a fixed-term parliament bill and that consultation on a draft bill was well advanced.²⁶ Bartlett stated that the parliament would run full term, with an election to be called on 20 March 2010, after which legislation would be tabled to fix this date.

The 2010 election returned a minority parliament with a 10 ALP, 10 Liberal and 5 Greens members returned which resulted in a coalition between the ALP and the Greens, whereby the Greens secured spots in the Cabinet, albeit without being bound by cabinet solidarity.²⁷

In September 2010 the leaders of all three parties signed a document agreeing to a set of parliamentary reform principles, including the pursuit of a fixed term parliament. As of 2026 all of these reforms have been enacted except fixed terms.²⁸

The 2010 parliament lasted until 2014. The Premier had been changed in 2012 and the Greens expelled from the coalition in the run up to the election. The result was a majority Liberal government coming to power. With a change of government and a majority parliament the need for a fixed term parliament was set aside.

Current situation: 35 members and no confidence

The current debate surrounding fixed terms came to the fore after a successful motion of no confidence in the Premier was moved on 4 June 2025. This followed the restoration of the House to 35 members in 2024.²⁹

²³ Richard Herr, 'Opposition in a Small Westminster Parliament: The Case of Tasmania'. *Australasian Parliamentary Review* 22(1) 2007, pp. 87-96.

²⁴ Christine Milne from the Tasmanian Greens introduced a fixed term bill in 1996, and Peg Putt from the Tasmanian Greens had introduced similar bills in 2006 and 2008.

²⁵ Paul Lennon, Tasmania, *Parliamentary Debates*, House of Assembly, 4 March 2008, p 24.

²⁶ David Bartlett, 'Select Committee Proposed for Fixed-Term Bill'. *Press Release*, 25 October 2009.

²⁷ Anne Twomey, 'Appointing the Premier in a Hung Parliament – the Tasmanian Governor's Choice'. *Australasian Parliamentary Review*, 25(2) 2010, pp. 54-62.

²⁸ David Bartlett, Will Hodgman, & Nick McKim, *Agreement for Parliamentary Reform*, 2 September 2010.

²⁹ *Expansion of the House of Assembly Act 2022*

Questions were raised during the election night count by ABC presenter Leon Compton when he asked senior government minister Eric Abetz if fixed terms should be considered.

Shooters Fishers and Farmers candidate for Lyons Carlo di Falco stated that he would pursue legislation for fixed terms if elected.³⁰

In the aftermath of the election, while the outcome was still unclear and it was uncertain as to who would be successful in negotiating with the crossbench to form government, the Opposition leader included fixed terms in his stability pitch to the crossbench, agreeing to “introduce legislation setting fixed 4-year parliamentary terms for the House of Assembly.”³¹ This was included as a mechanism to support collaboration and engagement with the crossbench “to ensure a stable parliament”, but no discussion on the mechanics of the proposal were included.

The incumbent Premier was recommissioned by the Governor who stated, “I have reappointed the Premier and leave it to the House of Assembly to determine confidence.”³² The Premier’s subsequent stability document which was a important part of his negotiations with the crossbench did not include any discussion of fixed terms.³³

Arguments for and against fixed term parliaments

Ayes

Following the election the chief voices for fixed terms were Meg Webb MLC and academic Richard Herr. Both argued that legislating would lead to increased stability and greater parliamentary responsibility.

Webb released a statement strongly advocating for fixed terms.³⁴ The rationale was that fixed terms would remove the executive prerogative and lead to more transparent and accountable governance. It was also argued that greater certainty for political actors, the public sector and the community would result. Further, it was stated that fixed terms are more financially responsible in a time of straitened circumstances, which went to the substance of the no confidence motion.

Following the formation of government Tasmanian academic Richard Herr also argued for fixed terms, stating that they would bring stability to a system that was in danger of losing its integrity.³⁵ He stated that fixed terms would allay voter mistrust over the

³⁰ Matt Maloney, ‘Call to Forbid ‘Disruptive’ Early Elections’. *Advocate*, 25 July 2025.

³¹ Dean Winter, *Tasmanian Parliament Framework for Collaboration: A New Approach to Politics for Tasmania*. Hobart: Australian Labor Party, 2025, p. 8.

³² Babara Baker, *Reasons for the Appointment of the Premier to Form a Government*, Hobart: Office of the Governor, 2025.

³³ Jeremy Rockliff, *Foundations of Stability*, Hobart: Office of the Premier, 2025.

³⁴ Webb, *Press Release*, 23 July 2025.

³⁵ Herr, *Mercury*, 30 July 2025.

partisan management of the electoral cycle and ensure a more collaborative parliament.

Both of these positions appealed to the notion that robust conceptions of responsible government is one of the chief aims of the parliamentary system, and its proper realisation will bring stability and good governance.³⁶

Noes

Countering these positions were ANU academic Jill Sheppard and Tasmanian commentator Kevin Bonham, although from quite different quarters. Sheppard stated that “fixed terms are a bit of a band-aid applied on that lack of stability, but it won’t really fix the problem.”³⁷ Instead, it was suggested that the removal of Hare-Clark would be a far greater guarantor of stability.

Bonham’s position was that the primary reason for not pursuing fixed terms was the need for flexibility in the Tasmanian system.³⁸ He strongly advocated for a more representative parliament, arguing that Tasmania is prone to defections which delegitimised the parliament and alienated it from the electors. Following Dicey he stated that the executive prerogative to end a troublesome parliament is “correct and good for democracy.” He likewise argued that the Premier should have the capacity to appeal to the electorate for a renewed mandate on an issue, or if a new Premier is sworn in, that an election should be allowed.

Bonham’s position rested on the assumption that representative government is one of the highest democratic goods and that normative claims of fixed term stability are overstated.

In support of his case, he appealed to the Tasmanian precedent of Carrol Bramich. In 1956 Bramich, a government minister, defected to the Opposition in a hung parliament and a resulting motion of no confidence was successful.³⁹ Following the motion Premier Cosgrove sought a dissolution, despite the Opposition being willing and able to

³⁶ These arguments can be found in more detail in Gareth Griffith, *Fixed Term Parliaments, with a Commentary on the Constitution (Fixed Term Parliaments) Amendment Bill 1992*. Sydney: NSW Parliamentary Library, 1995, pp. 19-21.

³⁷ Jano Gibson, ‘Election Fatigue Leads to Renewed Calls for Four-Year Fixed Parliamentary Terms’. *Australian Broadcasting Corporation News*, 23 July 2025. Accessed at: <https://www.abc.net.au/news/2025-07-23/tasmanian-election-fatigue-call-for-four-year-fixed-terms/105562752>

³⁸ Kevin Bonham, ‘Why I Don’t Support Fixed Four Year Terms for Tasmania’, Dr Kevin Bonham, Blog Post, 14 March 2024. Accessed at: <https://kevinbonham.blogspot.com/2024/03/why-i-dont-support-fixed-four-year.html>

³⁹ Terry Newman, ‘The Bramich Bombshell and the 1956 General Election’. *Papers and Proceedings: Tasmanian Historical Research Association* 38(2) 1991, pp. 61-67.

govern. The Governor granted the dissolution on the basis that the electorate should have the opportunity to express its will on the newly configured parliament.⁴⁰

The 1956 case can be seen as one of the principal instances of the prerogative of dissolution being exercised by the executive in Tasmania and this exposes one of the main tensions in considering the introduction of fixed terms; balancing the need for legislated stability against the flexibility of convention.⁴¹

IV. Practical Considerations

Should the Tasmanian parliament seek to legislate for fixed term parliaments then the issues of reserve powers, the prerogative of dissolution, the doctrine of confidence and the interplay between responsible and representative government all need to be considered. It would be anticipated that legislation would be similar to that which was introduced in 1992.

The 1992 Act dealt with reserve powers by including a section that stated that the act would prevail despite anything to the contrary in the *Constitution Act 1934*. This was “particularly designed to overcome a clash of section 12(2) of that Act” which dealt with the dissolution powers of the Governor.⁴²

As discussed above, the prerogative of dissolution would be ceded by the executive, as one of the primary motivations of the legislation. It is arguable that the government could manufacture a dissolution by deliberately losing a vote of confidence, although this would prove electorally unpopular.⁴³

The issue of confidence would be narrowed to more discrete forms, so that the parliament would have to move a motion of no confidence “in the Premier and other Ministers” for it to have effect.⁴⁴ For such a motion to be successful the Assembly would have 8 clear days in which to pass a motion of confidence in the Premier and other

⁴⁰ The basis of this decision stems from a fundamental confusion on the mimetic function of representative government. See Martin Loughlin on the opposition of aesthetic and mimetic representation, where he argues that strict mimesis of electors by representatives is a denial of politics in a responsible system. Martin Loughlin, *The Idea of Public Law*. Oxford: Oxford University Press, p. 160.

⁴¹ Following the uncertainty of dissolution and his re-election Premier Cosgrove sought to abolish Hare-Clark and a select committee was formed to inquire into the matter. Unusually, Cosgrove was the Chair of the committee. Despite this, the committee did not finally recommend the abolition of Hare-Clark, but rather argued that the House should be enlarged from 30 to 35 members to make a hung parliament less likely. House of Assembly Select Committee on Electoral Reform, Parliament of Tasmania, *Report of Select Committee, with Minutes of Proceedings*, Tasmania: House of Assembly Paper No 59, 1957.

⁴² Explanatory Material, *Constitution (Fixed Term Parliament) Special Provisions Bill 1992*.

⁴³ Peter Patmore raised this prospect in his contribution on the second reading in 1992. Former West German Chancellor Helmut Kohl is a notable instance of this scenario. In 1982 he instigated a vote of confidence in his own government, and his coalition partners abstained, so that the motion was successful and elections could be called early.

⁴⁴ In the UK in 2018 a motion of no confidence was tabled in Teresa May's Premiership. The UK *Fixed-Term Parliaments Act 2011* contained a similar provision and it was determined that the motion would be merely a censure motion if it was successful and as a result it was not brought on.

Ministers, or to designate an alternative government. This places power firmly in the hands of responsible government and ensures the continued functioning of the parliament, should there be consensus and will, or a dissolution if negotiations between the opposition and the crossbench fail and the parliament becomes unworkable. During this time the parliament cannot be prorogued, so that this process cannot be interfered with.

The only other circumstance in which the Governor could authorise a dissolution of the Assembly under the Act would be if the Assembly or the Council rejects a money bill. This recognises that money bills are of paramount importance and are necessary to confidence.

Entrenchment

If the Tasmanian parliament was to institute a fixed-term parliament then it would have to consider manner and form provisions to entrench the position and bind future parliaments.⁴⁵ The parliament would have to decide if it was relying on political entrenchment, as with 4-year terms since 1972, or to doubly entrench the position.

As seen from the history of political instability in Tasmania it would require considerable political capital and consensus to achieve double entrenchment. Members of parliament and of the public would need to be convinced of its ongoing merits to bind future parliaments in such a manner.

From a practical perspective, double entrenchment would require a referendum to enshrine the position of a referendum provision, or a supermajority to enshrine a supermajority clause.

A referendum clause would have the benefit of introducing a representative element into the constitutional and parliamentary process. A supermajority clause would have the effect of leaving constitutional change in the hands of the parliament and would be of lesser effect.⁴⁶

Finally, given the parlous state of the Tasmanian Constitution as outlined by Brendan Gogarty in *The Worst of the State Constitutions* it would appear that targeted constitutional reform would run the risk of generalising.⁴⁷ It would be difficult to argue

⁴⁵ Section 6 of the *Australia Act 1986 (Cth)* and Section 5 of the *Colonial Laws Validity Act 1856 (Imp)* are the source of manner and form powers in Australia. These are discussed at length in *Attorney-General (WA) v Marquet* (2003) 217 CLR 545.

⁴⁶ A number of provisions are entrenched in the Victorian constitution, although as Greg Taylor notes the supermajority provisions were not entrenched by a supermajority in Victoria, leaving it of dubious effect. Greg Taylor, 'Victoria's Parliament and Constitution: The Bracks/Brumby Legacy'. *Victoria University Law and Justice Journal* 6(1) 2016, pp. 37-48.

⁴⁷ Brendan Gogarty, 'The Worst of the State Constitutions: Why Aboriginal Constitutional Recognition Must be Framed Against a Wider Reform of Tasmania's Constitution Act'. *University of Tasmania Law Review* 35(1) pp. 1-23.

for the entrenchment of fixed term parliaments without also entrenching Hare-Clark as a representative feature of the Tasmanian legislature. Any mandate for change would also risk the powers of the Legislative Council in its ability to force a dissolution of the Assembly.⁴⁸

V. Conclusion

It is uncertain that fixed term parliaments would bring lasting stability to Tasmanian politics. However, in the case of the most recent period of instability they would almost certainly have prevented the 2025 election and delayed the 2024 and 2021 elections.

While Hare-Clark endures with a 35-member parliament of five seven-member electorates it would appear that a large crossbench will continue to be elected, and minority government will continue to be commonplace. If there is no appetite to alter this then methods to bind the parliament may need to be pursued and fixed terms would be one of the most logical.

If fixed terms are not pursued, or if they prove unworkable, then other mechanisms may need to be investigated, such as deadlock laws, a reintroduction of free conferences, waka jumping laws, recall elections or majority bonus systems.⁴⁹ All of which bring unique implications to the issues of flexibility, stability, confidence, executive prerogatives, reserve powers and how they affect representative and responsible government.

⁴⁸ This power is outlined in section 44 of the *Constitution Act 1934*. The Legislative Council's powers were raised in the Morling Report, which was a discussion of reform options prior to the downsizing of parliament in 1998. Trevor Morling et al, *Report of the Board of Inquiry into the Size and Constitution of the Tasmanian Parliament*. Hobart: Board of Inquiry, 1994.

⁴⁹ Waka jumping is a term from New Zealand for when members of Parliament change political allegiance during a term of parliament. This upsets the proportionality of the Parliament and under the *Electoral (Integrity) Amendment Act 2001* NZ members lose their seats in Parliament as a result of leaving their party. Recall elections are used in various overseas Westminster jurisdictions including the United Kingdom with the *Recall of MPs Act 2015* (UK) and Alberta and British Columbia in Canada, under the *Recall and Initiative Act* RSBC 1996 c 398 and *Recall Act* RSA 2021 c R-5.7. Majority bonus systems are used in some non-Westminster parliaments, including the Italian Parliament between 2006 and 2013 and the current Greek Parliament.