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An upper house for Queensland:
an idea whose time has come

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Current events and concerns about the decline in executive government accountability have generated renewed interest in the role and status of upper houses and the importance of bicameralism in Australia and internationally.

In Australia, the federal Coalition government's historic majority in the Senate secured at the 2004 election has renewed interest in its important review functions.¹ In Victoria, the Legislative Council has recently undergone major democratic reform with some unexpected results in the most recent election.² While the South Australian Rann Labor Government intends holding a referendum to abolish the upper house at the next election,³ by contrast in Queensland, the only Australian State without an upper house, the idea of restoring an upper house has gained attention as a means of improving executive government accountability.⁴

Internationally, so too have recent events drawn attention to the role of upper houses and the revitalisation of long-standing bicameral systems. In the United States relations between the President and both chambers of the American legislature are again in focus following Democratic control of Congress.⁵ In Canada, the new Conservative federal government has announced a review of the parliamentary system and transforming the Senate into an elected body.⁶ The German Bundesrat is also being placed under scrutiny in relation to its composition, powers and roles.⁷ In the United Kingdom, reforms

¹ See John Uhr, 2005, 'How Democratic is Parliament? A case study in auditing the performance of Parliaments', *Democratic Audit of Australia* (June 2005), <http://democratic.audit.anu.edu.au>.

² Nick Economou, 2006, 'The landslide revisited? The 2006 Victorian Election', *Democratic Audit of Australia* (Discussion Paper 38/06), <http://democratic.audit.anu.edu.au>.

³ Jordan Bastoni, 2006, 'Does the South Australian Legislative Council have a future?', *Democratic Audit of Australia* (Discussion Paper 29/06), <http://democratic.audit.anu.edu.au>.

⁴ *Improving Government Accountability in Queensland: The Upper House Solution?* Conference sponsored by the School of Law, University of Queensland and the Faculty of Business, University of Sunshine Coast, Brisbane, 21 April 2006.

⁵ Dan Balz, 2006, 'For Bush's New Direction, Cooperation is the Challenge,' *Washington Post*, 9 November, p. A01.

⁶ Compare Herman Bakvis, 2001, 'Prime Minister and Cabinet in Canada: An autocracy in need of reform?', *Journal of Canadian Studies* 35(4), pp. 60–79.

⁷ Arthur Gunlicks, 2007, 'German Federalism Reform: Part One,' *German Law Journal* 8(1), pp. 111–132.

initiated by the Blair Government have significantly strengthened the House of Lords and further changes are under discussion.⁸

This renewed interest in the roles and powers of upper houses throughout the western world reflects growing concerns about the decline of democratic accountability, the emergence of new interest groups, declining political party membership and too frequent examples of executive governments avoiding parliamentary scrutiny, miscellaneous review mechanisms (such as auditors-general) and conventions of consultation in policy development. Indeed, it is widely asserted that Westminster democracies have generally fallen into a state of what Lord Hailsham famously called ‘elective dictatorship’ in which the sovereignty of Parliament has gradually become the sovereignty of the lower house, and the sovereignty of the lower house has become the sovereignty of the government of the day.⁹ Clearly, the prospect of concentrated executive and legislative power is a problem that all parliamentary systems must address, unicameral and otherwise. The issue in terms of democratic accountability is whether the existence of a second chamber reduces the potential for governments to have complete control over the legislature and to limit trends that are consolidating more and more power in the hands of the few.¹⁰

It is against this general background, as well as a number of public scandals at a local level, that Queensland’s unicameral parliamentary system in particular has been placed under increasing scrutiny.

Queensland’s abolition of its upper house

Queensland’s nominated upper house, the Legislative Council, was abolished in 1922. The decision to abolish it was seen at the time as being motivated by short-term partisan gain to minimise external scrutiny of government actions, and to reduce the need for any

⁸ Meg Russell, 2003, ‘Is the House of Lords Already Reformed?’, *The Political Quarterly* 74(3), pp. 311–318; Meg Russell, ‘Reforming the British House of Lords: How a Little Reform can go a Long Way’, *Australian Senate Occasional Lecture*, 8 Dec 2006.

⁹ Lord Hailsham, 1976, ‘Elective Dictatorship’, *The Listener* (21 October): 496-500, p. 497.

¹⁰ Compare John Uhr, 1999, ‘Generating Divided Government: The Australian Senate’, in Samuel Patterson and Anthony Mughan (eds.) *Senates: Bicameralism in the Contemporary World*, Columbus, Ohio State University Press.

compromise in the implementation of government programs.¹¹ The then Queensland Premier Edward Theodore argued that the upper house was an undemocratic institution which placed an unwarranted check on democracy and that, even if it was reformed into an elected body, it would still serve no ‘beneficial purpose’ because it would continue to function as a restraint on the ‘progressive’ policies of the Labor-controlled lower house.¹²

The abolition of the Legislative Council took considerable time and effort. Bills for its abolition were, as expected, rejected by the upper house in 1915 and 1916, and a referendum on abolition in 1917 was rejected by a vote of 179,105 to 116,196.¹³ Moreover, following the failed referendum, further bills were again rejected by the Legislative Council in 1918 and 1919. The Labor government accordingly shifted strategy, exercising its capacity to instruct the Governor to appoint additional members of the Council between 1918 and 1920, thus securing a majority of members of the upper house, and an abolition bill was eventually passed in 1921.¹⁴ These highly suspect political processes, a distinguished Queensland Supreme Court judge has suggested, come surprisingly close to casting doubt upon the constitutionality of the abolition of the Legislative Council in the first place.¹⁵

As these events make clear, Queenslanders have never had the benefit of a democratically elected second chamber. The Legislative Council, as a nominated body, was essentially a creature of the executive government. From the time of the Ryan Labor government of 1915, the Council functioned as a check upon progressive Labor governments because a majority of its members had been appointed by previous, non-Labor administrations. Yet, as a creature of the executive, the Legislative Council was ultimately subject to the whim

¹¹ Editorial, 1922, *Courier-Mail*, 20 March.

¹² *Queensland Parliamentary Debates*, Legislative Assembly, 25 October 1921, 138, pp. 1772–7.

¹³ Under the *Parliamentary Bills Referendum Act 1908* (Qld). See A.C.V. Melbourne, 1963, *Early Constitutional Development in Australia*, Brisbane, University of Queensland Press, p. 480.

¹⁴ *The Constitution Act Amendment Act 1922* (Qld). Moreover, in 1934 a Labor government under Premier Forgan Smith sponsored a statute which sought to referendum-entrench a unicameral parliament, again without first obtaining the consent of the voters through a referendum. See *Constitution Act Amendment Act 1934* (Qld).

¹⁵ Bruce McPherson, ‘A Constitutional History of the Parliament of Queensland’ (Paper presented at *Improving Government Accountability in Queensland: The Upper House Solution?*, Brisbane, 21 April 2006).

of the government of the day, and consequently it was through an exercise of sheer executive power that the composition of the upper house was radically overhauled, and a majority of its members voted themselves out of a job. Queensland's Constitution was thus fundamentally altered through successive acts of executive and legislative power effectively concentrated in the hands of the premier and cabinet. And, indeed, the politics of Queensland have ever since been determined by this same concentration of power – executive and legislative – in the hands of a small coterie of politicians. If there was no separation of powers under the conservative regime of Premier Bjelke-Petersen, its origins are to be traced to the abolition of the Legislative Council by the progressive forces of 1922. If, instead, a thorough-going democratic reform of the upper house had been undertaken – as would later develop in the other States¹⁶ – a second chamber may have provided a check on the powers of the government in a manner that was fully democratic. As Justice Bruce McPherson has pointed out:

In fashioning an instrument of unlimited power for their own use the politicians of that era lacked the wisdom to foresee, or perhaps to care, that control of it would one day pass to their opponents. Those who now regret the ambit of executive authority in Queensland can be in no doubt who were responsible for creating it.¹⁷

Queensland's present unicameral parliament

The abolition of the Legislative Assembly has led to what many commentators regard as Australia's most executive dominated system of government. Queensland's unicameral legislature exacerbates the 'winner takes all' approach characteristic of Westminster systems regardless of which party is in power. Throughout the Bjelke-Petersen era (1968–1987), complaints about executive domination were commonplace,¹⁸ but executive

¹⁶ Bruce Stone, 2002, 'Bicameralism and Democracy: The Transformation of Australian State Upper Houses,' *Australian Journal of Political Science* 37(2), pp. 267–281.

¹⁷ Bruce McPherson, 1989, *The Supreme Court of Queensland 1859–1960: History, Jurisdiction, Procedure*, Sydney, Butterworths, p. 399.

¹⁸ Evan Whitton, 1989, *The Hillbilly Dictator: Australia's Police State*, Sydney, ABC Enterprises for the Australian Broadcasting Corporation, pp. 184–185; Roger Scott, Peter Coaldrake, Brian Head and Paul Reynolds, 1986, 'Queensland', in Brian Galligan, (ed.) *Australian State Politics*, Melbourne, Longman Cheshire, pp. 58–61

domination was a feature of Queensland politics before Bjelke-Petersen,¹⁹ and it has continued to characterise Queensland politics thereafter. Recent royal commissions,²⁰ external reviews,²¹ and whistleblowers have highlighted how Queensland's weak unicameral parliamentary system has encouraged a lack of ministerial responsibility, party-political determination of public service appointments and secrecy in government decision making. It is these issues that lie at the heart of the State's hospitals, childcare and energy scandals. The 2005 Davies Royal Commission into overseas doctors in Queensland's public hospitals identified how successive health ministers and cabinets avoided freedom of information laws and deliberately distorted the accurate public reporting of public health issues. Davies concluded that successive Coalition and Labor governments had released information on hospital waiting lists that 'was misleading' and had acted 'contrary to the public interest'²² in relation to the overseas doctor scandal and the management of the hospital system.

Overall, Queensland's present parliamentary system offers few opportunities for external probing of executive government actions and even fewer pressures to reveal information. Royal Commissions are instituted only when the magnitude of a crisis makes it unavoidable. Government in Queensland is for major party and big institutional players only. There are few countervailing influences and little opportunity to discover what is happening and for representation of regional and minority interests. Despite efforts to establish a strengthened committee system in the aftermath of the Fitzgerald Inquiry, parliament remains hamstrung in its capacity to scrutinise the government because the government enjoys a controlling majority in the Legislative Assembly.²³ Non-parliamentary agencies, such as the Crime and Misconduct Commission and occasional royal commissions have helped to hold the administration accountable, but their roles are

¹⁹ Peter Coaldrake, 1985, 'Parliament and the Executive,' in Allan Patience, (ed.) *The Bjelke-Petersen Premiership 1968–1983*, Melbourne, Longman Cheshire, pp. 220–223

²⁰ In 1989 there was the Fitzgerald Commission of Inquiry and in 2005 the Morris and Davies Royal Commissions into the Bundaberg hospital scandal.

²¹ The Criminal Justice Commission has conducted many reviews of individuals, local government and government departments.

²² The Royal Commission into Queensland Health (Davies), 2005, Queensland Government, para 6.564

²³ Janet Ransley, 1992, 'Reform of Parliamentary Processes: An Assessment,' in Andrew Hede, Scott Prasser and Mark Neylan (eds.) *Keeping them Honest: Democratic Reform in Queensland*, Brisbane, University of Queensland Press, pp. 149–164.

tightly circumscribed by legislation, their short term duration, and their lack of democratic legitimacy. Governments and administrations need to be scrutinised not only for traces of corruption and serious misconduct, but also for incompetence and poor policy choices. Only representative institutions which are not controlled by the government have both the capacity and the legitimacy to investigate on all of these levels, following the trail wherever it leads.

When things go wrong in Queensland the State's weak parliamentary system, watered down freedom of information laws, and government secrecy, means it is difficult to know what is happening. When scandals erupt it is even more difficult to allocate responsibility. Thus, despite the present Queensland government's commitment to reform the health system, it failed to establish a parliamentary committee to monitor health issues as proposed by the 2005 Forster Review of Hospital Management, and thus an opportunity to establish a connection between executive government administration and parliamentary public accountability was squandered.²⁴

Reintroducing an upper house in Queensland

The reintroduction of an upper house in Queensland would be no simple panacea; much would depend upon its composition, power and procedures. However, in the specific circumstances of the Queensland political system, an appropriately designed second chamber would have the potential to provide an effective mechanism by which government decisions – and, indeed, government indecisions – could be more closely scrutinised, evaluated and held to account. A revived upper house could help overcome Queensland's severe 'democratic accountability gap.'

It is sometimes argued that electoral reform and, in particular, the introduction of proportional representation²⁵ would not only make the parliament more democratically representative, but would also help to strengthen its capacity to hold the government to account. However, while reform along these lines would almost certainly help, the

²⁴ *Queensland Health System Review*, (Forster Review), 2005, September, p. 337; see various comments on the Forster Review, *Courier-Mail*, 1 October 2005.

²⁵ As in New Zealand, for example.

Legislative Assembly would remain limited in its capacity to become a house of review because it would remain, fundamentally, the house of government—governments would continue to command the support of a majority in the house. Proportional representation in a unicameral parliament can certainly strengthen the hand of individual members and parliamentary committees both to scrutinise and challenge the government, but the corporate powers of an entire house of parliament are of an altogether different order to the powers of members and committees. Only when there is a second chamber possessing near-equal powers to the first can a government be confronted by the powers and resources of a house of parliament over which it does not have decisive control.

Three key issues must be addressed in order to re-establish an upper house in Queensland.

First, electoral realities dictate the need to ensure that a new upper house does not mean more elected officials and added costs. Even though there are good design reasons to maintain a reasonably high proportion of members of parliament compared to the population on one hand and the size of the ministry on the other,²⁶ a second chamber which meant an increase in the total number of ‘politicians’ would be doomed to failure if such a proposal was put to the people at a referendum. Reducing the number of the present 89 member Legislative Assembly (one of the largest lower houses in Australia) by about 35 members to allow a similar number to be elected to the new upper house is one possible solution.

Second, an upper house should not be a mirror image of the existing lower house chamber. Proportional voting with multimember electorates based on three or more regions would overcome this problem. Such an approach would provide an added bonus of giving regional and minority interests the potential for representation in parliament.

²⁶ Bruce Stone, 1998, ‘Size and Executive—Legislative Relations in Australian Parliaments,’ *Australian Journal of Political Science* 33(1), pp. 37–55.

Third, the powers of a revived upper house should not be seen as causing deadlocks between the two houses. Improved accountability, not policy gridlock, should be the prime aim of a new upper house. Reforms in Victoria to overcome this potentially difficult constitutional problem provide guidance on this matter.

The problems of establishing an upper house are not constitutionally, administratively or even politically insurmountable. What we need is political will to put the issue on the agenda, a commitment by all the parties to improve accountability and an independent process to progress the issue.²⁷ The people through a referendum will do the rest.

Conclusions

Queensland's present unicameral legislature fails to deliver democratic practice, effective citizen participation, regional and minority representation, and accountable government. An upper house for Queensland is an idea whose time has come, but it needs to be accompanied by other reforms that reinforce notions of executive accountability such as improved freedom of information legislation and 'whistleblowing' laws, and a public service insulated from political interference. The issue is not whether Queensland should have an upper house, but how and when it should be introduced.

²⁷ The Borbidge Coalition government (1996–1998) seriously contemplated submitting a referendum proposal for the reintroduction of an upper house. However, political events and other controversies intervened and the Borbidge government was swept from office without having the opportunity to put the proposal to the people. On the eve of the last Queensland election (September 2006) the Government (predictably) opposed the idea very strongly, while the Opposition resolved not to make the reintroduction of an upper house a major plank of their platform.