

**Submission
No 13**

**INQUIRY INTO LEGISLATIVE COUNCIL COMMITTEE
SYSTEM**

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Re: Inquiry into Legislative Council Committee System

Introduction

I would like to thank the Legislative Council for this opportunity to comment on its committee system and to compliment it on its achievements over the past twenty five years. I have long held its work in high regard and believe that on the practical side of management and practice it needs little in the way of major reform. I am however pleased to see that the terms of reference revolve around three matters which fall outside these parameters being, the role of the committees as a platform to hold the Government to account, the possible expansion of the community's engagement in the parliamentary process, and its capacity to contribute the development of sound policy for New South Wales citizens.

Committees as a function of the Parliament

Parliamentary committees have the potential to make a very valuable contribution to the role of parliament as the body responsible for '*the peace, welfare and good government*' of its citizens. Increasingly the remit of committees has expanded as has the amount of time spent by members on committee work both in formal meetings and behind the scenes. As well as this growth, committees established by Upper Houses in Australia have been significantly impacted by the election of independent members and the inability of either major party to maintain a majority, thus allowing the membership of the House to dictate the number, nature and composition of its committees.

Committees are a valuable tool for a richer democracy however to fulfill this role they must be

- a) adequately resourced
- b) involve all members, and,

c) considered an integral part of a member's duties, that is, sittings of committees must be identified and recorded as a formal function of parliament in session.

More important than the number of committees and the scope of their references is the need to ensure that the effort put into committee work is effective in terms of forming public policy, shaping legislation and addressing public need. While the popular belief is that Government is responsible for these three roles the constitutional reality is that it is the parliament, as the body representative of the people, which bears the ultimate responsibility. I believe the accumulative wisdom of the members who make up parliament, properly harnessed and contributive, has much to offer in producing outcomes that accord with popular opinion, are well researched and effectively framed. To do this they must have adequate staff and accommodation, access to expert advice, access to government papers and collateral information including independent, expert advice on legal and fiscal matters. Australian governance suffers far too much from a lack of transparency and accountability to the people. This must not be allowed to impede committees in their task.

Improving parliamentary performance

Committee work makes a great contribution to collegiate cohesion within a parliament so it is important that every backbench member participates on committees, on an equal number of committees, and the role of chair ideally circulated among all members. To better facilitate the use of members' time I suggest Parliamentary Committee Sitting Days be established on the same structured timetable as current parliamentary sitting days. On these days all members would be engaged in committee meetings either in deliberation or taking evidence and each such day would be counted as a parliamentary sitting day along with the traditional sitting days when parliament is in plenary session.

This has particular significance for the New South Wales Legislative Council because members do not have the call on their time imposed by constituents in the single member constituencies of Assembly members and the Council can determine its own balance between plenary and committee sitting days. I do not see that the sitting days of the two Houses need to so closely correspond.

Getting better value out of committees in the public interest

It would be in the public interest if recommendations of committees were binding on the Government unless amended or voted down by the Parliament. This would encourage committees to make recommendations that were legally sound, fiscally responsible and in the public interest. In case this is considered too radical a suggestion let me put it this way. Presumably committees are created to consider in depth their terms of reference, and to determine an outcome in fulfillment of those terms of reference, usually expressed in the form of a number of recommendations. If this not the case the very existence of committees in terms of usefulness is completely negated. If therefore, it is reasonable to presume recommendations are basically sound there seems little reason why they should not be adopted as public policy but, as a safeguard, a recommendation could be voted down but only for good reason, for example, that it is in some way fatally flawed, the cost is prohibitive, it is not sound in law, impinges unduly on the rights of a significant section of the community and so on. That is, it is not in the public interest and the majority that votes it down must stand public scrutiny that this is the case.

A classic example of a positive outcome occurred following the report of the Staysafe Committee, a Joint Standing Committee, which led to the introduction of random breath testing. This was major reform driven largely by backbench initiative and highly successful, an initiative that succeeded despite strong opposition from civil libertarians, the hotel, registered club, and allied liquor industry group and some sections of the general community. It was an initiative not specifically mentioned in the committee's terms of reference but emerged from the volume of evidence highlighting the impact of alcohol in serious and fatal car crashes.

Much of the efficacy which has been lost from parliamentary debate with its set piece speeches, structured Question Time and controlled debates could be restored if committee work became an essential element of public policy debate. The framing of legislation and plenary sessions would be much more effective if greater time was given to debating committee reports.

A strong and purposeful committee system has the potential to return greater sovereignty to the parliament through the empowerment of rank and file members. Perhaps this why governments have always been reluctant to give them a greater share of the parliamentary table, however, greater sovereignty of the parliament generally means better outcomes for the people.

The New Zealand experience

On this note I recommend the Committee look closely at the New Zealand experience. While there are differences in parliamentary structure, New Zealand has its single House mixed member proportional (MMP) representation, there are none the less valuable lessons to be learned from their experience. Since the introduction of MMP the major parties have not been able to gain an outright majority and therefore have to negotiate with minority parties to secure the passage of its legislation.

Without going into great detail key elements are that committees have from eight to twelve members and have the power to invite additional members to sit in on their proceedings. The bulk of committees are broadly aligned to ministerial portfolios but committees may also be established to inquire into matters of special interest. They do not always have a government majority. As a consequence the scrutiny role has increased dramatically.

All legislation, whether introduced by the Government or a private member, is forwarded to the relevant committee which must report within six months unless an earlier time is specified. To reach consensus the government may need to compromise with a minority party.

Considerable effort is made to ensure the public have the best possible opportunity to participate and many submissions are received from the public. Inappropriately worded submissions may be returned to the sender with suggestions for improvement, however frivolous, vexatious or offensive submissions are rejected. Broad ranging natural justice provisions protect both witnesses and those who may be subject to statements that go to personal reputation or are of alleged criminal activity.

There is also a Business Committee, chaired by the Speaker, which makes decisions about many aspects of proceedings of the House and its committees. Towards the end of each year it recommends to the House a sitting program for the following year. It can determine the order of business to be transacted in the House, the time to be spent on any particular item of business in the House, how time spent on a

particular item of business will be allocated among the parties represented in the House, and the speaking time of individual members on an item of business. It can determine extended sitting hours and whether legislation may proceed through the House as cognate bills or as an omnibus bill. The nature of consideration of a bill by the Committee of the Whole House may be determined by the Business Committee. It also decides the size and membership of select committees.

Other measures to improve parliamentary performance

In ensuring efficacy in the use of parliamentary debating time non-partisan agenda committees are a useful tool (see note above relating to the Business Committee of the New Zealand Parliament.)

There are many parliaments throughout the world where all business is transacted by committees with the findings and recommendations of the committees ratified at a short plenary session. It is extremely rare that the committee's findings are not adopted and often no debate is allowed. The absence of debate in the plenary session however can lead to lack of public awareness that the subject is even being considered and outcomes that are often manipulated by vested interests. I believe the exposure of committee reports to public debate and regular reporting of committee progress is essential if community engagement is to be of real value. Community debate of issues in the formative stages often makes for better outcomes that will stand up to public scrutiny of the final outcome.

Legislation Committees

The establishment of legislation committees would be a significant step forward for enhanced, informed and better articulated debate.

While it would be within the power of the Legislative Council to form legislation committees there are no doubt difficulties in bi-cameral parliaments that do not exist in uni-cameral parliaments. The Government may well consider that such a practice unreasonably delays the passage of legislation however legislation is often months in the making before it even reaches parliament so more time for a better result would not seem that much of a problem.

Legislation committees could be created by melding the functions of the six General Purpose Committees with the Law and Justice, Social Issues and State Development Committees with the power to take on additional matters determined by the House or in some cases on its own initiative, the nexus being that most issues are at some stage related to legislation. The role of other special purpose standing committees and select committees would of course remain.

When a bill is initiated in the House it would, in the case of a bill originating in the Assembly be followed by a short introductory statement similar to the old style first reading speeches, and when originated in the Council by the normal second reading speech by the minister. The bill would then be referred to the appropriate committee.

The relevant minister would be invited to sit on the committee or at the very least be invited to appear as a witness. The committee would consider the general aspects of the bill, its philosophy and practical intention, as well as the justification for the legislation. It would also consider amendments and where necessary seek expert advice in the determination and drafting of amendments. In an appropriately

structured schedule of sitting days the committees could consider bills during recesses of the Assembly, thus reducing potential delay.

The challenge for the Legislative Council, in determining the number of committees that may successfully function, lies in the relatively small number of members available for committee work. It must be remembered however that there are effective parliaments with less members in total than are available in the Council. If legislation committees could be established in the manner suggested above there may be no increase in the number of committees.

Of equal importance to the committees' deliberations is the need for a more effective follow up mechanism to track government responses. Committees should have the power to reconvene if, after a reasonable period, the government's response is inadequate, the committee would determine what further action it should take. Every Member of Parliament should be concerned at the waste of time, effort and money each time an excellent and well presented report disappears into the proverbial 'black hole'.

Community Engagement

This is clearly an area in which there is scope to capture a wider input of information to inform committee deliberations. Committees currently utilise a number of procedures to assist potential witnesses to engage with them. These are described in the discussion paper but simply accessing the parliamentary website does not readily reveal these possibilities. I would suggest an addition to the website which details these initiatives in an easily accessible, user friendly format, would be very helpful.

Additionally I would suggest the committee investigate an interactive element which would open up the process to a much wider cohort. Presently the system relies on some degree of pre-knowledge to activate interest. Using an appropriate tool a series of key words could be developed that would direct information to persons interested in a particular subject. It could be set up to draw attention to inquiries that were current as well as concluded inquiries on the selected subject. It could also include the opportunity to suggest an area of inquiry that could be of interest. It could have a 'Q and A' format that would inform and advise the community. It could also allow citizens to subscribe to a register which would allow them to be automatically advised of matters coming within the purview of a committee in their field of interest.

I appreciate that all this takes resources and resources require finance. I have always been critical of penny pinching when it comes to the democratic process. It may well be that it is not so much a matter of saving money but an excuse to keep the system as closed as possible. Governments seem to hate the 'pesky public' which actually has an opinion on what is needed and how that need should be addressed.

I was saddened to read on page 24 of the Discussion Paper (at 5.8) that the Council does not have a dedicated officer to manage community engagement. I believe that there should be a dedicated unit comprising at least three specialist staff which could devise, manage and continually upgrade ways and means of engaging the community. This would be a comparatively small cost for an initiative that would be a major step forward in participatory democracy.

Conclusion

A summary of my comments is as follows:

1. The current General Purpose Committees should be merged with the Law and Justice, Social Issues and State Development Committees to become specific subject committees covering the full range of ministerial portfolios.
2. A Business Committee should be established along the lines of the New Zealand model.
3. All bills introduced into the House would be sent to the relevant subject committee for consideration and report.
4. The majority of committee hearings to be conducted on days designated as parliamentary sitting days specifically set down for that purpose.
5. All members not holding ministerial portfolio to be appointed to the subject committees in a manner that spreads the workload equally amongst those members.
6. Committees must be adequately staffed and accommodated with access to expert advice, access to government papers and collateral information including independent, expert advice on legal and fiscal matters.
7. Recommendations of committees should be binding on the Government unless amended or voted down by the Parliament.
8. More time should be devoted to debating committee reports in plenary sessions.
9. An effective follow up mechanism to track government responses.
10. The Council website should be expanded to incorporate access details and community engagement strategies mentioned in the Discussion Paper.
11. Establishment of a Community Engagement Unit comprising at least three staff to devise, manage and continually upgrade ways and means of engaging the community.

Many of these suggestions are in the embryo stage and would require further investigation and development. I would be happy to appear before the committee to expand on the detail and assist the committee any other way that was considered appropriate.

Once again I thank the Council for the opportunity to contribute

Yours faithfully

The Hon. Kevin Razzoli AM