

INTERIM REPORT FROM THE COMMITTEE ON A COMMITTEE SYSTEM

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1. Introduction

1.1 - Following its appointment on August 23 1983 your committee met on August 25 and has met on 10 subsequent occasions. In the period February 26 - March 2 1984 visits were made to the Federal Parliament and to the Parliaments of N.S.W. and Victoria.

Your committee records its appreciation for the advice and assistance it received from the members and staffs of those three Parliaments.

1.2 - For reasons that should become clear on reading this report, your committee believes that members of the Council should participate in a seminar on committee systems before a final report and recommendations are brought up.

1.3 - Your committee also sees a need to set out clearly at this stage the background to its deliberations and the guidelines that it has adopted in deciding whether it will recommend the expansion of committees within the Council and what form that expansion should take.

2. The role and functions of Upper Houses

2.1 - In answering the questions addressed by its terms of reference your committee has had to consider the "proper" role and functions of an upper house if only in reaching a determination on the issue of whether or not additional committees would assist in "..... the more efficient, proper and orderly passage of the business of the House including the support of its review and investigatory function(s)".

2.2 - Within parliamentary systems it is often argued that upper houses are superfluous and that any function attributed to them is equally capable of being performed by a unicameral legislature. Taken as a bald proposition the argument is probably well-founded; it is more efficient for one to make decisions than have to share that power with another, but a second opinion is often worthwhile. Moreover, societies often see a need for power sharing as a means of avoiding concentrations of political power. Your committee believes that the continued existence and activity of the Legislative Council can be justified on the foregoing grounds.

- 2.3 - Nevertheless, any institution, if it is to do more than simply survive, must take a realistic account of changing social and political attitudes. Leaving aside those who favor outright abolition, the preservation of the bicameral system lies in defining with some precision the functions a second chamber may usefully perform without being seen as a threat to the government of the day. Perhaps this is especially so where a government lacks a majority in the upper house which retains the power to amend or reject legislation.
- 2.4 - The resolution of potential or actual conflict is usually seen in reducing or confining the second chamber's legislative powers and steering it towards greater use of its investigative functions. The upshot is a concentration of Ministers of the Crown in the lower house ("unicameral responsibility") and increasing use of committees in the upper house. Your committee is impressed by the achievements of the Federal Senate which has managed to preserve its legislative powers, and their exercise, intact while expanding its functions by judicious and timely use of select and standing committees.
- 2.5 - Your committee accepts the constitutional role of an upper house as being one of revision and investigation. Its absolute veto over legislation may be likened to the reserve powers of the Crown, ie, if it is to be used at all, it is used sparingly and in cases of necessity.

3. The Role of the Legislative Council

- 3.1 - In context of the foregoing, your committee submits that the role of the W.A. Legislative Council may be expressed in terms of the following functions:
- 3.1.1 - passage and revision of legislation, especially complex or technical proposed laws, and consideration of pre-legislative proposals:
- 3.1.2 - investigation of issues affecting the State:
- 3.1.3 - scrutiny of subordinate legislation and the administration of money appropriated by Parliament:
- 3.1.4 - consideration of regional and minority interests within the State.

3.2 - In your committee's opinion a proper performance of those functions, whatever decisions as to the structure, composition and powers of the Council are made, can be enhanced by a selective but intensive use of committees. If the Council is to be, and to be seen as being, an effective chamber of review and investigation the need for off-the-floor scrutiny will become a necessity.

4. The need for committees

4.1 - Within the framework of the functions identified above, your committee makes the following observations.

One of, it not the, primary functions of the Council is to consider proposed laws. Without its concurrence, no proposed law can be enacted. Under present procedures, debates in the Council tend to follow patterns similar to those in the Assembly. In the absence of a member having a particular interest or expertise in a subject, it is likely that debate will center on the same points in both Houses. Moreover, there is frequently little discernible difference in the type of debate between second reading and committee speeches. There is a real likelihood of the committee stage becoming an extended second reading debate with a consequent loss of the value underlying a clause by clause scrutiny of the bill to ensure that the principles enshrined in the bill when given its second reading are capable of execution were the bill to be enacted in that form.

4.2 - A member who wishes to scrutinize a bill or proposed amendments is disadvantaged. First, he must rely on the minister-in-charge's second reading speech to explain the bill's purport. Very rarely are bills printed with explanatory notes.

Secondly, if the subject matter is complex, he will have to rely largely on his own knowledge of the subject supported by whatever fragments he can derive from other sources. No research facilities, apart from the Library, are provided. Members of the governing party have greater access to "official information" but its use may be limited because of time constraints or the nature of that information.

Thirdly, the time spent on a bill by the House or any member must be seen against the dynamics of the parliamentary session and the legislative program of any government. The "end of session" rush seems to be unavoidable and is endemic in legislatures, both unicameral and bicameral, throughout the parliamentary world.

Fourthly, a backbench member who wants amendments drafted is clearly disadvantaged. Parliamentary counsel are engaged in drafting a government's legislation. Requests for amendments, understandably, figure very low on counsel's list of priorities. Others who may be capable of drafting amendments (or bills for that matter) are very few and may only be available on a grace and favor basis. Whether one or more of the Clerks should be trained in drafting techniques is an issue on which clerks themselves are divided. Given the increasing demands placed on the clerks, it is unlikely that a move will be made in this area for some time.

Finally, regard must be had to party composition and discipline. Members of the governing party will most likely have resolved differences over principles in legislation before the bill is introduced. Those in opposition must make similar decisions after the bill is introduced. Where the power exists, outright rejection of legislation is a drastic step to take to prevent enactment of something opposition members are unsure about either in its nature or effects, yet it may be seen as necessary by an opposition where time, pressure and procedures frustrate proper consideration.

- 4.3 - It must be conceded at once that the proportion of contentious and/or complex legislation forms the minority of legislative programs. Conversely, it is to the benefit of both sides that that minority part of the program be subject to procedures designed to enable scrutiny without undue delay. The experiences of other Parliaments tends to support the proposition that committees appointed to consider legislation speed up scrutiny without sacrificing quality.
- 4.4 - In dealing with the revision of legislation, two aspects require consideration.
- 4.5 - First, the W.A. statute book is in appalling condition. Successive governments have been aware of the problem but the cost of rectifying the situation has been estimated, depending on which "statute book" is being discussed, as lying somewhere between \$50 000 and \$2 000 000. Your committee understands that efforts are being made to devise a method of updating the statutes accurately at the lowest cost possible.

4.6 - If it is accepted that "review", as it is applied to the Council, means more than scrutiny of proposed laws, there is no reason to prevent the Council from revising existing Acts with a view to consolidating the statute book. Such a committee could operate on a subject basis and would no doubt liaise with the Law Reform Commissions of W.A. and the Commonwealth as the case may require. It should be made clear that "statute revision" is different from "law reform" - the former is concerned with consolidating the law as it is, the latter with changes in the law arising from shifting attitudes and circumstances - and it is not intended to replace in any way the work of the Law Reform Commission(s).

4.7 - Delegated (subordinate) legislation is clearly established as part of the State's constitutional structure. Little point is served by inveighing against the principle. Unlike the United States, both federally and at state level, Westminster-style systems until recently appear to have accepted that once parliament empowered the executive to legislate, little or no oversight was required or desirable. The factors of time and complexity have eroded the principle that delegated legislation was purely administrative and not policy-making. Parliaments have conceded the point and delegated legislation, now, often makes policy as well as providing administrative forms and procedures. In addition, delegated legislation may itself vest a discretion in a designated office or official, or empower the making of tertiary-level legislation, eg, Public Service Board Administrative Instructions. All this is in addition to the subordinate legislative powers of local authorities and administrative agencies.

4.8 - As early as 1932, the Federal Senate created a standing committee to monitor and review the exercise of subordinate legislative powers, and the effects the committee has had on Federal delegated legislation are quantifiable.

4.9 - In W.A., this review function is performed by a statutory authority rather than a committee of either or both Houses.

While proper regard must be had to the worth of the Legislative Review and Advisory Committee it is more appropriate for that function to be performed by legislators through the inquiries and reports of a parliamentary committee.

- 4.10 - Consideration of regional and minority interests has usually been undertaken by national upper houses with extremely variable results.

In Australia, the performance of the Senate as a State's House has had a chequered career and the quality of the Senate's performance will depend on whether one is centralist or federalist. Nevertheless, it was certainly intended by those framing the Constitution that the Senate uphold the rights and interests of the several States from erosion by the Federal Parliament or Government.

- 4.11 - It may be argued that the Council would be hard pressed to justify a role within the State similar to that claimed by the Senate in relation to Australia.

On the other hand, it is certainly true that the State is "regionalised" and that the regions can have diverse and sometimes competing interests. It is suggested that region-oriented inquiries by the Council would provide a proper forum for regional interest groups to publish and explain their views and concerns.

- 4.12 - So too with minorities, broadly defined. Minorities come in many forms and may be constant or "issue conceived". Again, the Council could use its resources to inquire into matters that concern or affect the interests of minorities.
- 4.13 - Expressed simply, prelegislative scrutiny means that a proposed measure is referred to a committee for consideration before a bill on the same matter is formally introduced into the House. In other jurisdictions, the proposed law is accompanied by a white paper or explanatory memorandum.
- 4.14 - The advantage of prelegislative scrutiny lies in the ability of a government to have a proposed law considered without being committed to the policy it contains.
- 4.15 - For this State, it would be necessary to "re-educate" governments and induce them to forward such proposals at an early stage of development. Little would be gained from a referral under tight time constraints with the introduction of the actual legislation imminent.

- 4.16 - Your committee sees the need to retain select committees for occasional inquiries on "matters affecting the State".
- 4.17 - As to the expenditure of public money, actual or proposed, your committee believes that the Council would be better informed were a committee to take evidence on non-policy issues. Public administration is a subject on which Parliament needs to be informed and the destination and intended or actual use of public money voted by it should be more than of passing interest. It must be stressed, however, that any inquiry in this area by an upper house should proceed without questioning a government's policy underlying the appropriation.
- 4.18 - Your committee is unanimous in its view that there is a need for additional standing committees of the Council and the final report will discuss, in detail, both their worth and paragraphs (b) and (c) of the terms of reference.

