PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

INQUIRY INTO STRENGTHENING GOVERNMENT AND PARLIAMENTARY ACCOUNTABILITY

BRIEFING PAPER BY THE CLERK OF THE LEGISLATIVE COUNCIL

This Briefing Paper is prepared by the Clerk of the Legislative Council to assist the Public Accounts and Estimates Committee in its inquiry into the options for the next phase of strengthening Government and Parliamentary accountability in Victoria. In particular, the Committee is interested in my views on the following aspects of the terms of reference:

(b) question time procedure;
(e) modernisaton of Parliament including the permanent abolition of wigs and other archaic practices;
(f) reform of the process of dealing with petitions.

I note that the Committee is not seeking my views on the remaining terms of reference namely:

(a) Parliamentary Committees;
(c) Standards of Parliamentary behaviour;
(d) Overseas travel by Members of Parliament.

I wish to begin by making some preliminary observations regarding the inquiry itself. There are two particular aspects of the inquiry with which I am concerned. Firstly, I believe that it is very doubtful that the inquiry terms of reference are within the Committee's functions as prescribed in the *Parliamentary Committees Act 2003.* Secondly, as the terms of reference largely involve procedures in the Houses, any reforms in this area are a matter for the Houses themselves to determine. The process which would normally be followed where reforms to procedures are proposed is for the Houses to refer those matters to their respective Standing Orders Committees for consideration.

Often, procedural reforms are introduced as a trial Sessional Order following a report from the Standing Orders Committee. Any reforms which might be recommended by the Public Accounts and Estimates Committee in this inquiry should be considered by the Houses through their Standing Orders Committees. The Public Accounts and Estimates Committee will need to have regard to the differences in procedures between the Houses. Different precedents and cultures often determine the way the rules are interpreted and applied by the Chair. It cannot be automatically assumed that what is recommended by PAEC will be implemented in both Houses, especially in the Legislative Council.

However, I acknowledge that the Legislative Assembly has referred the inquiry to the Committee and am therefore happy to help the Committee where possible.

QUESTION TIME PROCEDURE

Question Time is a fundamental part of the Westminster Parliamentary system. It is a time when the accountability of the Government is demonstrated most clearly and publicly. Questions without Notice were first introduced into the Legislative Council on 27 April 1976 when by agreement between the parties ten minutes was allowed for Members to ask questions. On that first day nine questions were asked with three of those being from Government Members. The current Standing Orders do not describe an overall time for questions. Instead, in accordance with practice, ten questions are asked each day with five of them being asked by Government Members and the remaining five being apportioned to non-Government Members on a proportionate basis.

Given the importance of Question Time it is crucial it operates effectively. However, in most Parliaments including the Legislative Council, Question Time is, in my view, largely ineffective as an accountability mechanism. The problems are threefold. Firstly, in accordance with long standing practice, Ministers do not have to answer questions but if they do the answer must be relevant and responsive as determined by the Chair. Secondly, Ministers more often than not will not fully answer questions from non-Government Members and often spend much of the answer attacking the Opposition or other non-Government Members. Thirdly, Government Members usually use Question Time to publicise Government policies and actions.

It should be noted that the President has given several rulings in the current Council that Ministers will not be deemed to be relevant and responsive if they make a personal attack upon the Member asking the question or overtly criticising the Opposition or other non-Government Members. On one occasion, a Minister has been suspended for 30 minutes for failing to comply with the President's direction to not debate the answer he was giving.

Despite my scepticism regarding the effectiveness of Question Time there have been three recent innovations which have been useful. Firstly, the introduction of supplementary questions where the Member who asked the question can follow up with a supplementary question provided it is related to the original question and the Minister's answer. Secondly, the introduction of time limits on questions and answers which were introduced in the 55th Parliament but have been removed by Sessional Order in the new Parliament. They were beneficial in regulating Question Time, ensuring that Ministers did not give long winded answers and generally made the procedure more efficient. Thirdly, the new Sessional Order which enables questions to be asked of Council Ministers representing Assembly Ministers.

Suggestions for Improvement

- The convention that Ministers should not be compelled to answer questions should be abandoned. Ministers should not have the capacity to refuse to answer questions and should be subject to sanction from the House should they do so.

- Ministers must fully answer questions in a direct, succinct and practical manner and be given no latitude to debate the answer and attack other Members. The Chair should have the power to determine whether the Minister has properly answered the question.

- Increase the time allowed for Questions without Notice to 60 minutes each day and remove the limit of 10 questions being asked each day.

- Reintroduce the capacity for motions to be moved to take note of answers given to Questions without Notice at the conclusion of Question Time. Such practice exists in the Australian Senate.

- Questions without Notice could also be limited only to non-Government Members. If this was the case, as an alternative, greater use could perhaps be made of Ministerial Statements and consideration could be given to a procedure in the Legislative Assembly of Western Australia where brief Ministerial Statements, usually of a few minutes duration, can be made. A new procedure, perhaps called Government statements or announcements, could also be a possible alternative. These alternatives would enable proper consideration to be made of Government announcements through the moving of a take-note motion and would be consistent with and enhance the Council's capacity to scrutinize the actions of the Executive.

- Time limits on asking questions and giving answers should be reintroduced.

MODERNISATON OF PARLIAMENT INCLUDING THE PERMANENT ABOLITION OF WIGS AND OTHER ARCHAIC PRACTICES

It is curious why the abolition of wigs has been specifically identified as an archaic practice worthy of permanent abolition. Wigs have not been worn in the Legislative Council since 2002 and Windsor Court Dress was last worn in 2000. No wigs or Windsor Court Dress were worn at the 2003 and 2006 Openings of Parliament which have traditionally been regarded as full ceremonial dress occasions. It is hard to conceive the reintroduction of such attire.

As to the modernisation of Parliament generally, I can advise the Committee that the Legislative Council has recently completely revised its Standing Orders on two occasions following reviews by the Standing Orders Committee in 2002 and 2006. As a result of the recommendations from the Standing Orders Committee 58 obsolete Standing Orders were omitted. The Standing

Orders are now written in clearer and concise language and in gender neutral terms. The new Standing Orders enshrine many of the long standing, accepted practices of the House in the Standing Orders and generally have improved the efficiency of the Council's business.

Recent innovations in the Council have included:

- Introduction of 90 second statements each day where Members can simply raise a matter of concern or interest.

- Introduction of statements on reports and papers which have been tabled in the Council for 60 minutes on Thursdays where Members can speak for up to five minutes on any paper whether it be an annual report, a planning scheme or any other document which has been tabled.

- The capacity for a motion to be moved to take note of committee reports at the time of presentation.

- Introduction of a citizen's right of reply procedure to adverse statements made against them by Members in the Council.

- Establishment of a Legislation Committee.

- Incorporation of second reading speeches in Hansard.

- The streamlining of proceedings whereby the Chair is no longer required to put superfluous questions in relation to the passage of Legislation, eg. when the Council resolves itself into a Committee of the Whole and when a Bill is read a third time and passed.

- A procedure similar to the New South Wales Legislative Council for the production of Government documents.

- The ability of Members to seek explanations from Ministers who fail to answer Questions on Notice within 30 days.

The Legislative Council was also one of the first houses in Australia to allow the use of desktop and laptop computers in the Chamber.

Daily Adjournment Debate

It is fair to say that the Council has undergone a significant transformation in recent years in the way that it conducts its business. However, an exception to this is the Daily Adjournment Debate where Members can raise matters for the consideration of Ministers. When the procedure was first introduced it was regarded as an opportunity for Members to raise matters regarding their electorates which required urgent consideration. However, since then the matters now raised on the Adjournment range across all aspects of Government administration, both State and Federal. In some cases Members see the Adjournment debate as an extension of Question Time.

Unfortunately, the Adjournment Debate has become largely ineffective principally because the Minister at the table simply notes the matters which have been raised and indicates that they will be referred on to the relevant Minister for consideration. In the case of matters raised for Ministers in the Assembly this is understandable; however as all Council Ministers no longer attend the Adjournment debate, the responses to matters raised for their consideration are rarely on the public record. I understand that Ministers usually respond by letter to the Member concerned. The Adjournment Debate therefore seems to exist principally for the Member raising the matter to have his or her remarks on the public record.

I believe that the Adjournment Debate adds little, if anything, to the Council's scrutiny role and should be abolished. As an alternative, I would expand Members' Statements from 90 seconds to a maximum of five minutes with a one hour time limit on the new procedure where Members could raise any matter of concern. The Member could ask a Minister to take action on the issue or simply raise a matter of interest. A consequence of such a change would be that the Council would then automatically adjourn at 10.00 pm each evening unless a motion to extend the sitting for the further consideration of business is agreed to.

Other than my comments regarding the Adjournment debate, it is therefore not clear to me what other archaic practices envisaged by the terms of reference should be permanently abolished.

REFORM OF THE PROCESS OF DEALING WITH PETITIONS

The presentation of petitions is an ancient practice derived from the Parliament at Westminster. *May's Parliamentary Practice* 23rd Edition at page 932 stresses the importance of petitions by quoting the following resolution of the House of Commons in 1669:

> 'That it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and the House of Commons to receive the same'.

The new Standing Orders I referred to earlier in this paper have made some changes to the process for dealing with petitions. The requirement for the petition to end in a prayer has been removed, as has the prohibition on references to debates in Parliament. A petition may also now be in English or accompanied by a certified English translation. All these changes have helped modernise the process.

As yet in the Legislative Council there has been no consideration of the introduction of e-petitions as recommended by the Scrutiny of Acts and Regulations Committee in its report in the inquiry into electronic democracy. However, as long as adequate safeguards are in place there is no reason why electronic petitions cannot be introduced into the Legislative Council. A useful guide to e-petitions can be found in Standing Order 119 of the Legislative

Assembly of Queensland. Sub-sections (4) to (11) specifically deal with the concept of e-petitions.

A relevant issue for the Committee to consider is what happens to petitions once they are tabled. I am sure this would be of interest to many petitioners, particularly those who have organised the petition, if the matter is one of some controversy. The Standing Orders require the Clerk to forward a copy of the petition to the relevant Minister and the petition itself is filed with the Council's original documents. No further action is taken. The Minister is not required to respond to the Council although he or she may do so to the petitioners privately. I also cannot recall when a petition was debated in the Council. The Legislative Council of Western Australia has a procedure which guarantees a form of follow up to a petition which has been tabled. After the petition has been tabled it is referred to the Environment and Public Affairs Committee for consideration in the report. In considering the petition, the Committee usually seeks the advice of the Member who presented the petition, the petitioners who promoted it and the Minister in whose area of responsibility of the subject matter of the petition falls. The principal petitioners are advised of the outcome of the Committee's consideration of the petitions and the Committee may present a report to the Council. Such a procedure is worthy of consideration in the Legislative Council of Victoria.

I trust the comments in this paper are of assistance to the Committee.

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