

WESTMINISTER MODEL¹ – MANDATES AND ACCOUNTABILITY

Emeritus Roger Scott
Executive Director
TJRyan Foundation

Mandates

The Labor Government's decision to scrap the patient surgery guarantee and replace it with rubbery targets is a farce and needs to be tested on the floor of parliament.

Leader of the Opposition Lawrence Springborg said the Health Minister Cameron Dick and his union bosses do not have a mandate to change the policy, it should be decided by the Parliament. ...

"It has taken less than three weeks for the Health Minister to be captured by the health bureaucracy which have never supported guaranteeing patients their surgery on time, every time.

"In order to protect patients, the LNP will be moving a motion when Parliament resumes to keep the Wait Time Guarantee.

"As we have a hung parliament it is appropriate that each member has the opportunity to vote for what their electorate wants, not what the bureaucrats and union bosses want."

Mr Springborg said at no point during the election did Labor indicate they would scrap the policy and given they only won 37 per cent of the vote, they do not have a mandate from Queenslanders.²

¹ Key Features of the Westminster System:

- The Government is chosen by the democratically elected lower house.
- The government requires the continuing support of a majority of members of that chamber to stay in office.
- The head of government is the Prime Minister, who leads a Cabinet which is responsible to the lower house.
- A loyal Opposition exists, led by the leader of the party or parties with the second largest number of seats in the lower house.
- A constitutional monarch, if one exists, who is 'above politics' and acts on the advice of the prime minister.
- There is a career public service which impartially serves the government of the day.
- The armed services are outside of politics and act on the instructions of the government.
- The rule of law prevails, with an independent judiciary, subject to the Constitution.
(<http://australianpolitics.com/democracy-and-politics/key-terms/westminster-system>)

² LNP Media Release, Deb Frecklington MP, 11.3.15: <http://www.debfrecklington.com.au/news/v/2314/parliament-to-vote-on-surgery-guarantee>.

Once upon a time, there was something called 'the Westminster model' which was seen to operate in Britain and many of its former colonial dependencies. There have been many variants applied to this model in the changing circumstances of history and geography. The biggest difference is in the existence of a single document called a constitution.

There have also been variations in the electoral system from the original first-past-the-post; there have been variations in the entitlement of categories of citizens to vote; there have been variations in the powers, membership and even the very existence of an upper house from the archaic model of the British House of Lords; there have been departures from the doctrine of individual ministerial responsibility which presumed a non-partisan public service organized into discrete departments; there have been departures over time from the notion that a Premier or Prime Minister would be drawn from the lower house of a bicameral system and her or his government would be accountable to that house. All these variations are worth discussing in the contemporary Queensland context.

But at the core of the Westminster model, normally embraced by all sides of partisan politics, is the notion that the voters for seats in the lower house are organized into geographical constituencies. The winners of each of these seats then assemble to decide who as Premier or Prime Minister has the most support amongst these winners and should be entitled to form the Government and appoint the heads of the various government departments.

This situation is unaffected by the term 'hung parliament' which is another popular term without legal or constitutional foundation. It is irrelevant to her legal right to be Premier whether one of the constituency winners is not a member of Ms Palaszczuk's party. The winners of the majority of constituencies have decided that she in turn is the winner in the competition to be Premier.

This 'home truth' seems to have been lost, at least temporarily, on those who currently constitute the official Opposition.

Since the result of the January election was declared, the Leader of the Opposition, Mr Springborg, has made numerous statements which cast doubt on the legitimacy of Ms Palaszczuk's position as Premier. One line of argument was based on the evidence from opinion polls and electoral records which has no legal standing. This evidence reveals that the LNP, then led by Mr Campbell Newman, won in total across all constituencies more votes than the ALP. It also suggested that, taking account of the preferences indicated by those who preferred minor parties and independent, the LNP shaded the ALP.

These are interesting data, particularly for future campaigns and current policy choices, but they have absolutely no bearing on the 'legitimacy' of the Palaszczuk Premiership. Ms Palaszczuk became Premier because more of the winners of individual constituencies preferred her to any alternative candidate. This is central to how the Westminster system works.

It is mischievous and misleading for Mr Springborg to argue against this - Queensland does not select its Premier on the basis of state-wide popularity contests. Denying this fact is tantamount to exploiting popular ignorance in pursuit of cheap political benefit.

The extension of this argument also seeks to undermine the basic truth in the Westminster system by exploiting ignorance. The term 'mandate' is widely used in the lexicon of parliamentary debate but it has no standing whatever in the legal powers conferred or denied by the operation of the electoral system. It only has legal strength in the Australian system with respect to referenda which are genuinely state or nation-wide popularity contest concerning particular policy options.

The notion of mandate is borrowed from Swiss or US practice where voters get to express a binding opinion on a particular policy option. It has been embraced for partisan purposes and by the media where a party – such as Mr Newman's LNP - state in advance that a particular issue will be implemented if they are returned to government. (In the case of asset sales, this was presented as an alternative to having acted during their first term in office despite their massive majority).

Their failure to be returned was immediately and very rapidly acknowledged as a failure to secure a mandate and the policy was immediately offered by the LNP as the primary reason for their defeat, later qualified by also attributing blame to the former Premier's personal limitations.

In November 2014, I invited a distinguished political scientist and political practitioner, Professor Geoff Gallop AC, Director of the Graduate School of Government at the University of Sydney, to offer a lecture on 19 February 2015 (the first anniversary of the launch of the TJRyan Foundation) on the topic of 'Mandates, promises and surprises'. By December 2014, the majority of pundits and party officials were predicting an electoral outcome which would see the defeat of Mr Newman in his own electorate and the loss of over 30 LNP seats, but the LNP was expected to remain in Government.

I anticipated that Geoff Gallop's lecture would tease out the notion of 'mandate' before the 2015 election was held, an election avowedly to be fought to provide a mandate which would overcome any resistance to asset sales by a future non-Newman LNP government. Would the loss of, say, 35 seats be sufficient to take this option off the government's agenda? Or was 20 enough? Or two?

However, by the time of Professor Gallop's lecture, Queenslanders had already cast their votes, a 'snap' election having been called unexpectedly by the Premier on 6 January 2015, with election day 31 January.³

Nonetheless, posing the question about seat numbers underlines the slipperiness of 'mandate' which is used as a convenient political rather than constitutional consideration. Professor Gallop is clear that it is not comparable to constitutional or parliamentary conventions which influence the way rules are interpreted in practice.

Gallop quotes several writers who undermine the claim by Mr Springborg that the term "mandate" has any significance in terms of parliamentary processes.

The mandate idea is quintessentially a political doctrine in two important senses. In the first instance, it exists in the realms of political debate and competition. It is not a term which is ... to be found in constitutions or laws. ... A second sense in which mandate is a political doctrine is its provenance. It has been developed by politicians themselves in the context of electoral and parliamentary activity.⁴

This suggests that the Speaker, Independent MLA Peter Wellington, can draw upon his extensive parliamentary experience to recognize that claims framed in terms of asserted mandates or lack thereof are essentially just part of the political rhetoric. They are not based on any consideration of the integral character of the Westminster model.

Accountability and implementation

Mr Springborg said there were health 'bureaucrats' who 'never supported the wait time guarantee' and were seeking to reverse the decision because it was easier.⁵

In addition to seeking to pervert the essential characteristics of the Westminster model to incorporate the alien invention of the 'mandate', Mr Springborg managed in the same statement to

³ The text of Professor Gallop's lecture can be found at http://www.tjryanfoundation.org.au/dbase_upl/Mandates_Promises_and_Surprises.pdf

⁴ John Nethercote, *Mandate: Australia's Current Debate in Context*, Department of the Parliamentary Library, Research Paper No 19, 1998-99, p.4.

⁵ Amy Remeikis, 'Support for scrapping surgery wait time guarantees to be tested', *Brisbane Times*, 11.3.15, <http://www.brisbanetimes.com.au/queensland/support-for-scrapping-surgery-wait-time-guarantees-to-be-tested-20150311-1418ss.html>

assert that a policy decision not requiring legislation should not be made by a Minister because of the malign influence of the Minister's own bureaucratic advisers.

This general analysis was illustrated by the proposition that this important issue (access to hospital waiting lists) should not be decided by the Minister at the head of the Health Department. This was because his public servants had never supported this decision and were seeking to reverse it for their own comfort. 'Union bosses' were also implicated in the decision. On the same platform as Geoff Gallop, Professor Linda Shields, in her paper 'Health Care in a "New" Queensland' outlined the complexities, contradictions and health risks associated with the implementation of the previous policy and the urgent need for change and proper consultation with Health Department staff (including nurses).⁶

Mr Springborg would have 'Queenslanders' exercise decision-making power through their member of parliament. The earlier description of the essential characteristics of the Westminster system underlined the limited extent to which electors in particular constituencies can act on behalf of all Queenslanders apart from providing a member to select a Premier.

Under the Westminster model Ministers are appointed by the Premier (in the local ALP variant, subject to consultation with caucus). She or he then takes responsibility for the conduct of all the public servants in that department and the administration of all legislation and regulations identified with that department. 'Queenslanders' get a look in through influencing public opinion and in structured processes of consultation.

During the three LNP regimes in living memory, no-one seriously advanced the sort of 'direct democracy' implied here. Under the reformed Springborg model, individual members of Parliament would be empowered to judge whether the Minister had been reduced to a cypher or puppet by his or her non-partisan bureaucrats and then set about making administrative decisions themselves. Now that would seem to require a mandate in the form of a referendum.

⁶ Linda Shields, *TJRyan Foundation Research Paper 22: Health Care in a 'New' Queensland*, 19.2.15: http://www.tjryanfoundation.org.au/dbase_upl/Health-Care-in_a_New_Queensland.pdf