

# The tablecloth and the long bell: media perceptions of the NSW Legislative Council 1999–2009

Steven Reynolds\*

The conventional media — television, radio and newspapers — remain the primary means by which most citizens are able to understand and be engaged with the work of Parliament. Even amongst the internet-savvy 18–24 years-olds, two thirds cite television as one of their main sources of news ... The expectation is that the media will enlighten the public as to Parliament's work — why something is happening and what it means. This expectation is, however, too often unfulfilled, with the consequence that many remain in the dark about what much of our legislation actually means to their lives.<sup>1</sup>

Queensland Labor was right when it abolished the upper house in 1922. The NSW comrades vowed to follow suit but that was before they settled into the red benches and began a share-out of perks<sup>2</sup>

The New South Wales Legislative Council, like upper houses in many jurisdictions, gets a bad press. Lampooned as ‘the looney lounge’, dismissed as either irrelevant or condemned for being obstructive, it has few champions within the New South Wales parliamentary press gallery. But looking a little beneath the surface, a different and more positive picture of reporting emerges. There is a contradictory story, of relatively accurate and positive reporting of the parliamentary activity

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\* Steven Reynolds is the Clerk Assistant Committees and Usher of the Black Rod in the Legislative Council. Thanks go to the Parliamentary Library, particularly Christine Lamerton, for assisting the research of this article

<sup>1</sup> Hansard Society ‘Lights, Camera, Inaction? The Media Reporting of Parliament’ *Parliamentary Affairs* 60(4), 2007 p700.

<sup>2</sup> ‘Why Labor has got used to the House of Privilege’, Alex Mitchell, *Sun Herald* 6 June 2010 p22.

by the House, which sits oddly with caustic media references to ‘the House of Privilege’<sup>3</sup> or ‘God’s Waiting Room’.<sup>4</sup>

This article presents some recent media depictions of the Legislative Council and attempts to try to explore possible reasons for this disjuncture. It also seeks to document some of the recent attempts by the Department of the Legislative Council to improve the information available to the media on its proceedings and functions, in the hope that reporting can be in the context of a deeper understanding of the role of an upper house.

### ***Reactive media commentary***

In a bicameral system the role of an upper house will always and should always be a subject for media scrutiny. There are alternatives: Canada is a viable democracy with a Federal system with no provincial upper houses. Within Australia, Queensland has shown an upper house is not essential, despite ongoing debate about whether the right decision was made in 1922.<sup>5</sup> In New South Wales there have been several attempts to abolish the Legislative Council, most recently being put to a referendum in 1961.<sup>6</sup> Given that the role of an upper house is primarily to act as a house of review there can be no objection when another pillar of the democratic system submits it to scrutiny.

In the last decade most commentary on the NSW Legislative Council has consisted of occasional opinion pieces and reflections by political journalists. These are rarely written in response to the actual operations or activities of the House, outside of election and post election wrap-ups. There are however two significant exceptions. In both instances actual events began a debate about the appropriate role for an upper house: the electoral process in 1999, with the election of a number of ‘micro-parties’; secondly the suspension of the sitting day in 4 July 2008. Or in more media friendly terms: the ‘Tablecloth Ballot of 1999’; and, the ‘Night of the Long Bell’.

### ***The tablecloth ballot***

In the period from 1995 to 1999 NSW’s biggest selling daily newspaper, *The Daily Telegraph*, ran a number of stories calling for the abolition of the Legislative Council.<sup>7</sup> Media criticism of the upper house reached a crescendo during the 1999

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<sup>3</sup> Mitchell, *op cit*

<sup>4</sup> Graeme Wedderburn, ‘How Labor wrecked its own legacy’ *Sunday Telegraph* 27 June 2010 p109

<sup>5</sup> See Aroney, Prasser and Nethercote *Restraining Elective Dictatorship: the Upper House Solution?* (2008) University of Western Sydney, Part Five.

<sup>6</sup> David Clune and Gareth Griffith, *Decision and Deliberation* (2006) Federation Press p404–411.

<sup>7</sup> Clune and Griffith, *op cit* (2006), p671.

periodic election campaign when the ballot paper for the 21 Legislative Council members contained 233 candidates. The number of candidates for minor parties reflected a series of deals made to exchange preferences among so called micro-parties. The result was that six cross bench members were elected, bringing to 13 the number of crossbench members sitting in the Legislative Council during the 1999–2003 Parliament.

The ballot paper has gone into history of political oddities as ‘the Tablecloth’, named for its great size and the bizarre arrangements required by the Electoral Commission to accommodate its practical difficulties. It generated a widespread media debate concerning how the voting system had been abused to favour undemocratic outcomes. The *Sydney Morning Herald* highlighted that the Christian Democrat Party of Reverend Fred Nile with 3.17% of votes only just received sufficient votes for re-election, whereas the Outdoor Recreation Party received a seat with only 0.2% of votes because of various exchanges of preferences among minor parties.<sup>8</sup> While some sections of the media championed reform, the *Sunday Telegraph* on 4 April went further and called for the Legislative Council’s abolition:

Nearly 90 per cent of people believe the NSW Upper house should be abolished. In the wake of last weekend’s election debacle involving a ‘tablecloth’ ballot paper, the State is ready to place its trust in a one-house parliament<sup>9</sup>

Media criticism coalesced with both community concern and the political interests of the major parties. After debate and several different reform proposals the government and Opposition negotiated changes leading to the *Parliamentary Electorates and Elections Amendment Act 1999*. This increased the requirements for party registration and altered the rules governing above the line optional preferential voting. These reforms were effective, in that since the 2003 election there have been no micro parties elected, and addressed many of the criticisms of the Legislative Council:

If the 1999 reforms were minimalist, they were also effective in rescuing the tarnished reputation of the electoral system for the Council.<sup>10</sup>

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<sup>8</sup> ‘The case for House reform’ *Sydney Morning Herald* 27 March 1999 p44, quoted in Clune and Griffith *op cit* p672.

<sup>9</sup> ‘Time to abolish the Upper House’ p13. The ‘90%’ figure was based upon a telephone poll in which *Telegraph* readers were asked to ring in an indicate whether the Legislative Council should be abolished.

<sup>10</sup> Clune and Griffith *op cit* p675. Although not without some other implications: see Lynn Lovelock, ‘The Declining Membership of the NSW Legislative Council Cross Bench and its implications for Responsible Government’, *Australasian Parliamentary Review* Autumn 2009, 24(1).

### *The night of the long bell*

The last four years have been tumultuous ones for New South Wales politics. Most of the focus has been upon the ageing government, and media perceptions of its failure to deliver on infrastructure, lack of transparency in planning decisions and some ministerial indiscretions and resignations. The various changes in leadership, from Premiers Carr to Iemma, Rees then to Keneally have provided a media narrative portraying a failure of Executive government, generating headlines such as ‘How Labor wrecked its own legacy’ and ‘Failed State: NSW’.<sup>11</sup> Media criticisms of Parliament or the Legislative Council have tended to generally be critical of the whole political culture rather than concerned about the role of Parliament.<sup>12</sup>

The lack of media focus on the Legislative Council perhaps reflects that since the 2007 election, despite lacking a government majority, most of the government’s legislative agenda has been passed without substantial amendment. This has been with the assistance of the votes of the two Shooters Party representatives and Reverend Nile of the Christian Democrats. However under the premiership of Nathan Rees the previous relationship between the Government and the Shooters Party began to break down, particularly over a private member’s bill proposed by the Shooters Party to permit hunting in national parks. When the government refused to back this bill, the two Shooters Party members withdrew their support, leaving the government reliant upon four Greens members to support its legislative proposals.

On the second last day of scheduled sittings for the 2009 Spring session, the government had on its list of government business a bill to privatise Lotteries NSW, a proposal opposed by the Greens and at that time the Opposition. It became apparent that the Government did not have the support of the House to continue with its legislative programme. In the early hours of the morning of 25 June 2009, the Leader of the House, Tony Kelly, proceeded to move the adjournment of the House until the next session, due to commence on 1 September 2009. When the Opposition Whip, the Hon Don Harwin, sought to move an amendment to the motion, Mr Kelly, the last remaining minister in the House, left the chamber. Standing order 34 requires that the House not meet unless a minister is present in the chamber. The President then was obliged, under the standing order, to leave the Chair. As a result, the sitting of the House was suspended indefinitely awaiting the ringing of a long bell on the direction of the President. The sitting day of 24 June extended for three months, only coming to end on Tuesday 1 September 2009, when the House resumed before immediately adjourning!

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<sup>11</sup> Wedderburn *op cit*; John Birmingham, *The Monthly*, December 2009–January 2010, p26–33.

<sup>12</sup> For instance ‘Spin is no match for debate in a democracy’ Hon Richard Torbay MP (Current Speaker of the Legislative Assembly) *Sydney Morning Herald* 10 June 2010.

On the morning of 25 June, at the time the Council would normally resume sitting, Opposition and Cross Bench members accompanied by a phalanx of television cameras and photographers, made a show of attempting to enter the locked and theatrically darkened chamber. This provided perfect material for headlines: ‘Labor bolts the door on democracy’ ‘And Stay Out: Long Bell shuts Parliament’ and ‘Lights on but nobody home’ being among the many variations on this theme.<sup>13</sup>

The Night of the Long Bell, like the Tablecloth Ballot, led to media comment and debate about the appropriate role of the upper house. Critics of the Legislative Council quickly emerged. The *Herald*, in its editorial, was quick to criticise the bicameral system:

The real problems are twofold. First, the upper house itself. The present impasse calls its usefulness seriously into question. Its reform or abolition, though, is a long term question. The second, more immediate problem, is this state’s political culture, in which principles or beliefs come a distant second to short term political advantage.<sup>14</sup>

In a television interview, senior government Minister the John Della Bosca MLC appeared in footage saying ‘Of course it is Labor Party policy to abolish the Upper House’<sup>15</sup>

Unlike 1999, however, it was a more nuanced debate as it was obvious to many commentators that the initiative in this instance was taken by executive government, in effect trying to prevent the work of the upper house. Criticism was made of both the government and the Shooters Party. It was also notable that journalists in both print and television attempted to understand the issues of parliamentary procedure involved.

Once Parliament resumed in September differences between the Shooters Party and the government were gradually resolved, a new Premier was installed and the story became quickly subsumed into the general media narrative of the decline of Executive government in NSW. There was no wider debate on the role of the upper house, although the actions of the Shooters Party continued to receive some media scrutiny.<sup>16</sup>

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<sup>13</sup> eg ‘Labor bolts the door on democracy’ *Sydney Morning Herald* 26 June 2009 p1; ‘Premier shuts door on opposition’ *The Australian* 26 June 2009; ‘and Stay Out: Long bell shuts Parliament’ *Daily Telegraph* 26 June 2009; ‘Lights on but nobody home’ *Sydney Morning Herald* 27 June 2009; each of the four major television stations carried stories on the night of 26 June 2009.

<sup>14</sup> ‘The quagmire in the upper house’, Editorial *Sydney Morning Herald* 29 June 2009.

<sup>15</sup> ABC Channel 2 7pm news, 26 June 2009.

<sup>16</sup> eg ‘Let us kill in parks’ Simon Benson *Daily Telegraph* 1 September 2009 p11.

### ***General commentary on the Legislative Council***

Aside from these two incidents, media scrutiny of the role of the Legislative Council has been sporadic and *ad hoc* in recent years, in contrast to the consistent spate of articles calling for abolition up until 1999. While the media coverage has improved, if there is a tone to these articles, that tone is primarily negative:

From its very first meeting in 1824, the Legislative Council has failed to arouse broad public support...the upper house has never shaken off its crusty, privileged anachronistic and interfering aura<sup>17</sup>

They [Legislative Council members] don't represent individual electorates either. In theory, they represent the whole of the State (no I'm not kidding)<sup>18</sup>

A rare approach was presented in an article in the *Herald* in 2006 which balanced negative comments with quotes from the Senate Clerk Harry Evans and then Legislative Council President Meredith Burgmann.<sup>19</sup> Overall media perceptions of the Legislative Council have remained primarily negative whenever journalists write about it as an institution. The intensity has declined since the high watermark of 1995–99, but coverage remains negative.

### ***The good news: reporting of the activity of the House***

If this was the whole picture, an analysis of media perceptions of the Legislative Council would be a dark story indeed. But the surprising aspect of the media coverage is the contradiction between opinion pieces and the day to day parliamentary reporting of the actual activities of the Legislative Council. It is often said that Australians have a negative view about politicians in general but a positive view about their local member. Many NSW journalists appear to hate the Legislative Council but love to report the work that it does, as will be shown below.

The functions of the Legislative Council which receive extensive coverage are the work of its committees, its budget estimates process and the results of its orders for papers. To a lesser extent the role in scrutiny of legislation, the amendment of bills and disallowance of regulations also receives coverage,<sup>20</sup> although this has not been a heightened area of activity or media focus because of the co-operation of the cross bench with the legislative programme over the last two parliaments.

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<sup>17</sup> 'Its time to wipe away the tiers of government' *Sun Herald* 23 October 2005.

<sup>18</sup> Mitchell *op cit*.

<sup>19</sup> 'Chamber of Review has more lowlights than high', Tim Dick, *Sydney Morning Herald* 29 September 2006.

<sup>20</sup> for instance 'Libs pull plug on power sale' *Sydney Morning Herald* 28 August 2008.

### ***Reporting of committees***

The Legislative Council has one of the most active committee systems of any Australian jurisdiction. For instance in 2008/09 there were 26 active inquiries held resulting in over 668 witnesses giving evidence, over 82 public hearings, close to 1,500 submissions and the tabling of 19 reports.<sup>21</sup> With a non-government majority in the House and the ability of committees to initiate an inquiry by a majority vote of the committee, its inquiries have often involved politically controversial topics gaining wide media coverage. The current parliament has been no exception: inquiries into political funding and donations; same sex adoption; allegations of uranium pollution in an inner Sydney suburb and examination of school bullying are among many of the inquiries to regularly feature in both print and nightly news media, with the resulting backwash of talkback radio coverage. As examples, three inquiries that received extensive media coverage were:

- The Joint Select Committee into the Royal North Shore Hospital in 2007, established following media coverage of failures of the Emergency Department in one of Sydney's leading hospitals. The four hearings of the inquiry received extensive nightly television and newspaper coverage, and the site visit to the hospital became the proverbial 'media circus' with camera crews peering through the glass doors of the hospital entrance and a helicopter buzzing overhead.
- The inquiry by General Purpose Standing Committee No. 2 into the Management of the NSW Ambulance service received a large number of submissions, most of them confidential, from employees of the Service complaining about a culture of bullying and harassment. The major broadsheet, the *Sydney Morning Herald*, began a series of articles based upon submissions received extending to longer opinion pieces, all using the inquiry as its primary source material.<sup>22</sup> The first report of the committee, when tabled in October 2008 received widespread television news coverage. The second in May 2009 was given extensive front page coverage in the *Herald*.<sup>23</sup>
- The inquiry by General Purpose Standing Committee No. 4 into land and property dealings in Badgerys Creek, in Sydney's South West came out of the (still unsolved) murder of Sydney property developer and debt collector Michael McGurk. McGurk claimed to have a tape implicating politicians and senior government officials in corruption over land rezoning. While the committee, with an Opposition Chair and a non-government majority, concluded there was no evidence of corruption, in the process the three hearings and other aspects of the inquiry generated massive media attention. The *Herald*, in a first for the NSW Parliament, broadcast a live webcast of each hearing through its website.

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<sup>21</sup> Legislative Council *Annual Report 2009*, p33.

<sup>22</sup> 'Ambulance Chiefs lashed in suicide inquiry', *Sydney Morning Herald*, 20 October 2008, Channel 7 nightly news 19 October 2008.

<sup>23</sup> Eg 'Ambulance Chief avoids sacking', *Sydney Morning Herald* 6 May 2009.

In none of these examples is the inquiry portrayed as either irrelevant or unrepresentative, criticisms laid at the door of the Legislative Council by commentators. Many of the reports produced have been widely praised; only one — the inquiry into the Royal North Shore Hospital — was criticised for not being strong enough in its recommendations.<sup>24</sup>

### ***Reporting of the budget estimates process***

Another aspect of Legislative Council committee activity which garners extensive reportage each year is the budget estimates process. The annual inquiry by the Council's five general purpose standing committees scrutinises the proposed expenditure by Government departments and agencies, and has become an essential part of the House's superintendence of the executive government, as it has in other Australian jurisdictions.

Some raw data on the Estimates hearings indicates the volume of information being placed on the public record. In 2006-07, 2007-08 and 2008-09, the initial rounds of estimates hearing totalled 88 hours, 81.5 hours and 75 hours respectively. The number of supplementary hearings has varied between 14 in 2006-07, 2 in 2007-08 and 7 in 2008-09. In 2006-07, a record 5,000 questions on notice were submitted during the initial round of hearings.<sup>25</sup> Clearly a key role of any estimates process is placing information on the public record. While hard to quantify, in 2009 an analysis was made by the Parliamentary Library of the level of media coverage of Estimates based upon the previous year's process.

In 2007-08, there were at least 25 articles in the major metropolitan and regional newspapers reporting on issues raised in the initial round of estimates hearings between mid to late October 2007. In total they devoted almost 140 column inches to reporting issues raised at budget Estimates hearings. In 2008-09 coverage was higher. There were at least 31 articles in the major metropolitan and regional newspapers reporting on issues raised in the initial round of estimates hearings between 14 and 21 October 2008. In total, at least 211 column inches were devoted to discussing issues raised in the hearings. The articles covered subjects as diverse as freedom of information laws; asbestos in schools; children at risk and the operation of the proposed new T-Card. Estimates related stories also appeared on the nightly news programmes of most networks on two of the five days of hearings, and there were a significant number of Estimates-related stories broadcast on news programmes on metropolitan radio stations.

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<sup>24</sup> see the nightly news coverage on all four major channels, 20 December 2007.

<sup>25</sup> In 2007–08 this number was reduced to 800, with 1,800 in 2008–09, attributable to a change in the process for managing questions on notice.

These figures show the degree of media interest that the Legislative Council budget estimates process generates, and the volume of information that is placed on the public record as a result of the estimates process.<sup>26</sup>

### ***Media coverage of orders for papers***

After committee activity, the parliamentary proceedings of the Legislative Council which currently generate most media coverage are orders for papers made under standing order 52. The process, established during the *Egan* cases,<sup>27</sup> compels the Executive by order of the House to provide documents requested together with an indexed return within a specified time frame. It is one of the most powerful tools open to any legislature to enable scrutiny of government decisions and expenditure.<sup>28</sup>

The Legislative Council has a dedicated reading room which allows the media, together with other members of the public, an opportunity to view the public documents returned to order. The scrutiny given these documents has been the basis for many a story over recent years, usually but not always indicating the source of the information as the Legislative Council.

Orders for papers receiving major coverage within the last 12 months include an order relating to the government's decision to abandon the CBD Metro, various road proposals such as the M4 extension and the Iron Cove Bridge expansion, construction projects for the Building the Education Revolution Programme, and the decision to construct the Tillegra Dam.<sup>29</sup> Two examples of this type of coverage can be referred to here:

- November 2009 an order for papers from the Minister for Education and Training regarding Building the Education Revolution led to a detailed radio story quoting the Clerk of the Legislative Council among others in a discussion

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<sup>26</sup> It is worth noting that the increase in media coverage in 2008-09 coincided with the initiation of an estimates timetable in which all hearings were held between 9 am to 6pm on a non-sitting week. In 2007-08 for instance hearings were held as late as 9pm on a Friday night of a sitting week, and the previous year up to 10:30 pm on Friday and Monday nights.

<sup>27</sup> *Egan v Willis and Cahill* (1996) 40 NSWLR 650, the High Court decision *Egan v Willis* (1998) 195 CLR 424 and NSW Court of Appeal *Egan v Chadwick* (1999) 46 NSWLR 563

<sup>28</sup> For a fuller description of the history and process see Lovelock and Evans *New South Wales Legislative Council Practice* (2008) Federation Press p473-482; Lynn Lovelock 'the Power of the New South Wales Legislative Council to Order the Production of State Papers: Revisiting the *Egan* Decisions Ten Years On', *Australasian Parliamentary Review* Spring 2009, 24(2) 197-218

<sup>29</sup> for example 'All roads lead to more roads' *Sydney Morning Herald* 5 July 2010, 'no compensation for businesses derailed by metro' *Sydney Morning Herald* 1 July 2010 'RTA refuses to reveal M4 papers' *Sydney Morning Herald* 9 October 2009

on using electronic formats as a way to reduce the costs of providing the information.<sup>30</sup>

- A recent order for a report on the health impacts of un-flued gas heaters in schools reported in detail the activities of a Greens member using the processes of the House to have the government publicly release the document.<sup>31</sup>

The above examples show a dichotomy. The media, when writing about the upper house, usually takes a jaundiced view. Yet this is quite at odds with their frequent, relatively accurate reporting of proceedings of the House and its outcomes. None of the negative articles referred to earlier mention orders for papers or the committee system, which are reported at length in the same media. Perhaps the criticisms could be understood more clearly if based upon an assessment of the value of this work - are the orders for papers an abuse of the processes of the House; are the committee inquiries a waste of time? These issues are, however, never mentioned in critical commentary on the Legislative Council. Instead there is an unexplained gap in perceptions.

### ***Reasons for negative perceptions***

Some suggestions for this dichotomy are offered below which others can debate:

- The lack of diversity of views in parliamentary reporting
- A hangover of history
- The way in which members are elected to the Council; or
- Lack of understanding of the differences between the Assembly and the Council

While there is a limited literature on parliamentary reporting a common observation is the impact of having a parliamentary press gallery located within the parliament building:

The other problem with the Press Gallery arrangement, then and now, is that it reduces or even eliminates competition amongst the media and this results in an extraordinary uniformity of the coverage coming out of Canberra. The physical location of the media organisations cheek by jowl with each other in the Gallery in conjunction with the fact they are all covering the same stories day in and day out produces common thinking and a like-mindedness which is at odds with the usual journalistic competitiveness.<sup>32</sup>

The argument is that this contributes to a ‘herd mentality’, a comment often made in a more general sense about mainstream media. If there is a prevailing view among journalists that the Legislative Council is irrelevant or performs a negative role, it is likely to be self-reinforcing.

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<sup>30</sup> transcript, [www.abc.net.au/news/stories/2009/11/09/2737263](http://www.abc.net.au/news/stories/2009/11/09/2737263)

<sup>31</sup> ‘Dangers of heaters in schools concealed’ *Sydney Morning Herald* 31 May 2010

<sup>32</sup> ‘The Media and Parliament: Image –Making and Image –Breaking’ Anne Summers *Papers on Parliament No. 31* June 1998 p5

A related explanation is that the perception is a hangover of the history of the House. The Legislative Council was established in 1823 as a small group of worthy citizens advising the Governor of the Colony, and for much of its history has been seen as representing the interests of those with wealth and property rather than the general populace. Labor governments saw the Council as opposed to its interests, although lost enthusiasm for abolition during the 1950s when it gained control of the House and was able to use it to ‘rubber stamp’ legislation passed in the Assembly. For its first 150 years it is true to say that the Council lacked direct democratic legitimacy, and this in turn restricted its effectiveness as a house of review.<sup>33</sup> Prior to 1978 members were appointed, not elected, and the House was for decades known for its conservatism and inertia, particularly in the post-war period.

Since 1978 there has been a dramatic change in the way the Council has operated. From 1988 no government has held a majority in the House. The optional preferential system which elects members is arguably more representative of voters throughout New South Wales than the system which elects the Assembly, and as a result the cross bench has held the balance of power. The House has become highly active and effective in its scrutiny of the Executive, particularly after the *Egan* cases during the 1990s in which the powers of the House were tested and ultimately vindicated by the High Court.

Despite the reality of the Council changing, in the media there appears to be a residual view of the House from an earlier time. When considering the institution in the abstract, in opinion pieces, the old stereotypes prevail. However when the media reports the actual activity, a more accurate picture emerges, reflecting an activist upper house making a significant contribution to the democratic process in the State.

The colonial décor of the chamber itself conveys an image of a ‘Gentleman’s Club’ despite the vigorous modern political debate that takes place within. Political opponents of the Legislative Council have often used its history to attack its role:

I’ve been against it as a kid, against it as an adult, against it as a member of the lower house, against it as a member of the upper house, against it before I became a member of Parliament and after I became one, against it in Opposition and against it in government.<sup>34</sup>

If there is a single criticism which recurs in opinion pieces and commentary it is the process by which members are selected by their party to a position on the ticket rather than submitting directly to the electorate as an individual. This view is frequently expressed by former Press Gallery President Alex Mitchell<sup>35</sup>, among

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<sup>33</sup> Clune and Griffith, *op cit* p157, p397–404

<sup>34</sup> Hon Michael Egan, (then Leader of the Legislative Council), quoted in ‘It’s time to wipe away the tiers of government’ *Sun-Herald* 23 October 2005

<sup>35</sup> Mitchell *op cit*, also ‘Labor’s parachute goes up — to the House of privilege’ *Sun Herald* 20 June 2010

others, and is summarised in a recent opinion piece by the current Speaker of the Legislative Assembly:

The upper house has ceased to be one of review. It is packed, mostly, with time servers and party faithful owed a favour or three. No one in the upper house is directly elected.<sup>36</sup>

A final possible explanation is lack of understanding of the role of the House. Do many reporters realise that most of the committees they are reporting on are upper house committees, or that the documents they are using for their stories have come from an order of the House for papers under standing order 52? Only older reporters would be aware that the Legislative Council took the then Treasurer Michael Egan, on behalf of the government, to the High Court to establish the power to order such documents. Possibly few would be aware that it is a power rarely used by other Legislative Councils in Australia.

If this is the case it may also be a reflection of the wider community. Insiders — members and parliamentary staff - are acutely aware of the distinctive cultures and roles of the Assembly and Council. The rest of the world, unless very well informed, sees ‘Parliament’ as a single unit not two Houses. An activity of the Legislative Council is reported as a ‘parliamentary’ activity rather than being specifically attributed to the upper house.

### ***What can be done?***<sup>37</sup>

Whatever the reasons, the members and those who work for the Legislative Council do have a media perception problem. Ultimately this is a political issue, a contested view of the relevance and importance of a State Upper House. But it is also an issue to which the administration of a Parliament can respond in a limited way. It is not an issue to be ignored:

Political communication is vital to a healthy democracy. It is critical to the democratic processes by making governments aware of what people want, and providing feedback to government on its policies and actions.<sup>38</sup>

While an avalanche of paper is issued every day covering every aspect of what is happening in Parliament, the House [of Commons] authorities make little effort to make it digestible, accessible or relevant. In contrast, government and opposition communication teams supply well-packaged stories tailored to the demands and timer scales of modern media operations.<sup>39</sup>

There are some opportunities to at least ensure that media perceptions are based upon an understanding of the House and its processes. During this Parliament, both

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<sup>36</sup> Torbay *op cit*

<sup>37</sup> Thanks to Madeleine Foley, Principal Council Officer — Training and Research, for the following material.

<sup>38</sup> Singleton Aitkin Jinks Warhurst *Political Institutions* (2009) Pearson Prentice Hall p430

<sup>39</sup> Hansard Society *op cit* p701

Presidents Primrose and Fazio have supported and encouraged initiatives of the Department of the Legislative Council to improve the understanding of the Legislative Council by the general community and by the media.

These initiatives include:

- The House in Review publication
- The Running Record
- Parliament wide information briefings; and
- Community education initiatives

### ***House in Review***

**The *House in Review* is a weekly publication summarising the key business of the sitting week in the Legislative Council.** It is a new resource that aims to make the activities of the Legislative Council easily understood and more widely known. The *House in Review* is published by the Clerk of the Parliaments, providing commentary on the variety of matters considered, such as:

- An overview of the objectives of legislation brought before the House
- The progress of legislation, including amendments considered and passed
- Orders for papers made, and documents tabled in return
- Items of private members' business
- Petitions received by the House
- Topics of members' adjournment speeches
- Committee reports tabled and debated
- Motions for disallowance of statutory rules.

The *House in Review* is published on the Parliament's website on the Friday afternoon of a sitting week. It is emailed to members and their staff, as well as parliamentary officers. Interested persons can also subscribe to an email distribution list, which at present amounts to several hundred persons. The media are an important target group for this publication, with the aim being to provide succinct information in a readable style which can then direct journalists to find the relevant debates in Hansard and other sources.

### ***Running Record***

The Table Office has recently developed an online, real-time record of proceedings in the House called the Running Record, based upon a model used by the Senate. The Running Record is made available at the commencement of proceedings in the House each day and is updated throughout the day to reflect the current stage in proceedings, and the outcome of each item of business. Where possible, the Running Record contains links to bills, tabled papers, and notices of motions given that day.

The Running Record, though based on procedural principles, is written in plain language and has been developed with a view to informing members and their staff, departmental officers, the media and members of the public of the outcomes of business of the House in abbreviated text. The document is intended as a guide only — the *Minutes of Proceedings*, published the following day, remain the official record of proceedings. The Running Record is available through the Parliament's website. Feedback has been very positive, with early indications showing that it is well-used by the target groups.

### ***Access to returns to order under standing order 52***

Returns to orders for papers, where those documents are public, are available for viewing in the Procedure Office. Members of the public and the media can view the returns on weekdays from 9am to 5pm, and can photocopy documents as needed. Typically the press gallery are informed by members who have requested the documents that they are available for inspection, although the Clerk also receives direct media inquiries regarding access. In addition, the indexes that are required to accompany each return to order are available through the Parliament's website, in text searchable format, so interested persons can review the list of documents provided before coming in to Parliament House.

### ***Parliament-wide information briefings***

The Department's Procedural Research and Training Unit in 2009 delivered two information briefings designed to provide an introduction to the Legislative Council and an overview of its practices and functions. The briefings were open to all Parliamentary staff, including the media, members and their staff. The two sessions covered the topics of 'The Legislative Council in practice — conduct of proceedings' and 'The House of Review — legislative review and executive government accountability'. The sessions were well-attended and were the subject of positive feedback.

### ***Community education initiatives***

The Council recently undertook a pilot initiative to enhance community access and engagement in rural and regional schools, as part of a regional site visit by the Select Committee on Recreational Fishing. In May 2010 officers of the Procedure Office and the Parliamentary Education and Community Relations Office joined the Recreational Fishing Committee at its public hearings in Batemans Bay and Griffith, to deliver sessions to secondary school students. Students were given an overview of the NSW Parliament and system of government; the Legislative Council as a House of Review, and the role of committee inquiries within that context; and the way in which committee hearings are conducted, including the conduct of Recreational Fishing inquiry. Local media coverage of the Committee hearings assisted in promoting the sessions. Students participated enthusiastically,

with feedback showing the importance of the sessions being grounded in a real event of relevance to the local community. Given that committees frequently conduct public hearings and site visits in regional and rural areas, there may be an opportunity conduct more such initiatives in future.

At a more basic level, during the 2008 and 2009 Estimates process the Legislative Council trialled a banner to be used in hearings. Taking the lead from the House of Representatives and others who have used signage for committee hearings, the concept is to improve accuracy of reporting. The aim of the banner clearly stating 'The Legislative Council' is that accompanying reports identify the House to which the activity belongs instead of the generic term of 'a parliamentary committee'. The Department is also looking at redesigning its part of the NSW Parliament's website to give it a focus on the activities which are the primary role of the Legislative Council, distinguishing it from the more generic view of 'Parliament' currently presented.

### ***Conclusion***

The Legislative Council is committed to improving the understanding by the media of its parliamentary processes and is continuing to explore ways to achieve this. Reaching the wider community is heavily reliant upon communicating effectively with the media. There is a need to develop within the media a deeper and more up to date understanding of the work of the Legislative Council, especially in terms of scrutiny and review of the actions and decisions of executive government. In the long run, the when the public think of the Legislative Council, thoughts need to turn to orders for papers and parliamentary inquiries rather than long bells and tablecloths. ▲