

**VICTORIA'S REFORMS: IMPLICATIONS FOR THE STANDING
OF PARLIAMENT**

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INTRODUCTION

The constitutional amendments restructuring the Victorian Legislative Council (see Tunnecliffe, 2004) will transform it from domination by the major two-parties to a multi-party institution in which neither Government nor Opposition is expected to have a majority. This was the major purpose underpinning the Labor Government's push to transform the Legislative Council and was made clear by the Premier, Steve Bracks when he announced the establishment of Constitution Commission Victoria. As he said, the Commission was created from the desire '...to ensure that [the Legislative Council] is accountable and that is (*sic*) operates effectively as a genuine House of Review' (Bracks, 2001). The government was also concerned to ensure that reforms to the Legislative Council would result in a House that was attentive to the needs of the citizens of Victoria. These aims were reflected in the Commission's terms of reference which, *inter alia*, required it to consider:

- (i) the responsiveness and responsibility of the Upper House to the Victorian people;
- (ii) the roles of and accountability of the Upper House in relation to Executive Government; ... (Constitution Commission of Victoria, 2001a)

These sentiments were echoed in the second reading of the Constitution (Parliamentary Reform) Bill 2003. Government speakers emphasised that a principal aim of the reforms was to create a change which would see the Upper House 'become a true house of review'. To achieve this objective part of the Council's review function will include 'a detailed examination of government decisions and administration, particularly through standing or select committees, and public inquiries or hearings' (Costar, 2003a).

The important role committees can play in making both Houses of the Parliament more responsive to the community was a significant finding of the Constitutional Commission. A broadening of the committee system is also a key recommendation of a recently completed research project which was conducted by the authors in partnership with the Victorian Parliament. The research arose out of concern about the declining trend in the reputation of Members of Parliament (MPs), and a feeling of disquiet that if the trend continued it could threaten the legitimacy of the Parliament itself. The research reveals among other things a feeling of disconnectedness between the community and the Parliament, a desire by parliamentarians for reforms to the parliamentary system and a limited understanding by the media of the role and function of the Parliament. These findings could be a valuable resource for the Legislative Council when it considers how the philosophical changes which underlie the *Constitution (Parliamentary Reform) Act 2003* are to be operationalised. An enhanced role for parliamentary committees, the authors suggest, would help to address the disconnectedness felt by the community.

This paper begins by briefly outlining the methodology used in the research project *Protecting the reputation and standing of the institution of parliament: a study of perceptions, realities and reforms* and highlights its major findings. It then discusses specific findings in the context of the constitutional reform of the Victorian Legislative Council which will come into effect at the 2006 election. The paper further examines the influence the proposed changes could have on perceptions of the Parliament including those held by citizens, parliamentarians and media. The latter is an important perspective as the research clearly shows that the public's attitude to Parliament and parliamentarians is strongly influenced by the media.

RESEARCH PROJECT - METHODOLOGY

The research project was conducted over the years 2001-2003. Data was collected from focus groups representative of citizens in metropolitan and regional areas of Victoria. This was followed

by interviews with Members of the Legislative Assembly (MLAs), Members of the Legislative Council (MLCs) and senior parliamentary staff. Unfortunately, at the time the interviews with parliamentarians were conducted, no serving Minister was able to make the time available to participate in the study.

The project was extended to include electorate officers and a limited number of interviews with media who regularly report on political matters. The findings point to a need to conduct more in-depth investigations with a wider range of media personnel and this will be undertaken over coming months.

FINDINGS

The research reveals contradictions in people's perceptions and expectations of MPs and the parliamentary and political process and tensions between the parliamentary and electoral roles of MPs. It also reveals a strong commitment to parliamentary democracy and the institution of Parliament amongst citizens and MPs, and a desire by citizens for a closer and more interactive relationship between Parliament and the people.

Citizens' Perceptions of Parliament

Despite not having detailed knowledge about structures and processes, people have an almost intuitive sense of the institution of Parliament as a good. They see it as fundamental to stable democracy and understand that the political system in Australia guarantees freedom of speech and freedom from reprisal for expressing political views.

While they understand that Parliament is essential to their freedoms, they have little understanding about what it achieves beyond passing laws. They do not distinguish between the functions of the Legislative Assembly and Legislative Council. Indeed, in some instances there was little distinction made between the role of parliament and government or committees or commissions. The community views parliamentarians as a homogenous group and therefore fail to distinguish between the behaviour of parliamentarians in the Legislative Assembly and Legislative Council. As a result, the behaviour displayed by members of the Assembly during Question Time is applied equally to members of the Council.

MPs share a widely held concern about the conduct and effectiveness of Question Time. Nevertheless, they do not seem to fully appreciate the corrosive effect denigrating each other has on public perceptions' of parliamentarians.

In terms of parliamentary committees, MPs see them as having greater value than does the community. They believe committees undertake valuable work and are satisfying to their members, giving them meaningful roles in the parliamentary process. Despite this, the Victorian Legislative Assembly and Legislative Council do not have a strong history of using parliamentary committees for policy related decisions.

Parliamentary committees

The Victorian system has long been founded on joint committees with members of each drawn from both Houses.¹ The effect has been to limit the autonomy of the two Houses, each from the other, and keep any committee scrutiny of government to a low level.

¹ The current structure owes its origins to the joint investigatory committee system established by statute following the 1982 election of the Cain Labor Government. Although the terms of reference, sizes and number of committees has been amended since, the model has been maintained.

The small number of exceptions to this has been Legislative Assembly committees dealing with matters unique to the House's own operations (e.g. Standing Orders, Privileges). There is little history of the Legislative Council establishing its own committees. Only a very small number of Legislative Council committees have conducted inquiries and this has been done during periods in which the Opposition has had a majority.

Even at the height of controversies over government responsibilities for the financial crises affecting the Victorian Economic Development Corporation, Pyramid Building Society and Tricontinental merchant bank², the Victorian Legislative Council sat on its hands. In contrast WA Inc³ issues were investigated by Western Australian Legislative Council committees. This may help to explain why the community knows little about the committee system in Victoria.

Parliamentary Committees - Community

Members of the community do not perceive parliamentary committees as being a prominent or useful part of the Victorian parliamentary process. People only know of a few committees, such as high profile ones that look into matters that receive extensive media coverage. There was also confusion about committees and commissions with some focus group members using commission report findings as examples of the work of parliamentary committees.

Generally the committee process is seen as being 'dragged out' rather than as a sensible way to gather information and resolve complex and/or controversial issues. As one focus group member explained, 'Parliamentary committees are seen as a process by which important issues are put on the backburner as long as possible'; 'XYZ just wants to run committees and can't make decisions'. While they are seen to be concerned with the facts and figures of a particular issue, committees are not perceived as having a strong record of achievement.

Knowledge about how committees are set up is vague and people do not know how they report. They do not distinguish the work of parliamentary committees from other day-to-day parliamentary processes.

Parliamentary Committees - Parliamentarians

In contrast to the negative perceptions the community has of parliamentary committees, the MPs interviewed express the view that committee work is often very satisfying. It is an area of parliamentary activity in which they feel they have the opportunity to work collaboratively with members of different political parties in a spirit of co-operation. Committee members feel they can really come to grips with important issues affecting the community. As one MP expressed it, '... even the hottest political issues can be sent to parliamentary committees and find points of agreement between the major parties'. Another concurred, making the point that '...party affiliations are put to the side so there is less baggage and things work well with bipartisan support...it's the other way around in Parliament as its very difficult to have consensus on many issues'.

The fact that MPs are given the opportunity to make a direct input and that their input has the potential to actually make a difference is important to them. Some committees such as the Public Accounts and Estimates Committee and the Scrutiny of Acts and Regulations Committee are seen to have special responsibilities which heighten parliamentarians' satisfaction from membership.

² Kenneth Davidson, 'The Victorian Economy and the Policy of the Cain/Kirner Government' and Hugo Armstrong, 'The Tricontinental Affair' in Mark Considine and Brian Costar (1992), *Trials in Power, Cain, Kirner and Victoria, 1982-1992*, Melbourne University Press, Melbourne

³ For a fuller explanation of what is commonly referred to as WA Inc see Elizabeth Harman, 'The 1992 WA Inc Royal Commission' and Paul Finn, 'The Significance of the Fitzgerald and the WA Inc Commissions' in Patrick Weller (ed) (1994), *Royal Commissions and the Making of Public Policy*, Macmillan, Melbourne.

The immediate benefit of committee membership includes the ability to influence committee reports and recommendations. In the medium term the sphere of influence can widen. Committee recommendations can and do lead to administrative and policy reforms affecting significant sections of the community and the content of legislation. The ability to directly contribute and to make a positive difference is held in high regard by MPs. Members also recognise that committee membership offers the opportunity to develop valuable specialist policy expertise.

These research findings support the community views reported by the Commission in its Consultation Paper. The Commission reported majority support for 'greater use of committees along the lines of the Australian Senate' (p.6)⁴ which 'must have a closer relationship with the community in general (and) seek views outside the normal lobby groups and community organisations' (p.8) (Constitution Commission of Victoria, 2001b).

Media

Media understanding of the role and functions of Parliament are of concern. Some criticisms of the institution by media personnel are quite superficial and do not reflect a serious examination of its role, whether it be debating or passing legislation, keeping the executive accountable, the work of parliamentary committees or other aspects of the Parliament's multiple functions.

Despite their superficial appreciation of the functions of Parliament, the media sees parliamentary debate as too limited and orchestrated. Real debate they say is rare as comments are usually 'controlled and wary'. The party system, one representative said, 'does not allow (MPs) to be independent thinkers'.

This concern was summed up by one journalist who said:

The Parliament – it worries me a bit because you would like to think a Parliament would be robust and constructive and I don't think it is. My perception is that it is not [and] the experience and evidence says it isn't, and I'm trying to think [of] the issue recently debated – was it the legalisation of marijuana – they debated it for a day and all party rules were dropped. They could speak on what they wanted – a social issue – marijuana, euthanasia or something like that ... even then I was disappointed because we just got such controlled and wary comments that we didn't get a level of debate that you'd hope you would.

This sentiment was mirrored in several comments suggesting that MPs, including Ministers, are constrained by party influences from expressing their personal views. This is a realistic summing up of the constraints on MPs in both Houses. However, the same constraints do not apply in terms of parliamentary committee membership, a point noted by MPs (refer above).

Despite their strong opinions, media personnel had surprising and poorly articulated understandings of the Parliament's role. There was almost no knowledge of the specific differences between the two Houses of Parliament, but Lower House MPs were perceived as more involved and active in the community.

It seems that the media and the Government share the same perception of the Legislative Council (as currently constituted) in terms of its review function. As one member of the media put it:

The perception would be that the Lower House is working and the Upper House is irrelevant and a waste of money as a house of review and a house of debate. It is certainly seen as a plush velvet red men's club mostly, even though it's got a lot of women in it now. So, I think the Lower House has a degree of respect the Upper House has not.

⁴ For detailed reviews of the Senate committees, see Senate (1990). and Senate (Australia) (1999) *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, Department of the Senate, Parliament of Australia, Canberra.(1999)

Media perceptions of parliament are important for, as Costar argues, in the context of the forthcoming reforms to the Legislative Council the modern media's fixation on political stories means that there is little interest shown in the detail of legislative programs (Costar, 2003a).

The 2006 reforms have the potential to generate a dramatically different media perception of the Legislative Council, especially if they develop a strong committee system which reaches out to the community.

A New Committee System?

The constitutional reforms have already generated informal discussion in political circles about the prospect of the Legislative Council developing a strong committee system analogous to the Senate committees. As mentioned above, such a committee system would be a major departure from Victorian practice.

The reformed Legislative Council will commence its new life with the expectation that it will behave similarly to the Senate. It will have the benefit of the over three decades of Senate committee system experience on which to draw. It will also be able to observe the performance of its interstate counterparts, for example, it could look to New South Wales (NSW) and Western Australia (WA) for guidance.

Victoria and New South Wales share the inability of the Legislative Council to block supply. However, the entire State of NSW votes as a single electorate, enabling parties with quite low levels of voter support to be elected. On the other hand, Victoria will have eight Legislative Council provinces each with five members. In New South Wales half are elected at each election; in Victoria all will be elected for four years. Since the reforms creating the existing NSW system of election, its Upper House has developed a system of active general purpose committees (Griffith, 2002). Despite the structural differences between the Legislative Councils in NSW and Victoria, it is hoped that Victoria will adopt NSW's active approach to committees.

Victoria should also look to WA with its multimember regional electorates, for it too has an active committee system. The WA Legislation Committee, for example, has made 22 reports since 2001. However, the Senate practice is probably better known to Victorian MLCs, as Senate committee activity is reported in Victoria, whereas Parliaments of the States and Territories seldom attract attention outside their own jurisdictions. In addition, State MPs are likely to have personal connections with Senators from their home jurisdiction. Hence, it is likely that Victorian MLCs will look to Senate experience and practice in the development of practices in the reformed Victorian Legislative Council.

Senate practice commonly involves committees examining legislation and policy matters and many committee inquiries involve calling for public submissions and conducting public hearings at which selected people are invited to discuss and argue their cases.

The experience of the Commonwealth Parliament confirms that these types of committee activities are more likely to be created by a House that is not under the control of the executive as is likely to be the case in Victoria after the constitutional amendments become operational in 2006.

The Senate's motivation for establishing committees appears to have been related to its desire to more effectively fulfil its own mandate to examine legislation and hold the executive to account. However, the spin-off benefit is to reach out to the community, to involve the community and to help satisfy the desire for a closer relationship between community and parliament.

The reformed Victorian Legislative Council committee activities are likely to develop more quickly than did the Senate committee system, simply because of the potential for policy transfer (Stone, 2000).

If the reforms provide for the main consideration of legislation to be moved out into the community, through legislation committees which call for public comment and hold public hearings at metropolitan and regional locations, these committees could become the interface between the Victorian community and its MPs.

MLCs' Roles

A key factor in the operation of the reformed Legislative Council will be the extent to which it provides a satisfying career for Members. As mentioned above, the research findings show that committee work is one of the most satisfying elements of a parliamentarian's career. This may prove to be even more the case for MLCs in the re-constituted Upper House. Election by proportional representation from very large multi-member provinces will create a remote relationship between MLCs and their constituents, but an active committee system would enable them to experience a different type of inter-relationship with the community and fulfil valuable roles on behalf of the Parliament.

Parliamentary-Community Relations

An important element of the success of a re-invigorated role for the Victorian Legislative Council, with a new committee system, would be its active engagement with the community. This would be greatly facilitated by the establishment of an effective parliament-community relations function to support the Council and its committees. This would also support the institution of the Parliament in its relations with the community.

CONCLUSION

The findings of the research project reveal a major potential for significant changes in the relationship between the community and the Parliament. The deliberate intent of the structural reforms to the Legislative Council has been to create a fundamental change in the normative features of the Chamber. The House will be transformed from a tepid institution which has done little in the past two decades to an enlivened house of review that will be effective in holding the executive to account.

Reforms of the type described in this paper would dramatically change the Legislative Council and distinguish it from the Legislative Assembly. Such differences could not be ignored by the media and could be expected to reverse their dismissive perceptions of the Victorian Upper House. A lively, active Legislative Council reaching out to involve the community with the support of a parliament community relations function, has the potential to enhance the standing of the Parliament and its members and thereby the legitimacy of the institution.

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