

Four-year federal terms are too hard, but what about making the three-year term fixed?

Written by The Conversation USA

Can anyone remember when federal politics wasn't in campaign mode? Politicians, encouraged by the media, have given up the distinction between election season and governing season.

The continuous campaign has become destructive for policymaking, probably unhelpful for economic confidence, and drives the already cynical public to distraction. It is a strong argument to have a longer term and making that term a fixed one. The continuous campaign disease may be beyond a cure, but a four-year fixed term might give some relief, providing more opportunity to operate off the hustings.

Most states have fixed four-year terms. Queensland has just passed a referendum for the change.

It would make sense at the federal level. But there are hurdles, and they would likely be insurmountable – even if there was some political will around the issue.

One is the Senate – senators have six-year terms with half the upper house going out at each normal election. Senators with eight-year terms? Don't think that would fly with either the political players or the public. It would be much better if senators' terms were the same as those for House of Representative members, but that would be unachievable politically.

In a change, there would still have to be special arrangements to deal with deadlocks between the houses and no-confidence votes.

Most fundamentally, there is the constitution. A fixed four-year term would require constitutional amendment. That would be an uphill battle, given most referendums fail; anyway, the timetable for national votes – plebiscite on same-sex marriage, referendum on Indigenous recognition – is already crowded.

The Australia Institute, recognising the constitutional and political difficulties, is proposing a limited pragmatic compromise. It suggests shooting for a voluntary agreement between

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government and opposition to make the present three-year terms come with a fixed election date.

Polling done for the institute by ReachTEL in March in Queensland, South Australia and the electorate of New England found support for set terms between 58%-63%, with opposition between 19%-24%. Support was 60.5% in Queensland, 58.2% in South Australia and 62.5% in New England.

The question asked:

The current system for calling Australian federal elections allows the prime minister of the day to set the date for elections. Do you support or oppose fixed election terms to give voters certainty about election dates?

One problem with present arrangements is that the relatively short term is even shorter in practice.

Since 1910, early elections have cut a total of more than 16 years off terms, according to the Australia Institute.

“The average term since 1910 is 2.59 years, amounting to 6033 days, or 16-and-a-half years cut out of three year terms,” the institute says.

Its executive director, Ben Oquist, says that for a long time the debate has focused on four-year terms but it would be possible to effectively enshrine three-year set terms without the need for a referendum.

“Looking back, most three-year terms are not making it all the way, and it means that Australians have been going to the polls closer to every two-and-a-half years, on average.

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“Fixed terms would end the political manipulation that prime ministers can engage in with the setting of election dates. It is bad for democracy and it is bad for effective governing to have a system in which the prime minister can finagle election timing,” Oquist says.

There is an obvious disincentive for prime ministers to give up the flexibility. Being able to set the date of an election has advantages – of going early when an opportunity presents, of keeping the opposition guessing, or catching your opponent by surprise. But premiers seem to cope with the constraints of terms being fixed – anyway, a level playing field is good.

Anne Twomey, professor of constitutional law at the University of Sydney, says that a voluntary agreement for fixed three-year terms would not raise legal problems but any attempt to give it formal legal effect would, because the governor-general’s constitutional power cannot be constrained without a referendum.

George Williams, a constitutional expert at the University of New South Wales, does believe it would be possible to legislate for fixed three-year terms, although there would be no guarantee that would hold up if there was a constitutional challenge. “But who would want to challenge it?” Williams asks.

Twomey points out that politicians will seek political advantage when the rules are less than watertight, noting the salutary example of Canada.

“In Canada they legislated for fixed terms – but because they didn’t want to do a constitutional amendment, they had to leave the power of the governor-general to dissolve parliament at any time. Presumably they believed that the legislation would at least bind the prime minister politically to go full term. However, it did not.

“[Then-prime minister] Stephen Harper called an early election for the very first election after the fixed-term legislation came into effect. The governor-general acted upon his advice and an early election was held. The validity of this action was challenged in the courts and failed. So the fixed-term legislation in Canada was proved to be ineffective,” she says.

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Even if a working agreement for fixed terms had been in place, it would not have stopped Malcolm Turnbull's current plan to call a double dissolution for July 2 if the Senate refuses to pass the government's industrial relations legislation.

Table data provided by The Australia Institute.

Read more <http://theconversation.com/four-year-federal-terms-are-too-hard-but-what-about-making-the-three-year-term-fixed-57278>