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Topic:

Contemporary and future challenges for procedural and administrative reform: Are there real differences for upper and lower Houses relating to such things as –

- **Government v non-Government majority Houses**
- **Executive animosity towards the House(s)**
- **Partisan pressures on Presiding Officers and the role of advice from Clerks and parliamentary officers**
- **Executive control of Parliament's appropriation**
- **Resource priorities such as committees**
- **Opportunities to engage the public balanced against traditional rules and restrictions?**

Introduction

There is a long tradition of gentle banter between the members and officers of upper and lower houses. It is not unknown for a lower house to find itself dismissed as a rubber stamp for the government, a *fait accompli* corrupted by party politics and about as effective in holding the government to account as is Question Time. Equally, upper houses have on occasions in the past been dismissed as unrepresentative debating chambers, lacking any kind of mandate, generating a lot of hot air and filled with senior citizens whose best is, to put it gently, behind them.

This paper explores some of the areas of real difference between the houses arising from their different electoral systems and roles and functions within the system of government. But it also argues that there are areas of real commonality between the houses, and importantly too, real commonality between the officers of the houses, underlain, one suspects, by a profound and deep seated respect for the different roles that the staff of the respective houses play.

The paper draws heavily on examples from the NSW Legislative Council and the Western Australian Legislative Assembly, being the houses in which the authors work.

Government v non-government majority houses

The following table summarises the electoral system in the federal, state and territory parliaments around Australia and New Zealand.

	House	Term	Electoral system
Cmth			
	House of Rep[s]	3 years	Preferential voting–full allocation of preferences
	Senate	6 years	Proportional representation—'Senate' model
NSW			
	Legislative Assembly	4 years	Preferential voting–optional allocation of preferences
	Legislative Council	8 years	Proportional representation—variation of 'Senate' model
Vic			
	Legislative Assembly	4 years	Preferential voting – full allocation of preferences
	Legislative Council	4 years	Proportional representation — 'Senate' model
Qld			
	Legislative Assembly	3 years	Preferential voting—optional allocation of preferences
WA			
	Legislative Assembly	4 years	Preferential voting–full allocation of preferences
	Legislative Council	4 years	Proportional representation—'Senate' model
SA			
	House of Assembly	4 years	Preferential voting–full allocation of preferences
	Legislative Council	8 years	Proportional representation—'Senate' model
Tas			

	House of Assembly	4 years	Proportional Representation—Hare-Clark model
	Legislative Council	6 years	Preferential voting–optional (partial) allocation of preferences
NT			
	Legislative Assembly	4 years	Preferential voting – full allocation of preferences
ACT			
	Legislative Assembly	4 years	Proportional representation — Hare-Clark model
NZ			
	House of Rep[s]	3 years	Mixed member proportional representation

With the exception of Tasmania, the ACT and New Zealand, all Australasian parliaments follow a model of preferential voting in the lower house, and proportional representation in the upper house, where the upper house exists:

- 'Full' preferential voting is used in the House of Representatives and the lower houses in Victoria, South Australia, Western Australia and the Northern Territory; 'optional' preferential voting is used in the lower houses in New South Wales and Queensland. A partial 'optional' preferential voting system is used for Tasmania's Legislative Council.

- Proportional representation – the Senate model or variations on it – is used in the Senate and the upper houses of New South Wales, Victoria, South Australia and Western Australia; the Hare-Clark version of proportional representation is used for elections for the Tasmanian House of Assembly and the Australian Capital Territory Legislative Assembly.

These different electoral systems are a clear point of distinction between upper and lower houses.

By their nature, proportional representation systems used in Australian upper houses often result in non-government majorities. In the Senate, since the early 1980s, the government of the day has grown accustomed to being in a minority position in the House, with the notable exception of the period from 1 July 2005 to the 2007 election. In NSW, the government has not held a majority in the upper house since 1988. In Victoria, the introduction of proportional representation in 2006 led to the government losing its majority in the upper house, although it has since won a majority back again.

By comparison, preferential voting in single member electorates tends to favour the larger parties gaining an absolute majority in lower houses. The normal state of affairs in Australia is for governments to have comfortable majorities in the lower house. That is not to say, however, that preferential voting systems do not result in minority governments. Since 1989-1990, there have been many minority governments around Australia:

- Tasmania 1989-1992
- South Australia 1989-1993
- Australian Capital Territory 1989-2004
- New South Wales 1991-1995

- Queensland 1996-1998
- Queensland 1998

- Tasmania 1996-1998
- Australian Capital Territory 1998-2001
- Victoria 1999-2002
- South Australia 2002-2006
- Western Australia 2008 to date
- Australian Capital Territory 2008 to date
- Northern Territory 2009 to date
- Tasmania 2010 to date
- Federal 2010 to date.

Most recently of course, the Gillard Government has found itself in a minority in the House of Representatives, the first time there has been a minority government in almost 70 years.

There are also implications for procedural reform arising from non-government majorities in lower and upper houses.

A non-government majority in a lower house, the seat of government, has in some cases precipitated periods of rapid and major procedural reform. Undoubtedly, in some cases, the reforms are ones that the governments would not have made of their own volitions.

In NSW between 1991 and 1995, the minority Greiner/Fahey government in the Legislative Assembly was pushed into a range of reforms following the signing of the Charter of Reform on 31 October 1991 between Premier Greiner and three non-aligned independents in the Assembly. Some of those reforms were the adoption of a new and separate parliamentary appropriation bill, joint estimates committees, and amendments to the *Constitution Act 1902* seeking to guarantee the independence of the Speaker, President and the judiciary.

The Tasmanian hung Parliament of 2010 led to the appointment of the Greens leader as a minister in the Labor Bartlett Government, while another member of the Greens was appointed as a Cabinet Secretary.

Most recently of course, in Canberra, the minority Gillard Government in the House of Representatives has had to knuckle down to some significant reforms to the operation of the House of Representatives under the *Agreement for a Better Parliament: Parliamentary Reform*, entered into after the August 2010 election. They include reform of Question Time, greater priority for private members' business, a Parliamentary Budget Office and a code of conduct for members and senators.

By comparison, however, WA seems to buck the trend of minority governments in the lower house delivering major procedural reforms. WA is currently experiencing its first minority Government since 1959: the Liberal Party governs with the support of the Nationals and some Independents. However, this development has not resulted in any kind

of rush to introduce procedural reforms in the Assembly – in fact, not a single procedural reform has taken place since the election of the Barnett minority Government in 2008.

A non-government majority in an upper house is comparatively more common than in lower houses so perhaps it tends not to attract as much attention in terms of procedural reform. Nevertheless, some undoubtedly significant reforms have been achieved, and in many cases those reforms have been linked to the existence of a non-government majority.

For example, the transformation of the Senate from a states house as originally conceived to its modern role as a house of review, including notably the development of its modern committee and estimates system, clearly owes much to the adoption of proportional representation in 1949 and the changing numbers in the House.

In NSW, the fact that the government has not had a majority since 1988 has led to the modern renaissance of the Council, emulating the Senate's transformation into a house of review. Of note was the Council's assertion of its right to call for state papers following decades of not doing so and the famous *Egan* cases of the 1990s, which gave judicial recognition to the right. When the Government of the day sought to argue that the Government was accountable to the lower house only, the High Court gave Mr Egan short shrift, acknowledging that while government is made in the lower house, the executive is nonetheless accountable to both houses of parliament.

Accordingly, electoral systems, and the presence or otherwise of a non-government majority, often have significant implications for the achievement of major procedural reforms. This is perhaps especially so on those rare occasions on which a non-government majority occurs in lower houses.

However, it must be emphasised that procedural reform is not necessarily linked solely to the balance of numbers in a house. In the WA Legislative Council, where the Government has the numbers, the Procedure and Privilege Committee has launched a complete review of the Standing Orders. Amongst other things, the review aims to streamline and simplify the procedures of the House and its committees, rationalise the priority given to business in the House, and ensure that the rights of all members to contribute to proceedings in the House and its committees are retained or strengthened. If adopted, these changes will represent the most significant procedural reforms in the WA Council for many years.

Similarly, in the NSW Legislative Council, the achievement of a wholesale review of the standing orders in 2004 owed more to the urgent need for consolidation and reform (the standing orders having last been reviewed in 1895) than the fact that the government did not have a majority. Conversely, it is interesting to note the current difficulties of the NSW Council in achieving even some modest procedural reforms – the Council has been grappling with e-petitions now for many years – a fact attributable to the difficulty of getting agreement across all the parties in the House.

Executive animosity towards the house(s)

It goes without saying that the lower house of a parliament, as the seat of government and the ultimate political prize for the major political parties, enjoys political support as an institution from all sides of politics, even where the government on occasion does not have a majority.

By contrast, upper houses have always, at least to some extent, been contested institutions. As is famously said to have been stated by the Abbé de Sieyès, the publicist of the French Revolution: 'If a second chamber dissents from the first, it is mischievous; if it agrees, it is superfluous'.

One of the traditional critiques of upper houses is that they are conservative and undemocratic institutions which prevent progressive governments that have been popularly and legitimately elected from pursuing their legislative agenda in the lower house.

Indeed, in the face of this challenge, a number of nations and states/provinces have rejected bicameralism in favour of unicameralism: for instance Queensland in 1922, New Zealand in 1950, Denmark in 1956, Sweden in 1971, Iceland in 1991, together with all the Canadian provinces.

In Australia, five upper houses, with the exception of the Queensland Legislative Council, have survived, but in some cases only just. In NSW, throughout the 20th century, Labor made five formal attempts to abolish the Council, with a number of attempts by Premier Lang coming within a hair's breadth of success. One attempt only failed when seven appointed Labor members of the Council failed to vote with Labor, even though they had been specifically appointed by Lang to the Council to vote it out of existence. Not surprisingly, they were soon sacked from the Labor Party.

In WA, there has been a long history of executive animosity towards the WA Legislative Council, especially from Labor Governments: the WA Labor Party had abolition of the Council as party policy from Scadden's Government of 1910 until Burke's Government in the 1980s, although a proposal for abolition was never formally taken to the people.

In modern times, of course, the traditional critique of upper houses as undemocratic and unrepresentative institutions has no application as a result of electoral reform. In Australia, the NSW Legislative Council was the last house to be made fully elected in 1978 (although the change was not finally made until 1984). In WA, major reform came to the Legislative Council in 1962 when legislation was passed which abolished property qualifications for all citizens in Council elections. The age of qualification for membership of the Council was reduced from 30 to 21 years. This meant that at the joint elections of 1965, the membership and franchise requirements were identical for both houses for the first time.

Nevertheless, executive animosity towards upper houses persists, particularly where the government does not have a majority in the upper house. In most cases, this is because upper houses are seen as obstructionist: it is now almost routine for incoming

governments to claim a mandate for their program announced during an election campaign and to decry any impediment to implementation of that program.

But even in upper houses where the government does have a majority, the majority is often tight, such that it is not unusual for the sand to shift under a government's feet. This occurred recently in WA with the defeat of the controversial Criminal Investigation Amendment Bill 2009 (stop and search laws) in the Council. The proposed law aimed to provide police with new powers to stop and search people without prior consent, an arrest or search warrant, or the need for the police to form a reasonable suspicion. Despite the successful passage of the bill through the Assembly, the bill was effectively killed off when the majority of the members on the Council's Standing Committee on Legislation recommended that the bill not be passed. This caused the National Party to withdraw their support for the bill, and thus the Government no longer had the numbers to pass it.

Executive animosity towards upper houses is normally just verbal. At the federal level, the animosity towards an obstructionist Senate is perhaps best captured in Paul Keating's famous reference to the Senate as 'unrepresentative swill'. But governments of all persuasions up to and including the current Federal Government have at times railed against 'unnecessary' Senate delays.

However, in some cases, executive animosity goes further to proposals for 'reform'. In NSW, Mr Egan, the Treasurer throughout much of the Carr Government, was a staunch critic of the Council, even though he sat in it. A proposal to reduce the size of the Council from 42 to 34 seats, thereby increasing the quota for election to the Council and increasing the likelihood of a government majority in the house, was ultimately not progressed. But even in the last few months, the new O'Farrell Government in NSW has made some rumblings again about reform of the Council following the Council's amendment of the Government's Graffiti Bill, amendments rejected by the Government in the Assembly.

It must also be said that rumblings about the effectiveness of the South Australian Legislative Council and reform or abolition of that House never seem far away.

However, some Australia upper houses can at least rest a little easy. The constitutional independence of the Senate is undoubted, as is the public respect for the role that it performs. In NSW, since 1930, section 7A of the *Constitution Act 1902* has specified that no bill to abolish the Council, or alter its constitution or powers, can receive royal assent unless passed by both houses and approved at a referendum by a majority of the electors. Moreover, section 7A is itself entrenched, with the result that it cannot be altered or repealed except by a bill similarly approved at a referendum. Equally in WA, section 73 of the *Constitutions Act 1889* requires a state referendum, and an absolute majority of both houses, before the abolition of the Council (or Assembly for that matter) could proceed. Indeed, in WA, the Legislative Council is something of a rare beast, having expanded its membership over time, growing from 30 members in 1965 to 39 members today.

Partisan pressures on presiding officers and the role of advice from clerks and parliamentary officers

The Westminster tradition in the House of Commons dictates that the Speaker of the House of Commons should be entirely impartial. Of note, the Speaker is expected to resign from his or her political party on appointment to the position. At election time, the Speaker contests his or her seat as 'the Speaker seeking re-election', rather than as a candidate of a political party, and an incumbent Speaker re-elected at an election is always re-appointed as Speaker, even if his/her former party is no longer in government.

There is no such tradition in modern times in Australia.

In the NSW Legislative Council, the position of President was at one time founded on the principles of continuity and independence, similar to the tradition inherited from Britain. The first President of the Legislative Council, the Hon Sir Alfred Stephen, in his first address to the House on 22 May 1856, indicated that he considered his position as 'primus inter pares' (first amongst equals), and that he was not in a position to control, but merely to regulate the debate.

However, the tradition of independence was formally broken on 3 July 1991 at the commencement of the 50th Parliament (1991–1994), when the Coalition Greiner Government removed the incumbent President of the Council, President Johnson (a member of the Labor Party) from office. President Willis, a member of the Liberal Party, was elected instead. The Greiner Government then steered legislation through the Parliament, the Constitution (Legislative Council) Further Amendment Bill, requiring the Council to elect a new President at its first meeting after an election and at any other time when the office became vacant.

Ironically, with the continuity and independence of the Office of the President having been significantly altered as a result of the removal of President Johnson and the passage of the Constitution (Legislative Council) Further Amendment Bill, in 1992, the Coalition Government was obliged to steer through the Parliament a new bill: the Constitution (Amendment) Bill. This bill rather belatedly inserted a new section 22G into the *Constitution Act 1902* to require the President to be the 'independent and impartial representative' of the Council. This step was imposed on the then minority Greiner Government in the Legislative Assembly by the independents in the lower house under the Charter of Reform, as noted earlier.

Similarly, in the WA Legislative Assembly there is no tradition of formalised impartiality of the Speaker. Speakers continue to attend to, and participate in, party political work, including the attendance of party room meetings.

However, while modern Australian presiding officers have not inherited the independence of the Speaker of the House of Commons, there remains an expectation that presiding officers in both upper and lower houses will be fair and impartial to all members. And indeed presiding officers seem to make a reasonable effort to uphold this expectation; it

has been suggested that many Australian parliaments have had presiding officers with a reputation for partisanship prior to their elevation to the Chair, but who thereafter sought to be fair and impartial to all members. That said, a government presiding officer in a lower house with a strong government majority may perhaps make less of an effort in the direction of independence and impartiality than a presiding officer in an upper house with a minority government.

Governments themselves are also perhaps at times reluctant to place presiding officers in difficult political situations. An example from the NSW Legislative Council is the recent referral of the provisions of the Election Funding Bill to a select committee for inquiry and report, despite the bill itself remaining on the Council *Notice Paper*. On a previous occasion in 2001, a motion for a judicial inquiry into the system of workers compensation was ruled by the President to anticipate the Workers Compensation Legislation Amendment Bill on the Notice Paper for that day, which prompted a motion of dissent from the Leader of the Opposition. However, come 2011, when the rule of anticipation could again have been raised by the Government to seek to prevent reference of the Election Funding Bill provisions to the select committee, the Government chose not to do so, perhaps out of concern not to place its own President in a very difficult position.

However, where the expectation that presiding officers will be fair and impartial seemingly comes under greatest pressure is where the presiding officer has a casting vote and is called upon to use it. With the exception of the Senate and the Victorian Legislative Council, all Australian houses follow the British tradition of the presiding officer having a casting vote but not a deliberative vote. The New Zealand Parliament also gives its Speaker a deliberative but not a casting vote, a change implemented in 1993.

In those houses where the presiding officer has a casting vote, but also where the numbers in the house are tight (usually but not always upper houses), the presiding officer's casting vote can become very important. In such instances, the British traditions of the Chair voting in favour of further discussion, and voting in favour of leaving a bill in its existing form, come up against the hard reality of the government's political imperatives.

This was clearly evident in the Western Australian LA recently, where the delicate composition of the current Assembly resulted in the Speaker's actions being questioned, specifically in regard to the use of the Speaker's casting vote. During the consideration in detail stage of the Waste Avoidance and Recovery Amendment Bill 2009, the Government on three occasions moved a 'gag' motion. The Speaker was required to exercise his casting vote on all three occasions, and supported the Government's position each time. The following day, the Opposition moved a motion calling on the Speaker to provide a ruling on the Westminster convention relating to the Speaker using casting votes to allow further discussion. The motion also enquired as to the future application of this convention to the WA Assembly. In a considered opinion, the Speaker found that he was not bound by the casting vote conventions that apply in the UK.

The position of presiding officers has given rise to proposals for procedural reform. In the NSW Council prior to the last election, there was some discussion amongst the then

Opposition whether there would be scope for giving the President in the Council a deliberative rather than a casting vote, thereby preserving the government's numbers in the House. In the event the matter was not progressed.

Similarly, in WA in 2002, the then Labor Government attempted to give the President of the Legislative Council a deliberative vote in order to gain the absolute majority needed to pass the 'one vote, one value' legislation. However, the Government was stymied in these plans after failing to secure the support of the Greens. This led to the Government taking the issue to the High Court for determination, where it once again failed to gain the result it sought. There has been no suggestion of reform in this area since.

While the dynamics of an individual house dictate the degree of partisan pressures brought to bear on the presiding officer, from the point of view of clerks, there remains a strong expectation of balanced and impartial advice, regardless of the political dynamics of the house, and regardless whether it is an upper or lower house. In a house where the numbers are finely balanced, the imperative and obligation is clear, even where the presiding officer may not take that advice. But even in a house where the government enjoys a healthy majority, clerks are wise enough to remember the political maxim that today's opposition is tomorrow's government, and that the discharge of their functions in anything but a balanced and impartial manner will not go unnoticed.

Executive control of parliamentary appropriations

If different electoral systems and executive animosity towards upper houses are points of difference between upper and lower houses, they come together in a shared (although seemingly lost) cause when it comes to the executive's control of parliamentary appropriations.

It is an accepted constitutional principle (if not always written in black and white in different jurisdictions) that the legislature and the executive are separate arms of the government, except to the extent that the executive government is formed out of the members of parliament and is subject to the scrutiny and control of parliament under the Westminster system. In view of this, it may be seen as undesirable that the funding of parliament be dictated by the government of the day.

In a number of countries, the parliament is supported by funding arrangements that guarantee at least some degree of security and autonomy of funding for the parliament:

- In Canada, under the *Parliament of Canada Act*, the Senate and the House of Commons have the exclusive right to determine their budgets through an internal management board called the Board of Internal Economy. The Board may determine the budgets of the Senate and the House, which are then forwarded to the President of the Treasury Board, who must include them in the Estimates laid before Parliament. Although the government has no discretion and cannot withhold from the two chambers whatever amounts they request, the record suggests that in

formulating its budgets, the Parliament is mindful of the budgetary framework of the day.

- In New Zealand, the Parliamentary Service Commission exercises control over the budget and services provided by the Parliamentary Service. The *Parliamentary Service Act 2000* stated that one of the Parliamentary Service Commission's responsibilities is 'to recommend to the Speaker adoption of criteria governing funding entitlements for parliamentary purposes'. The record suggests that the Parliament usually gets its funding request.

- In the United Kingdom, the House of Commons Commission is the overall supervisory body of the House of Commons Administration. Amongst other things, it is required to prepare and present the estimates incurred from the service of the House. Administrative expenditure is not subject to cash limits, and the Treasury has no formal control over the estimates. [1]

By comparison, in Australia, there is no tradition of independence in parliamentary appropriations. In most if not all jurisdictions, parliamentary funding is dictated by the executive government through the annual appropriation bills with little or no input into the process by the presiding officers or other representatives of the parliament. As a generalisation, funding for the parliamentary departments is considered as simply a portfolio of the government. As expressed in the submission of the House of Representatives to the Commonwealth Joint Select Committee on Public Accounts and Audit inquiry into efficiency dividends and small agencies in 2008:

> The Department, together with the other parliamentary departments, supports the Parliament, a quite separate arm of the state from the executive government. It is completely unsatisfactory that the funding of the departments that support the Parliament is dictated by a model developed by the executive, with little capacity for the departments to negotiate additional funding.[2]

NSW is a case in point. Parliament is funded by the Treasury by the annual appropriation bills. Just last year, the annual Appropriation (Parliament) Bill, a separate bill appropriating money to the Parliament, and hitherto the only concession acknowledging Parliament as a separate arm of the government, was discontinued.

In 2009, in a modest attempt at reform, the former presiding officers made an approach to the Premier seeking an arrangement to mandate their appearance before the Treasurer and the Budget Committee of Cabinet each year in relation to the Parliament's budget, thereby giving the Presiding Officers greater input into the annual budget process as it relates to Parliament. The approach was unsuccessful.

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1 June Verrier, 'Benchmarking Parliamentary Administration: The United Kingdom, Canada, New Zealand and Australia', http://www.democraticaudit.anu.edu.au/papers/20070723verrierbenchmkparlad.pdf

2 Cited in Joint Committee of Public Accounts and Audit, Report 413: 'The efficiency dividend and small agencies: Size does matter', December 2008, pp 26-27.

In WA, the Parliament is funded under Division 1 of the budget bills. As in NSW, there is no recognition in the budgetary process that Parliament is a separate arm of the government. Parliamentary funding is not guaranteed, despite the fact that, in reality, each House has very little control over the services it delivers – it simply must respond to the direction of the House. However, the presiding officers do at least have the opportunity to 'bid' for revenue before the Economic and Expenditure Reform Committee.

The prospects of anything further in WA seem slim. Any real chance of reform ceased with the 1996 Commission on Government (COG) Report that recommended against a separate parliamentary appropriation bill. COG found that with the appropriations bills used for the Parliaments of Victoria and NSW, the government retained the final say over the amounts appropriated, making them effectively very similar to the WA funding model. Furthermore, it found that the current process for determining funding had never delivered Parliament with an unworkable budget - proving it to be a 'workable compromise'.

In the Federal Parliament there are Appropriations and Staffing (or Administration) Committees in both the Senate and the House of Representatives. As in WA, these committees have given the Presiding Officers, together with Senators and Members, at least some input in the appropriations of the parliamentary departments at the Commonwealth level.

Regrettably, parliamentary funding arrangements become even more opaque when funding for the parliamentary departments is set out according to program areas rather than individual departments. For example, in NSW, the annual appropriation bill provides separate appropriations for the Parliament for the 'recurrent services' and the 'capital works and services' of the Parliament. Funding for each is divided between three programs: chamber and committee support, members' support and community access. There is no specific funding for the Department of the Legislative Council, the Department of the Legislative Assembly and the Department of Parliamentary Services within these three programs.

The situation in other jurisdictions may be slightly better. In WA, each House interacts with the government separately with regard to their respective budgets – in this process the Parliamentary Services Department is represented by both Presiding Officers. The three separate departments of the Parliament (Assembly, Council and Parliamentary Services) are each provided with a distinct budget, for which they are answerable at estimates.

Finally, it may also, perhaps, be suggested that the desirability of some certainty or independence of funding for parliament may be particularly relevant to upper houses which routinely do not have government majorities and which routinely put themselves in the firing line of government censure for actions which may not have the government's support.

Sadly, however, this is an area where the prospects of administrative reform seem remote indeed.

Resource priorities such as committees

The mutual interest of upper and lower houses when it comes to the executive's control of parliament's appropriations extends to issues such as the resourcing of committees.

In general terms, parliaments are funded from the budget bills each year for the delivery of core services, with no allowance in the budget for contingencies such as the appointment of additional committees.

For example, the recent establishment by the WA Parliament of the Joint Standing Committee on the Commissioner of Children and Young People, administered by the Assembly and financed out of the Assembly's usual appropriations, is currently placing significant strain on the Assembly's delivery of core services.

However, there are exceptions to this lack of funding flexibility. The NSW Legislative Council has on three occasions successfully applied to the Treasury for additional funding for committee inquiries. There also seems to be recognition by the Department of Finance and Deregulation at the Commonwealth level that the establishment of additional committees will attract additional funding.

The staffing of committees is also seemingly an area of commonality, with staff performing similar roles across houses and parliaments.

In recent years, the committees of the NSW Legislative Council, and more recently the Legislative Assembly, have adopted a pooled staffing model, with staff working across all committees and all types of inquiries. There is limited specialisation with individual committees. Accordingly, staff tend to be generalists with the capacity and flexibility to engage with a range of inquiries.

Similarly, in the WA committee system staff are regularly rotated between committees, and are therefore generalist in nature, allowing for the greatest degree of flexibility in the operations of the committee office.

Opportunities to engage the public balanced against traditional rules and restrictions

Opportunities to engage the public is also an area of commonality between the upper and lower houses.

Clearly fundamental to parliaments achieving their roles as representative and legislative bodies is community access and awareness of their operations. However, for sub-national parliaments in particular, the level of public recognition, anecdotally at least, does not seem great. Media reporting of state and territory parliaments is generally minimal, and even when they are reported, the coverage is often not flattering. For example, in NSW, media reporting has in the past lampooned the Council as 'the Looney Lounge', 'the House of Privilege' or 'God's Waiting Room'. The Council has few champions within the NSW parliamentary press gallery. And yet, the media reporting of the activities of the House,

such as its committee inquiries and documents unearthed under calls for papers, is relatively accurate and indeed positive.

As an aside, even the names Legislative Assembly and Legislative Council (or variations on them) at the state level in Australia are perhaps unappealing to the general public. In the NSW Council, Revd the Hon Fred Nile has had on the Notice Paper for some time now a bill to provide that the Legislative Council may also be known as the State Senate, similar to upper houses in the states of the United States.

There are various ways in which parliaments are seeking to engage with the public, including:

- Through the provision of fact sheets, videos and other information on the parliament's website, including information specifically targeted at certain groups such as school children
- Through guided tours and education talks for visitors to the parliament
- Through outreach activities such as visits by parliamentary staff to schools and universities
- Through regional sittings of parliament
- Through events and exhibitions such as open days
- Through the offering of secondments and internships to public servants and students
- Through the offering of education programs and public seminars
- Through the expanding use of social media such as Twitter
- Through committee inquiries.

As a case in point, the WA Legislative Assembly is very keen to engage the public and raise the profile of the Assembly and the Parliament more widely. Over the past two years, the Assembly has sponsored an extensive outreach program that has focused on raising awareness of Parliament amongst the most remote communities in the state. Other significant work includes: a re-design of Assembly committee reports to make them more accessible to the public, a trial use of a media consultant to maximise the public impact of committee reports, a complete website re-design (undertaken with the Council and the Parliamentary Services Department) and the establishment of an Assembly Twitter account.

The NSW Legislative Council has also made public access and engagement a priority in recent years. In 2009, the Council adopted for the first time a community access and engagement business plan. At the same time, a new Procedural Research and Training Unit was created responsible for developing a more systematic approach to engaging with the community and improving community access to the activities of the Council. Initiatives under that plan have included the launch of a new parliament website, in close

collaboration with the Legislative Assembly, a program of regional visits to schools, and a new series of public service seminars. Other initiatives are on the way such as touch screens for visitors to the Council, a parliament YouTube site, university outreach visits and an enhanced internship program.

Conclusion

There are real differences between upper and lower houses in their electoral systems and executive government perceptions of the respective houses. In turn, these areas of difference prompt different challenges for procedural and administrative reform. Non-government majorities in lower houses have in some cases precipitated periods of rapid and major procedural reform, whereas in upper houses, non-government majorities over long periods of time have been instrumental to the modern transformation of houses such as the Senate and NSW Legislative Council. In this picture, executive dislike for 'obstructionist' upper houses is not new. From the point of view of the staff of upper and lower houses, the challenges of procedural and administrative reform can be quite different, but one senses underlying these differences a profound and deep seated respect for the roles that the staff of the respective houses play.

However, there are also areas of real commonality between the houses. In both upper and lower houses, there is an expectation that presiding officers will be fair and impartial to all members, and most if not all seem to take this expectation seriously. Where this becomes most problematic is where the presiding officer has a casting vote and is called upon to use it. In truth, the position of a presiding officer can be equally uncomfortable regardless of the house in which he or she sits. But for staff, the giving of balanced and impartial advice is an imperative regardless of the house. In addition, there are real areas of commonality between the houses and their officers in more administrative matters such as parliamentary appropriations, resourcing and delivery of core services such as the staffing of committees, and the desire for greater engagement with the public.