

STATUTE LAW REVISION COMMITTEE

PROGRESS REPORT

ON THE

CONSTITUTION ACT 1975

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THE ROLE OF UPPER HOUSES OF PARLIAMENT  
(Interim Report)



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*Ordered to be printed*

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D No. 1/1982

STATUTE LAW REVISION COMMITTEE

MEMBERS

Mr Aurel Smith, M.P. (Chairman)  
Mr C. T. Edmunds, M.P. (Deputy-Chairman)  
The Hon. Joan Coxsedg, M.L.C.  
Mr W. T. Ebery, M.P.  
The Hon. D. M. Evans, M.L.C.  
The Hon. J. V. C. Guest, M.L.C.  
Mrs J. T. Patrick, M.P.  
The Hon. N. B. Reid, M.L.C.  
Mr B. A. E. Skeggs, M.P.  
Mr T. C. Trewin, M.P.  
The Hon. J. M. Walton, M.L.C.  
Mr J. T. Wilton, M.P.



Joint Secretaries:

W. R. Tunnecliffe

Mrs E. Chandler

EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS  
OF THE LEGISLATIVE COUNCIL

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TUESDAY 8 SEPTEMBER 1981

- 15 STATUTE LAW REVISION COMMITTEE - The Honourable A. J. Hunt moved, by leave, That the Honourables Joan Coxsedge, D. M. Evans, J. V. C. Guest, N. B. Reid and J. M. Walton be members of the Statute Law Revision Committee, and that the said Committee have power to send for persons, papers and records.

Question - put and resolved in the affirmative.



EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE  
LEGISLATIVE ASSEMBLY

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TUESDAY 8 SEPTEMBER 1981

- 19 STATUTE LAW REVISION COMMITTEE - Motion made, by leave, and question - That Mr Ebery, Mr Edmunds, Mrs Patrick, Mr Skeggs, Mr Smith (*South Barwon*), Mr Trewin and Mr Wilton be Members of the Statute Law Revision Committee; and that the Committee have power to send for persons, papers and records (*Mr Thompson*) - put and agreed to.

## REPORT

The STATUTE LAW REVISION COMMITTEE, appointed pursuant to the provisions of the Parliamentary Committees Act 1968, has the honour to report as follows:

### INTRODUCTION

1 This is an Interim Report to the Parliament on that aspect of the Committee's Inquiry into the Constitution Act 1975 relating to the Role of Upper Houses of Parliament, and in particular the Victorian Legislative Council. It was the Committee's intention to present its report on this subject during the 1982 Autumn Sitting. However, with the dissolution of the Legislative Assembly on 24 February 1982, that is now not possible. This Interim Report is therefore designed to advise the Parliament of the progress which has been made in the Inquiry and of some conclusions which have been arrived at by the Committee.

2 The Committee commenced hearing evidence on the Role of Upper Houses on 6 March 1979 and to date 30 persons have appeared before the Committee both in Melbourne and during a visit to Hobart in July 1979, resulting in 641 pages of transcript. Discussions, of which a transcript was not taken, have been held with several persons during visits to Brisbane and Darwin. The Committee has also considered a number of written submissions and letters. A full list of those persons who have assisted the Committee will appear in its final report on the subject.

### THE COMMITTEE'S APPROACH TO THE INQUIRY

3 At the outset of the Inquiry, the Committee decided not to confine itself to an examination of the operation of the Victorian Legislative Council. It decided that a more constructive approach would be to look at the Parliamentary system as a whole in an attempt to highlight any weaknesses and deficiencies which may be apparent. Having established this as a basis, the Committee then considered whether there was a role for the Legislative Council in making the Parliament a more effective body.

4 Several issues emerged during the Inquiry relating to the weaknesses in the Parliamentary system and a proposed role for the Legislative Council. With regard to the Parliamentary system, a common source of concern to all



witnesses and to the Committee was the increasing power of the Executive government. The Committee readily agrees that because of the rapidly growing power of the Executive there is a need for Parliament to strengthen its review of Executive activity. The discipline of the party system exercised to the extent that it is in Australia is also seen by the Committee to be a problem hampering the effectiveness of Parliament as an institution.

5 In the case of the Legislative Council, obviously the initial question to be resolved was whether it should be retained. The remaining issues relating to any proposed role for the Legislative Council are dependent upon that question being resolved in the affirmative and the Committee proceeded with the Inquiry on the assumption that, at least for the time being, there would be an Upper House in Victoria. Such proposed role for the Legislative Council could be largely determined by the following issues:

- (a) should a Standing Committee system be established in the Legislative Council and would it require guaranteed Constitutional support for its funding?
- (b) should the Legislative Council contain Ministers and retain the powers to initiate legislation?
- (c) should any change be made to the Legislative Council's powers to reject or amend Bills?
- (d) should the Legislative Council retain the power to reject Appropriation or Supply Bills?
- (e) are the present provisions relating to disagreements between the Houses satisfactory, if not, what changes are desirable?
- (f) what system of election should be employed for Members of the Legislative Council?

6 It is not proposed in this Report to detail the arguments made in relation to those issues which have arisen during the Inquiry but merely indicate some views which the Committee has formulated on those issues. The Committee realizes that the comments made in this Report are not binding upon its successor but it would expect such new Committee to review all aspects of the Inquiry as a matter of priority with a view to making a final report to the Parliament sometime during 1982.



CONTROLLING THE EXECUTIVE: A MAJOR REASON FOR RETAINING  
THE LEGISLATIVE COUNCIL

7 The Committee sees this level of Executive government power as the main threat to Parliamentary supremacy. In the Committee's view there are three main ingredients of the problem. Firstly, there is the vast growth in the number of public servants, and in the public sector generally and the lack of adequate controls on public service decision-making. Secondly, there is the ever increasing growth of subordinate legislation and the need for their scrutiny on far wider principles than the Subordinate Legislation Committee is presently permitted to do. Thirdly, there is the lack of accountability in the spending of public moneys.

8 The Committee considers that Parliament must act swiftly to take action to overcome this problem. In view of the main task of Parliament to act in the best interests of the people and the many criticisms of Upper Houses, the Committee considered the effectiveness of bicameral as opposed to unicameral Parliaments. By a majority decision it concluded that the better way of providing for Executive government control is by retaining the bicameral system in Victoria but with an Upper House with significant reforms. The Committee agrees with many of the criticisms of the Legislative Council but views those arguments as supporting the reform of that House, rather than providing grounds for its abolition.

9 In the Committee's view, the principal reform to be effected should be the establishment of a Standing Committee system similar to that which operates in the Senate. Such Committees would have as their prime function the examination of legislation, regulations, annual reports, departmental estimates and monitoring the administration of Government policy. The Committee feels that the establishment of a Standing Committee system, with a guarantee of adequate resources to support its work, is the best way of providing for an effective review of Executive decisions and will ensure a distinctive role for the Legislative Council which is now lacking.

CONCLUSIONS ON THE OTHER ISSUES

10 Having concluded by a majority decision that it is desirable that the Legislative Council be retained, the Committee then examined other aspects relating to its proposed role. Witnesses were divided on the most important questions of whether the Legislative Council



should contain Ministers and whether it should have the power to initiate legislation. The Committee is firmly of the view that the Legislative Council retain its power to initiate legislation other than money Bills although some Members were of the opinion that the power should be confined to the initiation of private Members Bills. On the question of removing all Ministers the Committee was evenly divided but it concluded by a majority decision that a reduction in the number of Ministers would facilitate the performance of the Legislative Council in its new role.

11 The Committee considered the many calls for curtailment of the Legislative Council's powers in relation to Bills, including its power to reject Supply and Appropriation Bills. It does not favour any reduction of the Legislative Council's powers in this respect although it does consider the present provisions relating to disagreements between the Houses to be unsatisfactory. The Committee therefore takes the view that, as a consequence of the rejection of a Supply or Appropriation Bill by the Legislative Council, there should be an automatic double dissolution of both Houses of Parliament, unlike the present situation whereby, as a first step in resolving the disagreement, the Legislative Assembly only is dissolved. In relation to other Bills which are the subject of disagreements, the Committee favours a simplification of the present deadlock procedure without providing for an automatic double dissolution.

12 The question of electoral systems together with tenure of office of Legislative Council Members and the desirability of conjoint elections is a most complex matter upon which the Committee would need considerable time for further study. Many suggestions have been put to the Committee that proportional representation should be the method used to elect Members to the Legislative Council, but at this stage the Committee has reached no conclusion on this or on the question of conjoint elections.



Committee Room  
23 February 1982