



Submission To Public Accounts And Estimates Committee

I seek to address the issues raised by Terms of Reference given to the Public Accounts and Estimates Committee to inquire into the options for the next phase of strengthening government and parliamentary accountability in Victoria. In particular the Committee is required to consider:

- a. parliamentary committees;
- b. question time procedure;
- c. standards of parliamentary behaviour;
- d. overseas travel by members of Parliament;
- e. modernisation of Parliament including the permanent abolition of wigs and other archaic practices;
- f. reform of the process of dealing with petitions.

Background To The Need For Reform

All who seek good government under the Westminster system will hope that the Committee is rewarded with success in its undertaking. Good government depends on the right balance between Parliament, the Executive and the Judiciary. The right balance will ensure that each arm of government will be kept accountable. This is a proposition oft repeated over a long period of time, but never quite realized.

How can appropriate restraints be placed on the Executive? Does Parliament do so effectively? Or do the Courts provide the only true and consistent discipline on Government?

The Australian Law Journal for January 1991 contains *the Blackburn Lecture* delivered by The Honourable Justice Brennan, as he then was, on the 7th August 1990 and entitled "*Courts, Democracy and the Law*". In it he said:

"The theory of responsible government, which made the fate of an Executive Government dependent on the confidence of the Parliament was, so to speak, turned on its head by the political dependence of the majority members of the Parliament on the Executive Government. Policy formulation became primarily an executive function. As the pressure on legislative time intensified, a virtual monopoly over initiatives for legislation passed to the Executive Government. The influence of Ministers in debate, whether in the party room or Parliament, was enhanced by the support they could command from the public service. These developments virtually destroyed the Diceyan theory."

Later in his lecture Justice Brennan said:

"As the wind of political expediency now chills Parliament's willingness to impose checks on the Executive and the Executive now has a large measure of control over legislation, the courts alone retain their original function of standing between government and the governed."

Those comments raise the matter of the Party System. Indeed they raise the Factional System.

The Party System.

The merits of the party system should not be excessively discounted; nor should its shortcomings.

The party system provides a major check on the operations of both Government and Parliament. Those out of power scrutinise those in possession of it. Those holding it strive to put those lacking it to the test. The dynamics thus created constitute a powerful means of bringing each of the protagonists to account. In my view the party system must be kept.

On the other hand the party system allows the Executive to exercise what at times becomes unfettered power. This is a point often made by respected commentators and authorities. The following quotations point out that Parliament is a powerful institution that can be despotic. Accordingly where the Executive takes control of the Legislature it too can be despotic.

In *City Of Collingwood v The State Of Victoria and Another[No 2]* [1994] 1 V.R. page 652 the Full Court referred with respect to a decision of Justice Molesworth made in 1862 in which he said Parliament was despotic. [See *Dill v Murphy* {1862} 1 W.& W.{L} 342 at page 362.

His Honour said:

“The first section of the Constitution Act, in its terms gives the Legislature of Victoria the same unlimited power over its subjects as possessed by the Imperial Legislature over its subjects. This power of the Victorian Legislature is I apprehend, subject to the control of the Imperial Legislature, and I see nothing absurd in this despotism within a despotism.”

E.C.S. Wade wrote an introduction to the tenth edition of *the “Introduction To The Study Of The Law of The Constitution”* by A.V. Dicey published in 1960. In it he said:

“It must not be forgotten that the inevitable consequence of the supremacy of Parliament in the legislative field is that there can be no check upon the unscrupulous use of power by a Government which finds itself in command of a majority in the House of Commons.

Parliament The Courts And Civil Rights

Parliament is not an institution assured, by its nature, to be ever ready to protect and augment rights and liberties. The passing of the “Communist Party Dissolution Act 1950” is an example of this proposition, and is now distant enough in the past to be used without seeming partisan. Both Government and Opposition voted for the measure. The High Court, and later a referendum, put an end to the only attempt by the Federal Legislature

to make a political party illegal by force of a statute directed specifically against it.”

The Courts have done outstanding work over the decades. Nevertheless Parliament too has an obligation to do its part in making our society truly civil.

In this context it is right and proper to acknowledge the reforms already carried out by Parliament on the initiative of the Government. In my view the most important of these as far as parliamentary and government accountability is concerned is the change in the manner of voting for the Legislative Council. It means the Executive's power in Parliament is now more restrained.

Parliamentary Committees

Of the six matters set out in the terms of reference that to do with parliamentary committees is the most important.

I served as a senator on a number of parliamentary committees from 1985 to 2002. They provided the best way of bringing accountability to Parliament and to the Government.

Since leaving Canberra I have given talks papers about committees and I forward some shortened and edited version of one of them to you.

Question Time Procedures

In my view question time has long been dysfunctional where a legislative chamber is within the control of a particular party. Things improve where no party has continual domination but not by much. Reform of the Legislative Council was a major step for the good.

Standards Of Parliamentary Behaviour

There is little doubt that where debate is courteous its quality improves. Debate can be rigorous and effective and at the same time gracious.

To achieve better debate the culture of how a legislative chamber goes about its business must change. That depends upon what its members are prepared to do. There lies the problem.

Overseas Travel By Members Of Parliament

This is a good thing. It must be for better parliamentary and government performance.

Ministers do more travelling than other parliamentarians. This is an illustration of resources being applied in a lopsided way. Parliamentary committees ought to travel more.

Modernisation Of Parliament

Standing and sessional orders ought be examined to see if the culture of theParliament can be approved

Petitions

I am not sure how the Victorian Chambers handle petitions. Canberra seems to deal with them fairly peremptorily.