

Are more independents and minor parties good for parliamentary accountability?

The 55th Queensland Parliament – a case study

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The data is clear: more Australians are voting for independent and minor party representatives in their Parliaments than ever before. Writing in 2006, Jennifer Costin noted that “now Australia is home to more non-party independent Parliamentarians than any other comparable Western country”.¹ From 1990 to 2016, the proportion of votes that went to non-major parties in Australian House of Representatives elections has consistently risen, from 5.8% to 23.3%; and in the Senate, from 7% to 35%.²

While the Senate figures are supported by the proportional representation voting system, the latest Australian parliament election, in Queensland in November 2017, saw a strong continuation of this broader trend with the preferential voting system still seeing 31% of voters voting for someone other than the two major parties.³ In the 2015 Queensland state election that figure was 21%.⁴

There is considerable public commentary about increasing voter dissatisfaction with the two major parties in Australia, as well as internationally. The trend in Australia is attributed to several causes, including that “while overall support for the major parties is in long-term decline, the control these parties seek to exert over their parliamentarians has rarely been greater....the Liberal, Labor and National parties have rendered some of their local MPs – who, of course, are required to advocate often unpopular party dogma – electorally vulnerable to independents that are free from any party discipline”.⁵ Thus political parties are no longer the ‘agents of representation’ they may once have been.⁶ In that context, on the face of it an increasing number of independent and minor parties in Parliament means greater representation of the broader populace.

But does having more independent and minor party representatives in parliament, mean that the parliament is any more representative of the electorate; and is the electorate any more able to hold the executive to account through that parliament?

¹ Jennifer Costin, *Independents in Federal Parliament: a new challenge or a passing phase?* (2006) Papers on Parliament No. 44, Department of the Senate, p 1.

² Reproduced from Andrew Charlton and Lachlan Harris, ‘A pox on both your houses’, *The Monthly*, December 2016-January 2017, online <https://www.themonthly.com.au/issue/2016/december/1480510920/andrew-charlton-and-lachlan-harris/pox-both-your-houses>.

³ Electoral Commission of Queensland, Media results data <https://results.ecq.qld.gov.au/elections/state/state2017/results/summary.html#13>

⁴ Electoral Commission of Queensland, Media results data <https://results.ecq.qld.gov.au/elections/state/state2015/results/summary.html#13>

⁵ Costin, above n 1, 4.

⁶ Rodriguez, Dr Mark and Brenton, Dr Scott, 2010. *The age of independence? Independents in Australian Parliaments*. Research Paper no. 4 2010-11, Parliamentary Library, Parliament of Australia, 110.

Mr Harry Evans, former Clerk of the Australian Senate, has expressed views about how responsible government is working in Australia:

Responsible government was a system which existed from the mid 19th century to the early 20th century, after which it disappeared. It involved a lower house of parliament with the ability to dismiss a government and appoint another between elections. This system has been replaced by one whereby the government of the day controls the lower house by a built-in, totally reliable and “rusted on” majority. Not only is the government not responsible to, that is, removable by, the lower house, but it is also not accountable to it. The government’s control of the parliamentary processes means that it is never effectively called to account in the lower house.⁷

Fundamental to the concept of ‘responsible government’ in Westminster systems is that executive accountability should be located definitively in the parliament. The parliament is representative of the people, who elect and remove the members of parliament who represent them. Through the parliament, the government is accountable to the populace.

Evans sees that the two party system in Australia limits the ability of the Parliament to hold the executive to account, as party discipline has a significant impact on the extent to which the parliamentary backbench pursues the objective of holding the government to account.⁸

Evans suggests that the public now views the Opposition performing its scrutiny function as simply political gamesmanship, which means there is “no way of the public making an informed judgement at the next election of the government’s performance”.⁹

A key question is whether Evans’ observations hold true in a situation where there is no “built in, totally reliable, rusted on majority”, as is occurring more and more frequently with the increase in election of (and votes for) independent and minor party members of parliaments.

The party system has been central to Australian politics since federation.¹⁰ While the formal standing orders of the parliament do not always reflect that importance beyond its relevance to committee composition, “in a formal sense, party structures and disciplines exist in parallel with the regulation of the House and its proceedings although in practice, they interlock at every level”.¹¹

While the effects of party discipline may be a key reason for the electoral success of independents who are free to represent constituent interests in a way that members of state- and nationally-

⁷ Mr Harry Evans, speech delivered by at the National Press Club, Canberra, 11 April 2006

⁸ Evans, Harry, *The Senate, Accountability and Government Control* (2007). Paper for Australian Research Council Project Strengthening Parliamentary Institutions, ANU Parliamentary Studies Centre, 5.

⁹ Ibid, 5.

¹⁰ Paul Reynolds, *Trends in the Australian political system* (2007) Papers on Parliament no. 47, Department of the Senate, 1.

¹¹ Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 80.

focused parties cannot, it is important to acknowledge why it is such a strong feature of our system. Parties form around broad principles, and policy formulation and expression is a key function of political parties, allowing for “demarcation of differing ideological views within the polity”.¹² This informs voting decisions and political negotiations, a key part of a functional democracy. Of course party members will not always agree on policy or implementation detail. This is generally a matter for discussion or negotiation behind closed doors, with a united party position presented externally. The alternative, a parliament comprising a large group of individuals with diverse perspectives, objectives and interests, would not enable formation of a government, or passage of legislation. Party discipline is clearly a significant factor for stable governance.

The stability afforded by party discipline becomes even more important in parliaments where party numbers are close, such as in a minority government.

It has been observed that “It is ironic that, on the one hand, there is public pressure for MPs to be more independent but, at the same time, a feeling that a party that cannot keep its own members on side has somehow failed.”¹³ Where members vote against their party position, this is often about fundamental principles (for example, engaging in military action, in the United Kingdom). In a minority government, such votes have the potential to bring down the government. Parties will go to great lengths to avoid defeats in the House, including withdrawing or not proceeding with bills.¹⁴

Three of Queensland’s eight Parliaments since 1996 have given rise to minority governments supported by an independent holding the balance of power. The number of cross benchers increased in these Parliaments following defections.

This paper considers the 55th Queensland Parliament in respect of whether a minority government with a number of independent and minor party members impacted on the extent to which the Parliament was accountable to the electorate, and the government accountable to the Parliament; and whether there was any associated detrimental impact on stable governance.

Methodology

The measures used to assess the influence of independents and minor parties in this paper are:

- Formal agreements
- Question time and the estimates process
- Private member’s bills
- Crossing the floor

¹² Reynolds, above n 10, 3.

¹³ Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 85.

¹⁴ Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 87.

- Divisions lost
- Influence of bipartisan parliamentary committees.

Indicators of instability include:

- Inability to pass legislation
- No confidence motions
- Frequent elections

Background

From 2015 to 2017 Queensland's minority Labor government was supported in supply and confidence by independent Member for Nicklin, Mr Peter Wellington MP (who also served as Speaker of that Parliament – the 55th).

An exchange of letters between the Leader of the ALP Opposition and Mr Wellington on 5 February 2015 outlines the agreement between the new government and Mr Wellington which was instrumental to that party forming government.¹⁵ In those, the government committed to a number of measures aimed at ensuring government integrity and accountability to the Parliament, and of Parliament to the electorate, including:

- committing not to use urgency motions to avoid bills being referred to committees for proper scrutiny, unless negotiated with cross-benchers
- reform of electoral donations laws
- an inquiry into links between political donations and the awarding of tenders, contracts and approvals. This inquiry has recently seen criminal charges laid by the Crime and Corruption Commission against several local councillors and council officials, and recommendations by that agency about political donations to local government authorities that were accepted by the government and reflected in a Bill before the House at the time the 55th Parliament was dissolved (and now lapsed). The Premier made election commitments to progress that Bill, specifically to ban property developer donations to political parties.
- Revitalising community cabinets (cabinet meetings held in regional Queensland and including deputations from members of the public).
- Better support for independent members of parliament and those with geographically large electorates.

¹⁵ Mr Peter Wellington MP, correspondence to the (then) Leader of the Opposition, the Hon Anastacia Palaszczuk, 5 February 2015. <http://www.peterwellingtonmp.com/Letter%20Exchange%202015.pdf> .

Commitments were also made in respect of several broad policy issues, including exploring the potential for a Bill of Rights for Queensland, and a review of laws governing subcontractor payments.

Just six commitments were made which were specific to or substantially focused on Mr Wellington's electorate.

Overall, the flavour of the agreement was enhanced integrity and accountability in the context of perceived "erosion" of these under the previous (Newman LNP) government.

The content of agreements made between minority governments and the independents or minor parties supporting them in Australia, range from 'particularist' through to those seeking to strengthen the parliamentary system.¹⁶ The agreement between Mr Wellington and the Palaszczuk government tends towards the system-focused end of the spectrum. The government at the very least delivered on, and in some cases exceeded, the commitments made to Mr Wellington over the term of its government (February 2015 – November 2017), those measures arguably improving accountability of the government and the parliament to the electorate.

Following two departures from the ALP and one from the LNP, there were an additional three cross bench members. By the end of the Parliament it consisted of 42 government, 41 opposition (LNP), two Katter's Australian Party (KAP) members, two independents (former ALP members) and after January 2017, one Pauline Hanson's One Nation (PHON) (former LNP) member, along with the independent Mr Wellington.

Over the course of the 55th Parliament the independent Mr Wellington, as Speaker, exercised a casting vote in respect of motions where the votes were equal, on 55 occasions (other than confidence and supply matters).¹⁷

On just one of those occasions, on 24 October 2015, he voted against the government, on one clause of a bill during a second reading debate.¹⁸

The supply and confidence agreement was largely for measures to enhance Parliamentary accountability, which were implemented. There was no evident negative impact on the stability of the government or the Parliament from the arrangement.

Question time and the estimates process

¹⁶ Bowe, William, 2010. 'Green Members in Green Chambers: the role of the Australian Greens in government formation'. *Australasian Parliamentary Review*, Autumn, Vol 25(1), 137-149.

¹⁷ Queensland, *Parliamentary Debates*, multiple dates, 2015 – 2017.

¹⁸ Queensland, *Parliamentary Debates*, 14 October 2015, 2187.

Rogers and Walters, discussing ‘the dynamics of dissent’, note the power that a member of a government party threatening revolt can have in terms of achieving party policy changes. However, “small majorities work both ways; when the boat is low in the water, people are less inclined to rock it, and, however strongly they feel, government MPs will be reluctant to risk the ‘nuclear option’ of defeating their party on a major issue and perhaps triggering a vote of confidence”.¹⁹

A government backbencher holding the executive to account in a minority government was illustrated in Queensland’s 55th Parliament, where the Member for Bundamba (a Minister until earlier in the government’s term), took an active role in holding the executive to account. Having faced estimates committee hearings in 2015 as Police Minister, the Member participated in the estimates hearings held by all seven portfolio committees in 2016 and 2017 (as a standing member of just one – the Finance and Administration Committee (FAC)). It is common for shadow Ministers and cross benchers to attend and participate in questioning, but this was the first time a government member who was not a member of the relevant committee had done so. At estimates hearings other than that of the FAC, the Member asked questions on topics as follows:

Table 1: Questions asked by Member for Bundamba, Estimates hearings

Portfolio committee	No. of initial questions asked Estimates 2016 – 17*		No. of initial questions asked Estimates 2017 – 18	
	Electorate issues	Broader issues	Electorate issues	Broader issues
Infrastructure Planning and Natural Resources Committee	4	8	9	7
Legal Affairs and Community Safety Committee	3	1	2	6
Agriculture and Environment Committee	3	8	2	7
Education, Tourism, Innovation and Small Business Committee	1	8	3	11
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	1	8	4	2
Public Works and Utilities Committee (incl Transport in 2016-17)	11	3	3	5
TOTALS	23	36	23	38

* Source: Estimates hearing transcripts, all committees, 2016 and 2017.

Government members asked a total 551 questions across the 2017 estimates hearings (49.5% of all questions asked of Ministers and CEOs). Of those 61, or 11%, were asked by the Member for Bundamba, who was one of 24 government Members asking questions across those hearings.

Well over half of the questions asked by the Member for Bundamba in both 2016 and 2017 were on issues pertinent to the state as a whole, and not centred on issues specific to the members’ own

¹⁹ Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 87.

electorate. Media reports in both years stated that the Member for Bundamba had been more effective than the Opposition in highlighting areas for government criticism.²⁰

In 2017 two additional government Members also participated in estimates committee hearings other than the FACs, asking questions of the government – though not ones that appeared to highlight possible government shortcomings. As committee chairs aim to allocate at least even time to government and non-government questioning in estimates hearings (any weighting towards non-government questions), the presence of two additional government members could have had the effect of diluting the time available for the Member for Bundamba to ask questions; however on the numbers of questions alone, it would appear that it did not have that effect.

Arguably, the Member for Bundamba broke party discipline to hold the executive to account. As she stayed as a party member, there were no measurable impacts on stability. However, had more than one member done so, it may have had a different impact.

Crossing the floor

During the 55th Parliament there was only one instance of a member crossing the floor to vote against party position. This occurred during the second to last sitting week of the Parliament, with the Member for Gympie (LNP), the Deputy Opposition Whip, voting against his party (which voted with the government) in respect of a KAP disallowance motion on gun regulations. The Member stepped down as Whip later that evening. The Member was quoted in media the next day as saying:

"I am not afraid to stand solid in my support for the little person who is not being heard and for government to treat them with respect.

"I will stand up for them, and constituents across my electorate, on the matters that count.

"Gympie will not be a plaything of the manipulative politics of the green left union dominated Brisbane centric Labor Party."²¹

There had been considerable public speculation about the potential for One Nation to win rural seats such as the Gympie electorate around that time, and gun control was an issue taken up by One Nation.²² A state election was called two weeks later, and the Member was returned. There was no reported censure from the party. It could be argued that the Member crossing the floor was a

²⁰ For example, <https://www.brisbanetimes.com.au/politics/queensland/joann-miller-continues-to-keep-up-the-pressure-on-government-in-estimates-20170719-gxe5ko.html>

²¹ 'Perrett crossed the floor as a matter of principle'. *The Gympie Times*, 12 October 2017.

<https://www.gympietimes.com.au/news/perrett-crossed-the-floor-as-a-matter-of-principle/3235032/>.

²² Felicity Caldwell, Polling shows strong One Nation support in ex-deputy Premier's seat, *Brisbane Times*, 9 November 2017. <https://www.brisbanetimes.com.au/queensland-election-2017/polling-shows-strong-one-nation-support-in-ex-deputy-premier-s-seat-20171109-p4ywx6.html>.

matter of electoral survival not just for himself but potentially his party, in the face of what was perceived to be a significant threat from One Nation on an issue central to the Member's electorate.

Private members bills

Generally speaking, it is understood in a Westminster parliament that the government of the day has been elected to introduce most of the laws into the parliament by virtue of being elected to do just that. One of Parliament's key functions is then to provide checks and balances through scrutinising, amending and questioning that legislation.²³

But some of the legislative initiative can come from other Members. Mylne (a clerk in the Scottish Parliament) observes that the extent to which this occurs depends on where a parliament sits in terms of a spectrum ranging from "power hoarding" to "power sharing".²⁴ Some measures to determine where a parliament might sit on that spectrum include:

- What is the entry threshold for introducing a private member's bill?
- How much time and resources are given by the Parliament to private member's bills, in comparison to government bills?

Too low a threshold equates to a considerable demand on parliamentary resources, and potential inefficiencies in the legislative process. A raised threshold rations access, but can also allow the convention to develop that once introduced, private member's bills get fair access to parliament time and resources and proceed as far as they can through the legislative process, on their merits. The Scottish Parliament, sitting at the "power sharing" end of the spectrum, has a higher threshold, with Parliamentary Service staff supporting drafting and compulsory public consultation on private members bills. A minimum number of votes from other Members is then required to allow any subsequent bill to be introduced.

The Queensland Parliament generally sits more towards the other end of the spectrum, and the unlikelihood of success has generally limited the number of private members bills introduced. The 55th Parliament, though, has seen a record number of private member's bills, that demand management no longer so effective in the context of a minority government where all bills have a possibility of passing.

²³ Andrew Mylne, 'Support for private members' bills: principles, procedures and practice', paper provided to the Society of Clerks at the Table in Commonwealth Parliaments Annual General Meeting, London, Report of Proceedings, December 2016, 34.

²⁴ Ibid, 35-36.

During the 55th Parliament 36 private members bills were introduced into the Legislative Assembly. This represented 18.75% of the 192 bills introduced to that Parliament. Of those, seven, or 37.3%, were passed with amendments.²⁵

This contrasts with 21 private members bills introduced in the 54th Parliament (10% of the total 202 bills, none of which passed) where the Newman government had a very large majority; and the perhaps more indicative 53rd Parliament, where 22 (or 11%) of the 201 bills were introduced as private members bills and just one (4%) of them passed.²⁶ Notably that one, a 2011 bill to introduce a regime for registering civil partnerships, open to both opposite and same sex couples, was introduced by a member of the executive (the Treasurer).

Prior to the seven private members bills passed during the 55th Parliament only six private member's bills had succeeded in the Queensland Parliament's history.²⁷ The first of this tranche saw the government defeated when former ALP Member turned independent, the Member for Cook (a far north Queensland electorate), voted with the LNP for the North Queensland based KAP's bill relating to the sugar industry.²⁸

Private member's bills face some hurdles not faced by government member's bills:

- Limited resources available to support drafting of private members bills: while the Office of the Queensland Parliamentary Counsel offers drafting support for both private members bills and amendments, ultimately it is the Member who determines the final draft to be introduced. This contrasts with government bills, where a Minister can direct department resources to policy development and subsequent bill drafting (at least, instructing OQPC).
- A total of one and a half hours each sitting week is set aside for introduction of private member's bills in the 55th Parliament (half an hour each sitting day).²⁹ This is an increase from the 54th Parliament, where a total of one hour was so set aside. Ministers may introduce Bills at any time during government business (at the very least, eight hours per week but from a point after dinner 'until adjournment' on each sitting day).³⁰

²⁵ Queensland Parliament, Bills register, 53rd, 54th, 55th Parliaments <https://www.parliament.qld.gov.au/work-of-assembly/bills-and-legislation/previous-bills-register/53?p=1>.

²⁶ Ibid.

²⁷ See appendix 1.

²⁸ 'Palaszczuk government loses sugar vote after Billy Gordon move', *The Australian*, 3 December 2015. <http://www.theaustralian.com.au/national-affairs/state-politics/palaszczuk-government-loses-sugar-vote-after-billy-gordon-move/news-story/9381444360954ded3afce5fad4809dc7>.

²⁹ Queensland Legislative Assembly, *Sessional Orders of the 55th Parliament (First Session)*, amended 9 August 2017, 1(d), 3(1).

³⁰ Queensland Legislative Assembly, *Standing Rules and Orders of the Legislative Assembly*, SO 129.

- A total of two and a half hours is set aside for debate of private member's bills and disallowance motions in each sitting week.³¹
- Private members bills are, unless agreed otherwise by the Legislative Assembly, referred to committees for a default six month period. (Only eight private member's bills in the 55th Parliament (seven LNP and one KAP) had shorter reporting timeframes set by motion of the House (with only one division, lost by the government)³²).
- Private members bills must (unless resolved by the Assembly in accordance with standing orders) sit on the table of the House for three months after the committee has reported on the bill, before they are debated.³³
- Private member's bills cannot obtain the governor's message required to introduce expenditure bills, reflecting the financial initiative of the executive.³⁴
- The government tendency to introduce its own bills reflective of the same or similar policy objectives, developed with the significant resources of a department of policy and legislation experts behind them, and not subject to the time factors outlined above.³⁵
- Parliamentary committees examine and report on all bills, and, reflecting the makeup of the Assembly, committees are dominated by government and opposition members. That seven private members bills passed during the course of one parliament in Queensland is an achievement which should be seen in the context of those challenges.

Government bills and private members bills – the 'same question' rule

In February 2016, following the government's introduction of a number of bills which substantially addressed the same matters posited in bills already introduced by the Opposition, the Leader of Opposition Business moved that the standing orders be amended to provide that:

(1) A Bill that is substantially the same as any other Bill that has already been introduced and read a first time shall not be introduced. (2) If the Speaker is of

³¹ Queensland Legislative Assembly, *Sessional Orders of the 55th Parliament (First Session)*, amended 9 August 2017, 1(d), 3(1).

³² The Bail (Domestic Violence) and Another Act Amendment Bill 2017; the Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Bill 2017; Child Protection (Mandatory Reporting - Mason's Law) Amendment Bill 2016; Electoral (Improving Representation) and Other Legislation Amendment Bill 2016; Constitution (Fixed Term Parliament) Amendment Bill 2015; Constitution (Fixed Term Parliament) Referendum Bill 2015; Electoral (Improving Representation) and Another Act Amendment Bill 2015; Electoral (Redistribution Commission) and Another Act Amendment Bill 2015.

³³ Queensland Legislative Assembly, *Sessional Orders of the 55th Parliament (First Session)*, amended 9 August 2017, 3(2).

³⁴ *Constitution of Queensland 2001*, s 68. See also Erskine and May, *Parliamentary Practice*, 23rd edition, pp 848-857.

³⁵ For example, the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 (LNP) and the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 (ALP); and the Planning and Development (Planning for Prosperity) Bill 2015, Planning and Development (Planning Court) Bill 2015, Planning and Development (Planning for Prosperity Consequential Amendments) and Other Legislation Amendment Bill 2015 (all LNP); and the government's Planning Bill 2015, Planning and Environment Court Bill 2015 and Planning (Consequential) and Other Legislation Amendment Bill 2015.

*the opinion that a Bill that contravenes (1) has been introduced and read a first time, the Speaker shall at the earliest opportunity order the discharge of the Bill from the Notice Paper and from any committee to which it has been referred.*³⁶

This motion sought in effect to extend the ‘same question’ rule, whereby matters that had been resolved by the House will not be reconsidered during the same Parliament,³⁷ to bills that had been introduced into the House, but not yet debated.

Some of the arguments put forward in the debate were that:

- The primary bill can be amended through department advice and input during the committee examination stage.³⁸
- This would ensure that independents, crossbenchers and opposition members can introduce bills in this place, they can be debated and amended and in a bipartisan way, achieve better outcomes.
- The amendment would reduce the ability of committees and the House to consider all the potential policy options; and a superior bill may not be able to succeed.³⁹
- A private members bill might be based on ‘half-baked policy’, and contain errors and unintended consequences. Such a flawed bill would become the primary bill.⁴⁰
- Opposition members could use this as a tactic to block a government bill that they knew was coming.⁴¹

The motion was defeated on the casting vote of the Speaker, who asked that the matter be referred to the Committee of the Legislative Assembly as “the leadership team of the parliament”.⁴²

Interestingly, in the Scottish model described above which sits towards the ‘power sharing’ end of the spectrum, the government can block a private member’s bill if it is planning to legislate itself on that matter. This is seen as avoiding duplication.⁴³

The typical practice in Queensland’s 55th Parliament was to consider private member and government bills which were substantially the same, cognately: where a committee has not yet

³⁶ Queensland, *Parliamentary Debates*, 25 February 2016, 640.

³⁷ Legislative Assembly, *Standing Rules and Orders*, SO 87.

³⁸ Queensland, *Parliamentary Debates*, 25 February 2016, 637.

³⁹ Queensland, *Parliamentary Debates*, 25 February 2016, 635.

⁴⁰ *ibid*, 637.

⁴¹ *ibid*, 639.

⁴² Queensland, *Parliamentary Debates*, 25 February 2016, 644.

⁴³ Andrew Mylne, above n 23, 36.

reported on the first bill, from the committee stage; and otherwise during debate in the Legislative Assembly.

Typically, the Assembly has passed motions in such cases to the effect that:

- Separate questions will be put in regard to the second readings
- Debate will occur during time allocated for government business
- Consideration in detail will occur together
- Separate questions will be put for the third readings and long titles
- That standing order 136(6) be suspended to allow the second reading debate for the private member's bill to take place before three months have elapsed since the committee's report was tabled
- Providing for the private member to speak for the same length of time as the relevant Minister during the second readings.⁴⁴ Normally, 10 minutes is allowed for the mover on a private members bill.⁴⁵

A key question in terms of parliamentary accountability to the people it represents, is whether the consideration of both legislative proposals by the parliament, and enabling amendments during debate, makes for better legislative outcomes? This may be difficult to measure. While it might seem instinctive that consideration of more ideas will lead to better outcomes, it also seems possible that the compromise process might mean that the best ideas are watered down, and the outcome is a less effective piece of legislation. Further research might develop some indicators of 'good policy' and 'good legislation' and attempt to do such measurement. This could include consideration of whether scrutiny of legislation in terms of whether it aligns with fundamental legislative principles is more or less stringent in a government with a large majority. For now, it is clear that more views about policy and its implementation have been heard, and have influenced, the legislative process in Queensland.

Parliamentary committees

Increasing electoral support for independents and minor parties casts doubt on how reliably the government and opposition parties are reflecting or expressing the views of the public. In this context, it has been argued, it is necessary to look to innovative ways to ensure public representation; and parliamentary committees might "represent an important yet undervalued site

⁴⁴ See for example Queensland, *Parliamentary Debates*, 15 September 2015, 1706.

⁴⁵ Queensland, Sessional Orders of the Legislative Assembly, 55th Parliament, 5.

of participatory innovation, particularly their capacity to promote inclusive public deliberation”.⁴⁶

The extent to which committees facilitate public inclusion in public debate is a measure of both how accountable Parliament is to the populace; and the extent to which they support the Parliament in its scrutiny function is a measure of how accountable the government is to the Parliament.

Committees in Queensland are bipartisan, with their composition reflecting the composition of the Legislative Assembly.⁴⁷ In the 55th Parliament, seven portfolio committees had six members each, with three members nominated by the Leader of the House (including the Chair) and three members nominated by the Leader of the Opposition, including opposition party members as well as cross-benchers. The chair did not have any casting vote (except in the Ethics Committee). In the 54th Parliament, portfolio committees had seven members: five government (including the Chair) and two non-government members.

Portfolio committee responsibilities are divided up to systematically cover the breadth of government portfolio areas, and as well as considering and reporting on all legislation and delegated legislation in respect of their portfolio areas, they are responsible for scrutiny of public accounts and works, and to inquire into any other matter they determine is appropriate, in respect of their portfolio area.⁴⁸

Are committees more or less willing to make recommendations for government action or for changes to or rejection of government proposals, in a minority government? Committee deliberations occur in private and so the reasons for committee recommendations (or lack of) may not always be entirely certain; but where bipartisan committees recommend against government proposals it would seem a reasonable indicator that they are putting their roles as parliamentarians, players in the ‘responsible government’ ideals, above their role as party members.

As well as offering broad stakeholder access to the political process, enabling challenges and alternative views and evidence to be presented, they can show how politicians of different parties can work together. The fact that they deliberate in private offers potential for a reduction in political pressure and more real collaboration; and working in a small group of people, often travelling together, can enhance interpersonal relationships in an otherwise political context.⁴⁹

⁴⁶ Carolyn Hendriks and Adrian Kay, ‘From ‘Opening Up’ to ‘Democratic Renewal’: Deepening Public Engagement in Legislative Committees’, *Government and Opposition*, 7 August, 2017, 20-21.

⁴⁷ *Parliament of Queensland Act 2001*, ss 91 – 91C.

⁴⁸ *Parliament of Queensland Act 2001*, s 93.

⁴⁹ Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 327.

For bill inquiries, committees are required to recommend whether or not a bill should be passed.⁵⁰ Of the 133 bill inquiry reports tabled by portfolio committees during the 55th Parliament, the committee was unable to reach agreement on whether to recommend that the bill be passed in 49 (36%) of them. Consequently the reports tended to present the evidence given to the committee without committee commentary; attaching in some cases separate statements from government members, non-government members and where relevant, cross benchers, containing their commentary and recommendations.⁵¹

Table 2: No recommendation as to whether bill be passed, 54th and 55th Parliaments

	No. of bill inquiries considered by House	Not able to agree re bill passage
54 th Parliament	157	0
55 th Parliament	133	49

Source: Annual Report 2016-17, unpublished data; committee reports; government responses as tabled, 54th and 55th Parliaments.

Conversely, the ability of committee members to ‘flex their muscle’ and not agree to any recommendations unanimously, meant that recommendations contained in committee reports in the 55th Parliament were more likely to be unanimous than in the 54th Parliament. Majority recommendations were much more likely in the 54th Parliament, with negotiation much less necessary in order for recommendations to be adopted by majority.

Recommendations made by committees unanimously carry greater weight than either majority decisions or recommendations made separately by each ‘side’.⁵² The high proportion of recommendations, including those for amendments to bills, accepted by the government during the 55th Parliament would suggest a measure of bipartisanship being reflected in the government’s responses to committee recommendations. This is a stronger indicator that better outcomes are being achieved than quantifying passage of private member’s bills (as above), the potential watering down effect of compromise being negated when there is no compulsion to compromise.

Where committees did agree to make recommendations in the 55th Parliament, the government accepted those in 85% of cases (in the 54th Parliament, the figure was 66%.)

⁵⁰ Legislative Assembly of Queensland, *Standing Rules and Orders*, 132(1)(a).

⁵¹ NB only two portfolio committees in the 55th Parliament had cross-bench members.

⁵² Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 327.

Table 3: Committee recommendations and acceptance rates, 54th and 55th Parliaments

	Total recommendations, bill inquiries (other than that the bill be passed)		Recs accepted	
	Legislative amendment	Other	Legislative amendment	Other
54 th Parliament	308	242	162 (53%)	202 (83%)
55 th Parliament	136	188	117 (86%)	161 (85%)

Source: unpublished data; committee reports; government responses as tabled, 54th and 55th Parliaments.

It is not truly possible to objectively measure the effectiveness of committees by considering their recommendations and acceptance rates, given the different types of recommendations they make. For example a recommendation that ‘the Minister explain during the second reading debate’ is much easier one to accept than a recommendation ‘that the bill be amended to remove reference to’, yet no distinction is made in the figures other than to separate out recommendations requiring legislative amendment and those which do not. There is also a ‘delayed drop’ effect, whereby committee recommendations may not be taken up at the time, but slowly influence change – and the effect of media attention to committee reports, either at the time or later; the impact of the committee’s composition and culture (in part determined by individual personalities). However, unanimous recommendations for a change to the government’s position; or for support for a non-government member’s proposal, would seem very strong indicators.

Simply having recommendations accepted though, is not what scrutiny is about, although acceptance of recommendations may be a result. Scrutiny is the process of examining in detail, in public, requiring the government to explain itself to the people. This makes for better decision making by the Parliament, and by the people when they determine whether to re-elect members of parliament.

The extent to which committees use their statutory powers, such as the power to order the production of documents, persons or things; or to order a person (other than a member) to attend, can also be an indicator of the extent with which they pursue their statutory responsibilities to the Parliament. However, as Walters and Rogers point out, “A select committee’s strongest weapon is publicity rather than the use of formal powers... the trick is for the committee to make not giving evidence more embarrassing or awkward than acceding to the committee’s request”.⁵³

With her support critical to the minority government, the Member for Bundamba also achieved considerable government action on a matter of broad public interest and very close to her heart

⁵³ Robert Rogers and Rhodri Walters, *How Parliament Works* (Routledge, 7th ed, 2015) 316.

(and to her electorate's heart). After the Member in 2016 urged that a royal commission be established into the re-emergence of coal workers pneumoconiosis in Queensland,⁵⁴ a select committee was established by the Legislative Assembly to inquire into the issue. The select committee was a compromise: the Leader of the Opposition had moved a motion to establish a Commission of Inquiry, and this was successfully amended by the government to establish a select committee. The Member for Bundamba was appointed as chair.⁵⁵

During the course of the inquiry, government officials and mining companies were summonsed to appear before the committee and required to answer questions and produce documents, utilising the committee powers to 'call for persons or things'.^{56,57} This power had only been exercised by a committee in one inquiry prior to this, the 2013 inquiry by the Parliamentary Crime and Misconduct Committee into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents.⁵⁸

On the motion of the Chair in March 2017, the select committee was extended for the term of the Parliament and the scope of its Inquiry extended including that it draft a Bill for the consideration of the Assembly.⁵⁹ A committee preparing a bill was unprecedented in the Queensland Parliament, and posed the procedural question of just how the Assembly would consider the Bill: would it be introduced as a private member's bill? As it happened, the committee's chair, Ms Miller, tabled an 'exposure draft' Bill in the Assembly as part of the committee's third report.⁶⁰

Under section 93 of the *Parliament of Queensland Act 2001*, and since 2016, section 26B of the *Constitution of Queensland 2001*, bills introduced to Queensland's Parliament must be referred to a portfolio committee for consideration. In that context, shortly after the exposure draft was tabled, the Leader of the House successfully moved a motion that the relevant portfolio committee consider the exposure draft "as though it were a bill referred to the committee under Chapter 23 of the standing orders of the Legislative Assembly".⁶¹

⁵⁴ Infrastructure, Planning and Natural Resources Committee, Estimates Hearing transcript, 19 July 2016, 20.

⁵⁵ Queensland, *Parliamentary Debates*, 18 August 2016, 3036 - 3041.

⁵⁶ Coal Workers Pneumoconiosis Select Committee, Report no. 2, 55th Parliament, *Black Lung White Lies, Inquiry into the re-identification of coal workers pneumoconiosis in Queensland*, May 2017, p 251.

⁵⁷ *Parliament of Queensland Act 2001*, s 25(2): An authorised committee may order a person, other than a member, to attend before the committee and also to produce to the committee any document or other thing in the person's possession.

⁵⁸ Parliamentary Crime and Misconduct Commission, *Report No. 90, 55th Parliament – Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, April 2013.

<http://www.parliament.qld.gov.au/documents/committees/PCCC/2013/FitzgeraldDocuments/rpt-090-5Apr2013.pdf>.

⁵⁹ Queensland, *Parliamentary Debates*, 23 March 2017, 870.

⁶⁰ Coal Workers Pneumoconiosis Select Committee, *Report No. 3, 55th Parliament – A Mine Safety and Health Authority for Queensland including the committee's exposure draft Mine Safety and Health Authority Bill 2017*.

⁶¹ Queensland, *Parliamentary Debates*, 24 August 2017, 2485.

The portfolio committee report on the exposure draft bill was fairly non-committal about the policy intent of the Bill, and somewhat critical of technical aspects of the Bill as drafted. It simply recommended the House note its report, which presented the stakeholder input received to inform that consideration.⁶²

In response the select committee tabled a further report responding to the portfolio committee's concern.⁶³

The inquiry had drawn considerable public attention to the issue of coal worker's pneumoconiosis, and the government announced measures to improve screening and support. In tabling the select committee's response to the portfolio committee's report on the final sitting day of the 55th Parliament, the Chair declared the committee's report and the government's response to the select committee's 66 recommendations "an insult to our coalminers and workers across the coal chain". She noted that:

*"on the surface the government's spin suggests its support for actioning all 68 recommendations ...[but]... provided unqualified support for only 14...This suggests that the government has, in fact, failed to accept the committee's proposed regulatory model and discounted the extensive stakeholder consultation, evidence gathering and analysis already undertaken by the select committee, which is underpinned with the development of the exposure draft Mine Safety and Health Authority Bill 2017".*⁶⁴

Substantive divisions lost

Several of the Palaszczuk government's defeats during the 55th Parliament related to the Vegetation Management Bill, including the Bill's defeat at second reading. The Government had earlier moved a motion that the committee to which the Bill had been referred, report back to the House in four weeks. The Opposition moved an amendment to that motion, which would allow three months for the committee to consider and report. Following five hours of debate the amended motion was successful, the Government losing its bid to curtail the committee timeframe.⁶⁵

⁶² Infrastructure, Planning and Natural Resources Committee, *Report No. 54, 55th Parliament – Mine Safety and Health Authority Bill 2017*.

⁶³ Coal Workers Pneumoconiosis Select Committee, *Report No. 5, 55th Parliament – A Mine Safety and Health Authority for Queensland: a further response*.

⁶⁴ Queensland, *Parliamentary Debates*, 26 October 2017, 3339.

⁶⁵ Queensland, *Parliamentary Debates*, 17 March 2016, 970.

Debate on the Trading (Allowable Hours) Amendment Bill was postponed over a period of three months, the government reportedly not having the numbers for the bills to pass initially.⁶⁶ The Bill ultimately passed with cross bench support.

During one sitting week in August 2017, the government lost four divisions:

- A government motion to curtail debate on a government motion that the LNP declare \$100,000 in donations, lost with the two KAP members, the PHON member and one independent (Pyne) voting with the Opposition (the original motion ultimately won comfortably with support from all cross-benchers);⁶⁷
- An opposition motion that the House condemn the government for using electricity price increases as a secret tax, won with support from KAP, ON and one independent (Pyne).⁶⁸
- A KAP motion that the House support the construction of the Tully-Millstream hydro-electric project, supported by the LNP opposition and PHON, with one independent (Gordon) voting with the government against the motion. Mr Pyne did not vote in that division.⁶⁹

Other significant divisions lost by the government included a 2016 government motion to provide just four weeks for a committee to report on the Vegetation Management Bill 2015; a December 2015 motion to allow the passage of the KAP's Sugar Industry (Real Choice in Marketing) Bill 2015; the disallowance of a Weapons Regulation in November 2016 when KAP and the Opposition voted together, with support from one of the independents.⁷⁰

The same week in August 2017, the votes being equal when PHON and both independents voted with the government against a motion of no-confidence in the Minister for Police and Emergency Services, and KAP voted with the Opposition, the Speaker exercised his casting vote to defeat the motion.⁷¹

Conclusion

In terms of the measures outlined at the start of this paper, the 55th Queensland Parliament did achieve greater accountability, with the Parliament acting as a check and balance on the operations of the government of the day.

⁶⁶ Courier Mail, 24 May 2017. 'Queensland Trading Hour Reforms facing defeat in State Parliament'. <http://www.couriermail.com.au/news/queensland/queensland-government/queensland-trading-hours-reforms-facing-defeat-in-state-parliament/news-story/1246c52f452b480ab913f9be024c33f5&memtype=anonymous> accessed on 28 December 2017.

⁶⁷ Queensland, *Parliamentary Debates*, 22 August 2017, 2259 – 2273; 2319 – 2329.

⁶⁸ Queensland, *Parliamentary Debates*, 22 August 2017, 2311 – 2318.

⁶⁹ Queensland, *Parliamentary Debates*, 23 August 2017, 2412 – 2417.

⁷⁰ Queensland, *Parliamentary Debates*, 2 November 2016, 4079.

⁷¹ Queensland, *Parliamentary Debates*, 22 August 2017, 2529.

There was no resulting impact on stability, as measured by frequency of election (the 55th Parliament existed for the historical average of 2.8 years)⁷² or ability to pass legislation. In fact there were several pieces of legislation that passed with bipartisan support, and with amendments negotiated between the government, opposition, independents and minor parties – arguably resulting in greater representation of public views in the resulting legislation. The continued ability of the Parliament to progress legislation is consistent with the minority Gillard Australian Government which was, in terms of an averaged rate per day at which legislation was passed over that period, “the most productive ever seen”.⁷³

To ensure they can fight effectively on two fronts, major parties will need to transform themselves in three ways: by rebuilding their structures, refocusing their policy agendas, and radicalising their political strategies.

First, major political parties will need to adapt their structures in ways that build respect, trust, authenticity, conviction and participation. Specifically, the elements of machine politics that have contributed to their thinning membership, narrow policy development and weakening community links have left them vulnerable to insurgent populists. The era of hyper-centralised policy-making, controlled preselections, leadership instability, divvying out of political favours, and dubious donations must come to an end, because these features of major-party politics are the source of public disempowerment that is fuelling the populists.⁷⁴

Parliaments will similarly need to adapt their structures. The use of Parliamentary committees seems to offer a particular opportunity for parliamentarians to ascertain the views of and better represent the populace; as well as for deliberating in a bipartisan manner, less constrained by party discipline than in the theatre of the Legislative Assembly.

Similarly, private members bills have had some success in both passing on their own merits, often with negotiations across the Parliament; and as precursors to the introduction of government legislation in the same areas, developed with the full resources that government can draw upon and depending on timing, informed by bipartisan parliamentary committee reports on the earlier private member’s bills.

⁷²

⁷³ Nick Evershed, ‘Was Julia Gillard the most productive Prime Minister in Australia’s history?’ *The Guardian*, 28 June 2013. <https://www.theguardian.com/news/datablog/2013/jun/28/australia-productive-prime-minister>.

⁷⁴ Andrew Charlton and Lachlan Harris, ‘A pox on both your houses’. *The Monthly*, December 2016. <https://www.themonthly.com.au/issue/2016/december/1480510920/andrew-charlton-and-lachlan-harris/pox-both-your-houses>.

The party system, and the party discipline that is part of that, is clearly an important part of a stable democracy. Without it, the populace would have little direction as to which of a potentially huge range of candidates best represents their views; and the Parliament would find it very difficult to produce a government. Yet a minority government and a healthy cross-bench offers the Parliament greater opportunity to fulfil its function of holding the government to account.

The 56th Parliament in Queensland will offer some insight into whether the features of the 55th such as greater backbench scrutiny and use of committee powers, committee recommendations for amendments to bills, and successful private member's bills, will continue in a parliament where the government has a small majority.

Private member's bills passed by the Queensland Parliament, 1880 – 2017

25th Parliament

Courts of Conciliation Amendment Bill 1931

48th Parliament

Carruthers Inquiry Enabling Bill 1996

50th Parliament

Criminal Code (Palliative Care) Amendment Bill 2003

52nd Parliament

Criminal Code (Double Jeopardy) Amendment Bill 2007

Carers (Recognition) Bill 2008

53rd Parliament

Civil Partnerships Bill 2011

55th Parliament

Transport Legislation (Taxi Services) Amendment Bill 2015

Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Constitution (Fixed Term Parliament) Amendment Bill 2015

Constitution (Fixed Term Parliament) Referendum Bill 2015

Electoral (Improving Representation) and Other Legislation Amendment Bill 2016

Child Protection (Mandatory Reporting – Mason's Law) Amendment Bill 2016

Bail (Domestic Violence) and Another Act Amendment Bill 2017

NB: Electronic bills registers only exist from 1992 (the 47th Parliament).¹ This list is informed by extraneous information for the time prior to that.^{2,3}

¹ Office of the Queensland Parliamentary Counsel, <https://www.legislation.qld.gov.au/browse/bills>.

² J Wanna & T Arklay, *The ayes have it: the history of the Queensland Parliament 1957 – 89*, Australian National University, 2010, 165.

³ Queensland, *Parliamentary Debates*, 21 May 1992, 5439 (M Foley).