Submission No 12

INQUIRY INTO STATE SENATE BILL 2015

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Date received: 1 April 2018

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31 March 2018

The Hon Paul Green
Chair
Legislative Council Select Committee on the State Senate Bill 2015
Parliament House,
Sydney, NSW 2000

Dear Sir,

Submission on the *State Senate Bill 2015*

I have been requested by the Secretariat of the Committee to make a submission in relation to the *State Senate Bill 2015.* The Bill's one great merit is its brevity. It provides that the Legislative Council of New South Wales may also be called the 'State Senate' and that a Member of the Legislative Council may be called a 'State Senator'. The second reading speech correctly notes that the name of the Legislative Council could not be changed without a referendum, as this would involve the amendment of entrenched provisions of the *Constitution Act 1902* (NSW). Accordingly, the Bill does not seek to change the name of the House – rather, it seeks to allow it to be called by a different name, with the consequence that its Members can also be adorned with a different title. It is apparently motivated by a concern that Members of the Legislative Council are treated as if they are city councillors when visiting the United States.

The Legislative Council of New South Wales has a long and distinguished history. It was first established by an Imperial Statute in 1823. It was the sole legislative body for New South Wales until responsible government and a bicameral Legislature was established in 1855. The *State Senate Bill 2015* brings to mind that debate on the establishment of a bicameral Legislature. A *Constitution Bill* was prepared by a Select Committee of the Legislative Council in 1853. That Committee contemplated the make-up of the proposed two Houses. It expressed its desire to have a 'form of Government based on analogies of the British Constitution', noting that it had 'no wish to sow the seeds of a future democracy'. It therefore proposed a Legislative Council to be comprised of persons holding hereditary titles. W C Wentworth, one of the primary proponents of the Bill, justified it by contrasting it with the United State Constitution and stated that his aim was to frame a 'constitution that will be a lasting one – a conservative one – a British, not a Yankee constitution'.

When the Bill was debated, both in the Legislative Council and in public forums, it was the subject of ridicule and brought the Legislative Council into contempt. Daniel Deniehy, in a widely publicised speech at Circular Quay, described the proponents of the Bill as pygmies who, while their weakness was ridiculous, could still do a great deal of mischief. He saw them as bringing contempt on New South Wales so that 'even the poor Irishman in the streets of Dublin would fling his jibe at the Botany Bay aristocrats'. And what was this jibe? That they had created a 'bunyip aristocracy'.

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The egalitarian spirit of the people of New South Wales prevailed and the self-aggrandising plans of the Members of the Legislative Council who had proposed their hereditary ennoblement was abandoned.

Now, it would appear, that rather than aping the hereditary titles of the United Kingdom, there is a proposal to ape a title from the United States – that of State Senator. If such a proposal were to be given the same degree of public scrutiny and debate as in 1853, I suspect the egalitarian spirit of the people of New South Wales would again rise and the proposal would be held in as much contempt and ridicule as that of the bunyip aristocracy. Indeed, there would be a substantial risk that the people would also demand the removal of the title 'Honourable' from Members of the Legislative Councillor, on the ground that it is a colonial relic and 'misleading and deceptive' in its description.

The reality is that in New South Wales, the title Member of the Legislative Council has been in existence for close to 200 years. The title 'State Senator' would only cause confusion, with people believing that it meant one of the State's elected Senators to the Australian Senate. It would be a highly misleading title in Australia, even if the title might have a clearer meaning to people in the United States.

One must then ask to whom are the Legislative Councillors responsible and in what community is it most important that their role be recognised – the community in New South Wales or the people of the United States? Surely the obvious answer is that it is far more important that Legislative Councillors not be mistaken for Senators in Australia, than that they achieve appropriate levels of deference in the United States? Does it really matter one jot whether a Legislative Councillor is regarded as a city councillor when travelling abroad? If anything, it would be an appropriate lesson in humility for the Member concerned and a chance to explain the political system in Australia, which is probably to the benefit of both parties in any such interaction.

Yours sincerely,

Anne Twomey
Professor of Constitutional Law