



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON THE STATE SENATE BILL 2015

State Senate Bill 2015



July 2018

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Select Committee on the State Senate Bill 2015

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Chair: Honourable Paul Green MLC

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Terms of reference

1. That the Select Committee on the State Senate Bill 2015 inquire into and report on the State Senate Bill 2015.

The terms of reference were referred to the committee by the Legislative Council on 23 November 2017.¹

¹ *Minutes*, NSW Legislative Council, 23 November 2017, pp 2250-2252.

Committee details

Committee members

The Hon Paul Green MLC	Christian Democratic Party	<i>Chair</i>
The Hon Natalie Ward MLC	Liberal Party	<i>Deputy Chair</i>
The Hon Wes Fang MLC	The Nationals	
The Hon Scott Farlow MLC	Liberal Party	
Mr Justin Field MLC	The Greens	
Hon Adam Searle MLC	Australian Labor Party	
Hon Walt Secord MLC	Australian Labor Party	

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Chair's foreword

When the New South Wales Legislative Council was established in 1823 its members were nominated and its role was to advise the governor in the making of laws. Gradually modernising to become directly elected from 1978, its role expanded to a house of review in which its members investigate issues via committees, scrutinise the executive government, and consider and indeed initiate legislation. The historical spirit of providing wise counsel on policy and legislation continues to this day, and in my view, provides the traditional foundation for continuing to use the term 'Legislative Council', and referring to members as 'Members of the Legislative Council'.

On the other hand, while use of the term 'Member of the Legislative Council' has a long and proud tradition, in my experience 'MLC' has been well branded as an insurance company and its use causes confusion among those not well acquainted with our state political system. In the best interests of educating the next generation of citizens, and the evolving modernisation of the Parliament, I would have liked the Bill's very reasonable and modest proposal to allow the alternative use of the more modern, globally recognised concepts of 'State Senate' and 'State Senator', to proceed into law at some time in the future.

In the end however, this House started in tradition, and this committee has recommended that the House should err on the side of tradition in relation to this matter and not proceed with consideration of the Bill.

I also note that in my view, the 15 submissions the committee received cannot be taken to fully reflect the community's thoughts on this matter. At the same time, I acknowledge the view expressed in numerous submissions that members of the Legislative Council should consider matters of greater importance to the people of New South Wales.

I thank my committee colleagues for their amicable approach to this inquiry. It is a mark of the Legislative Council's effectiveness that we can work together with collegiality on an inquiry such as this, where reasonable and well intentioned minds differ.



Hon Paul Green MLC
Committee Chair

Recommendations

Recommendation 1

5

That the NSW Legislative Council not proceed with consideration of the State Senate Bill 2015.

Chapter 1 The State Senate Bill 2015

This inquiry was referred to the committee by the Legislative Council on 23 November 2017. The committee received 15 submissions and held no hearings.

This report provides an overview of the State Senate Bill 2015, then canvasses the key arguments made for and against the Bill during the second reading debate. Next it briefly documents a similar proposal recommended by a committee of the Victorian Parliament, before presenting a brief summary of the views put forward in submissions to this inquiry.

The Bill

- 1.1** The State Senate Bill 2015 (the Bill) was introduced into the Legislative Council by the Reverend the Honourable Fred Nile, Christian Democratic Party, on 13 August 2015. The Bill was previously introduced by Reverend Nile in the same form in 2010 and 2012. Both the State Senate Bill 2010 and State Senate Bill 2012 lapsed at the second reading stage on prorogation of their respective sessions of parliament.²
- 1.2** On 23 November 2017 the House referred the State Senate Bill 2015 to a select committee to inquire and report on the provisions of the Bill.³
- 1.3** The objective of the Bill is ‘to authorise the use of the terms State Senate as a reference to the Legislative Council and State Senator as a reference to a Member of the Legislative Council’.⁴
- 1.4** The Bill consists of two administrative provisions and one provision to give effect to the objective of the Bill:

State Senate Bill 2015 [NSW]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Senate Act 2015*.

2 Commencement

This Act commences on the date of assent to this Act.

3 The State Senate and Senators

- (1) The Legislative Council may also be called the State Senate, and the use of that name has the same effect for all purposes as the use of its other name.
- (2) Accordingly, a Member of the Legislative Council may also be called a State Senator.

² The State Senate Bill 2010 lapsed on prorogation of the first session of the 54th Parliament on 2 December 2010. The State Senate Bill 2012 lapsed on prorogation of the first session of the 55th Parliament on 8 September 2014, was restored to the notice paper for the second session of the 55th Parliament on 9 September 2014, and lapsed for a second time on the prorogation of the second session of the 55th Parliament on 2 March 2015.

³ *Minutes*, NSW Legislative Council, 23 November 2017, pp 2250-2252.

⁴ State Senate Bill 2015 Explanatory Note, p 1.

- 1.5 During his second reading speech, Reverend Nile explained that the Bill allows for the term ‘State Senate’ to be used interchangeably with the ‘Legislative Council’, and for ‘State Senator’ to be used interchangeably with ‘the Honourable’. The Bill does not change the title of the Legislative Council or its members, but introduces alternative titles for ease of identification.⁵
- 1.6 Noting his experience that members of the Legislative Council often encounter a lack of understanding of their title and role, especially from overseas legislators, Reverend Nile proposed that enabling the optional use of these terms will facilitate a better understanding of the work of the Council and its members, because there is a wider understanding of the role of the Senate and the title Senator:

Around the globe the term “State Senator” is a more accurate description of what we do and, therefore, represents a more suitable title. A Senator is known to be someone who works in the upper House or Chamber of a bicameral legislature or parliament. ... I believe there should be an opportunity for members to have a choice in how they refer to themselves ... We seek simply to introduce an alternative for ease of identification for those who are not conversant with history and tradition or with Australian terminology ... We know that this would engender greater recognition and understanding than the current titles “Legislative Council”, “member of the Legislative Council” ... I believe it is now in order for the House to pass this legislation so that a custom ... is supported by legislation.⁶

Second reading debate

- 1.7 A range of views were expressed during the second reading debate on the Bill, as set out below.
- 1.8 The arguments in support of the Bill included that the terms ‘State Senate’ and ‘State Senator’ better convey the role of the Legislative Council and its members in both an international context and in contemporary society. The use of these terms will therefore address the common need for members of the Legislative Council to explain their role to people from other countries. In addition, by harmonising state and federal terminology, the Bill will assist the general public to engage with the Parliament, as they better understand the parallel functions of the Legislative Council and Senate. The Hon Paul Green MLC, for example, proposed that:

The Bill seeks to ensure that the general public are able to engage with parliament in a way in which they understand that the Legislative Council carries out similar functions to that of the Australian Senate ... the ability of members of this House to utilise the term “State Senator” and “State Senate” ensures that we are easily relevant and relatable to most people's understanding of our political system ... Harmonising the term “Federal Senate” with “State Senate” would go a long way to engaging and helping younger people understand the process in New South Wales in a bicameral Parliament.⁷

⁵ *Hansard*, NSW Legislative Council, 13 August 2015, ref 2548 (Fred Nile); see also *Hansard*, NSW Legislative Council, 23 November 2017, p 41 (Fred Nile).

⁶ *Hansard*, NSW Legislative Council, 13 August 2015, ref 2548 (Fred Nile); see also *Hansard*, NSW Legislative Council, 23 November 2017, p 41 (Fred Nile).

⁷ *Hansard*, NSW Legislative Council, 12 October 2017, pp 34-36 (Paul Green); see also *Hansard*, NSW Legislative Council, 10 November 2016, p 12 (Justin Field).

1.9 Members also expressed the view that by reflecting and engaging contemporary society in this way, the Bill will serve to modernise the Parliament.⁸

1.10 Arguments expressed against the merits of the Bill included that it is ‘not a sensible measure’,⁹ and ‘a waste of time for this House and an unnecessary extravagance’¹⁰. The Hon Trevor Khan MLC further argued that it is the substance of the work of the Legislative Council and its members that matters, not what they are called:

Questions about what somebody calls me or anyone in this Chamber do not make any difference as to whether we are making a significant contribution to the people of New South Wales, which is our job. Our job is to make a significant contribution to the democratic process to make the lives of the people of New South Wales better. It is not about whether we get in front of a crowd and have them say, “We know he is a state senator.”¹¹

Victorian inquiry recommendation

1.11 In 2014, a similar proposal was recommended by the Victorian Electoral Matters Committee during its inquiry into the future of Victoria’s electoral administration. That committee was of the view that use of the terms ‘Senate’ and ‘State Senator’, would assist members ‘to advertise and promote their work to constituents, and improve overall understanding of Parliament in the community’.¹²

1.12 However, the committee’s recommendation was not supported by the Victorian Government, which defended the longstanding title of the legislature and noted its consistency with that of other Australian states:

The Legislative Council has existed in Victoria for over 150 years and is part of the history and traditions of the State. The central role of the Legislative Council in Victoria’s parliamentary system is reflected in the Victorian constitution, which uses the term ‘Legislative Council’. This is consistent with other states which refer to their Upper House as the ‘Legislative Council’.

The Government supports the retention of the term ‘Legislative Council’ and does not see a need for change. The Government supports other methods to raise the profile for the Legislative Council’s work to resolve any confusion in the community.¹³

⁸ *Hansard*, NSW Legislative Council, 12 October 2017, p 34 (Paul Green); *Hansard*, NSW Legislative Council, 10 November 2016, p 15 (Shayne Mallard).

⁹ *Hansard*, NSW Legislative Council, 23 November 2017, p 41 (Adam Searle).

¹⁰ *Hansard*, NSW Legislative Council, 10 November 2016, p 11 (Peter Phelps).

¹¹ *Hansard*, NSW Legislative Council, 10 November 2016, p 15 (Trevor Khan).

¹² Electoral Matters Committee, Parliament of Victoria, *Inquiry into the future of Victoria’s electoral administration* (2014), p 119.

¹³ Victorian Government, *Response to the Electoral Matters Committee inquiry into the future of Victoria’s electoral administration* (2014), p 3.

Inquiry participant views

1.13 The committee received 15 submissions to our inquiry. While there were views both for and against the Bill, the majority were negative or very negative towards the proposal by a margin of 13 to 2. Those opposed to this measure included both lay people and those who can reasonably be accepted as having some expertise in the constitutional and political arrangements regarding the role and function of the Legislative Council of New South Wales.

1.14 A summary of the arguments in support of the Bill is set out below.

- The term ‘Legislative Council’ means little to the majority of the population, whereas the title and role of the Senate is better understood.¹⁴
- There is also a degree of confusion between the Legislative Council and local councils.¹⁵
- The changes in the Bill will assist people to better understand the role of the Legislative Council and its members, especially school children and those from other countries. If people better understand what a chamber of parliament is, they are more likely to take an interest in its proceedings. Thus the Bill will serve democracy by opening parliament up to the community.¹⁶
- This is not a particularly significant change, but will be a positive one, and should be dealt with expeditiously.¹⁷
- The change is long overdue, and once made, it is very likely that other jurisdictions will follow.¹⁸

1.15 The arguments expressed against the Bill were as follows.

- There are much more significant matters for the Legislative Council to consider than nomenclature of the Council and its members.¹⁹
- It is not clear how the Bill will improve the work of the Legislative Council or help the people of New South Wales.²⁰
- It is the substance of what a member of parliament contributes to society and to the democratic process that is significant, not the form in which they are addressed.²¹
- The Bill goes against the egalitarian spirit that prevailed in the titling of members of the Legislative Council when our bicameral legislature was established in 1853.²²

¹⁴ Submission 15, Mr Bernie Finn MP, p 1.

¹⁵ Submission 15, Mr Bernie Finn MP, p 1.

¹⁶ Submission 1, Name suppressed, p 1; Submission 15, Mr Bernie Finn MP, pp 1-2.

¹⁷ Submission 1, Name suppressed, p 1.

¹⁸ Submission 15, Mr Bernie Finn MP, p 2.

¹⁹ Submission 2, Mr Robert Devine, p 1; Submission 6, Name suppressed, p 1; Submission 9, Mr Michael Davis, p 1; Submission 10, The Hon Trevor Khan MLC, p 2.

²⁰ Submission 11, Associate Professor Luke Beck, Faculty of Law, Monash University, p 1.

²¹ Submission 10, The Hon Trevor Khan MLC, p 2.

²² Submission 12, Professor Anne Twomey, pp 1-2; Submission 13, The Hon Michael Egan AO, pp 1-2.

- It risks detracting from the standing of the Council in the eyes of the community.²³
- As the first representative body in Australia, the NSW Legislative Council can be proud of its name and should resist any change to it.²⁴
- It is not readily apparent how the use of the term ‘State Senator’ will alleviate confusion when federal senators from this state are referred to as the ‘Senator for NSW’, and when every state bicameral parliament in Australia uses the terms ‘Legislative Council’ and ‘member of the Legislative Council’.²⁵
- The Bill’s proposal to allow optional use of ‘State Senator’, such that some members will use it and others will not, will also lead to confusion.²⁶
- Bringing about what amounts to a change in the name of a House of the NSW Parliament and its members is not justified merely to address a lack of understanding on the part of American legislators.²⁷

Committee comment

- 1.16** One of the key purposes of this inquiry into the State Senate Bill 2015 was to explore the arguments for and against allowing the Legislative Council to also be called the State Senate, and for members of the Legislative Council to also be called State Senators. These arguments have been ventilated through submissions to this inquiry, as well as in the second reading debate on the Bill. In the committee’s view, there are merits to both sets of arguments and it is clear this is an issue on which reasonable minds can differ.
- 1.17** Another purpose of this inquiry was to gauge the level of public support for the proposals contained in the Bill. In light of the submissions received from individuals, academics, and from current and former members of the Council, at this stage it is clear that there is no real support for the Bill to proceed into legislation. Accordingly, we recommend that the NSW Legislative Council not proceed with consideration of the State Senate Bill 2015.

Recommendation 1

That the NSW Legislative Council not proceed with consideration of the State Senate Bill 2015.

²³ Submission 12, Professor Anne Twomey, p 2; Submission 8, Name suppressed, p 8; Submission 10, The Hon Trevor Khan MLC, p 2; Submission 14, The Hon Amanda Fazio, p 2.

²⁴ Submission 7, Mr Liam Bathgate, p 1.

²⁵ Submission 10, The Hon Trevor Khan MLC, p 2; Submission 12, Professor Anne Twomey, p 2; Submission 14, The Hon Amanda Fazio, p 1.

²⁶ Submission 11, Associate Professor Luke Beck, Faculty of Law, Monash University, p 1.

²⁷ Submission 11, Associate Professor Luke Beck, Faculty of Law, Monash University, p 1; Submission 12, Professor Anne Twomey, p 2; Submission 14, The Hon Amanda Fazio, pp 1-2.

Appendix 1 Submissions

No	Author
1	Name Suppressed
2	Mr Robert Devine
3	Mr Anthony Tortorici
4	Mr Alex MacDonald
5	Mr Adam Fitzpatrick
6	Name Suppressed
7	Mr Liam Bathgate
8	Name Suppressed
9	Mr Michael Davis
10	The Hon Trevor Khan MLC
11	Associate Professor Luke Beck
12	Professor Anne Twomey
13	The Hon Michael Egan AO
14	Hon Amanda Fazio
15	Mr Bernie Finn MP

Appendix 2 Minutes

Minutes no. 1

Wednesday 14 March 2018

Select Committee on the State Senate Bill 2015

Members' Lounge, Parliament House, Sydney at 1.05 pm

1. Members present

Mr Green
Mr Fang
Mr Farlow
Mr Field
Mr Secord
Ms Ward

2. Tabling of resolution establishing the committee

The Chair tabled the resolution of the House establishing the committee, which reads as follows:

1. That the State Senate Bill 2015 be referred to a select committee for inquiry and report.
2. That, notwithstanding anything to the contrary in the standing orders, the committee consist of seven members comprising:
 - (a) three government members,
 - (b) two opposition members, and
 - (c) two crossbench members, including Mr Green.
3. That the chair of the committee be Mr Green.
4. That members may be appointed to the committee as substitute members for any matter before the committee by providing notice in writing to the Committee Clerk, with nominations made as follows:
 - (a) nominations for substitute government or opposition members are to be made by the Leader of the Government, Leader of the Opposition, Government or Opposition Whip or Deputy Whip, as applicable, and
 - (b) nominations for substitute crossbench members are to be made by the substantive member or another crossbench member.
5. That a committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:
 - (a) the Chair is present in the meeting room,
 - (b) all members are able to speak and hear each other at all times, and
 - (c) members may not participate by electronic communication in a meeting to consider a draft report.
6. That, unless the committee decides otherwise:
 - (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
 - (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,

- (c) the sequence of questions to be asked at hearings alternate between opposition, crossbench and government members, in that order, with equal time allocated to each,
- (d) transcripts of evidence taken at public hearings are to be published,
- (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
- (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

3. Election of Deputy Chair

The Chair called for nominations for the Deputy Chair.

Mr Farlow moved: That Ms Ward be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Ms Ward elected Deputy Chair.

4. Conduct of committee proceedings – media

Resolved, on the motion of Ms Ward: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair's Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

5. Conduct of the inquiry into the State Senate Bill 2015

5.1 Closing date for submissions

Resolved, on the motion of Mr Farlow: That the closing date for submissions be Sunday 22 April 2018.

5.2 Stakeholder list

Resolved, on the motion of Mr Farlow: That members have until 5.00 pm Friday 16 March 2018 to nominate additional stakeholders to the stakeholder list.

5.3 Advertising

The committee noted that the inquiry would be advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

5.4 Hearing dates

Resolved, on the motion of Mr Farlow: That the committee conduct one hearing, with one reserve date, in May 2018, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

6. Adjournment

The committee adjourned at 1.09 pm *sine die*.

Merrin Thompson
Committee Clerk

Draft minutes no. 2

Monday 2 July 2018

Select Committee on the State Senate Bill 2015

Room 1254, Parliament House, Sydney at 11.00 am

1. Members present

Mr Green, *Chair*

Ms Ward, *Deputy Chair*

Mr Farlow

Mr Khan (substituting for Mr Fang)

Mr Searle

Mr Secord

2. Apologies

Mr Fang

Mr Field

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 1 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 21 March 2018 – Letter from the Hon Shelley Hancock MP, Speaker, NSW Legislative Assembly, to Chair, advising that she will not be making a submission to the inquiry
- 12 April 2018 – Email from Ms Laura Shumack, Acting Director, Legal Branch, Department of Premier and Cabinet, to secretariat, advising that the Department of Premier and Cabinet will not be making a submission to the inquiry
- 16 April 2018 – Letter from Ms Joy Birch MLA, Speaker, Legislative Assembly of the Australian Capital Territory, to Chair, advising that the Legislative Assembly will not be making a submission to the inquiry.

5. Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 2-5, 7 and 9-15.

6. Partially confidential submissions

The committee noted that the following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submissions no. 1, 6 and 8.

Resolved, on the motion of Mr Searle: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submissions no. 1, 6 and 8.

7. Public hearings

The committee noted that it previously agreed via email not to conduct public hearings for this inquiry.

8. Consideration of Chair's draft report

The Chair submitted his draft report entitled State Senate Bill 2015, which, having been previously circulated, was taken as being read.

Mr Searle moved: That paragraph 1.7 be amended by inserting 'most of which were negative or highly negative towards the proposal' before 'as set out below'.

Question put.

The committee divided.

Ayes: Mr Searle, Mr Secord.

Noes: Mr Farlow, Mr Green, Mr Khan, Ms Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 1.13 be amended by:

- inserting a full stop after 'The committee received 15 submissions to our inquiry'
- omitting 'expressing' before 'views both for and against the Bill', and inserting instead 'While there were'
- inserting at the end:
 , the majority were negative or very negative towards the proposal by a margin of 13 to 2. Those opposed to this measure included both lay people and those who can reasonably be accepted as having some expertise in the constitutional and political arrangements regarding the role and function of the Legislative Council of New South Wales.

Mr Searle moved: That paragraph 1.16 be amended by omitting 'are merits to both sets of arguments and it is clear this is an issue on which reasonable minds can differ', and inserting instead 'is no merit to the proposal.'

Question put.

The committee divided.

Ayes: Mr Searle, Mr Secord.

Noes: Mr Farlow, Mr Green, Mr Khan, Ms Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 1.17 be amended by:

- omitting 'does not appear that there is sufficient' before 'support for the Bill to proceed into legislation', and inserting instead 'it is clear that there is no real'
- omitting 'at this time' after 'Accordingly, we recommend that the NSW Legislative Council not proceed with consideration of the State Senate Bill 2015'.

Mr Searle moved: That recommendation 1 be amended by omitting 'at this time' at the end.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Khan, Mr Searle, Mr Secord.

Noes: Mr Green, Ms Ward.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That:

- the draft report as amended be the report of the committee and that the committee present the report to the House
- the submissions and correspondence relating to the inquiry be tabled in the House with the report
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- upon tabling, all unpublished submissions and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting

- the report be tabled on Wednesday 4 July 2018.

Resolved, on the motion of Ms Ward: That the committee note its thanks to the secretariat for their efficient preparation of the report.

9. Adjournment

The committee adjourned at 11.08 am *sine die*.

Merrin Thompson
Committee Clerk