

**Submission
No 4**

**INQUIRY INTO PARLIAMENTARY EVIDENCE
AMENDMENT (MINISTERIAL ACCOUNTABILITY) BILL
2023**

Name: Mr John Evans, Former Clerk of the Parliaments (NSW)
Date Received: 19 October 2023

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The Honourable Abigail Boyd MLC
Committee Chair
Public Accountability and Works Committee
Legislative Council
Parliament House
SYDNEY NSW 2000

Dear Ms Boyd

You have invited me to make a submission to the Committee on the Parliamentary Evidence Amendment (Ministerial Accountability) Bill 2023.

I make the following comments:

1. I have read the second reading speech of the Honourable Damien Tudhope and the reasons for introduction of the Bill.
2. I have also read the commentary on the Bill in the Legislation Review Digest and agree with those comments.
3. I am not in favour of legislation proposing to amend the Parliamentary Evidence Act 1901.
4. Since the passing of the 1901 Act, section 7A was inserted into the Constitution Act 1902 following a 1932 referendum on a Bill to reform the constitution and powers of the Legislative Council. The Constitution Amendment (Legislative Council) Act 1933 inserted a new section 7A manner and form provision into the Constitution Act.
5. Section 7A, further amended by the 1978 Bill to reform the Legislative Council to a directly elected House, provides that the powers of the Council cannot be amended except by a Bill submitted to a referendum of electors. (Section 7A (1) (a) and (2).
6. Quaere whether the 1901 Act, being inconsistent with section 7A cannot be amended to confer a new power on the Council to summon Ministers to appear before a Council Committee, except by complying with the referendum requirements in section 7A of the Constitution Act.
7. Despite any purported legality of the Bill, in my view such matters should be resolved by rules of procedure of the two Houses rather than changes to the law.

8. The rules of the two Houses of Parliament have not been adopted in an arbitrary manner but have evolved through accumulated practice and procedure. They ensure comity in the relationship between the Houses and respect the independence of each House from interference by the other.
9. Legislative Council Practice and Procedure at pages 500-502, in a discussion of witnesses before committees, refers to the independence of each House from the other. The privilege from attendance of any member before a committee is not the privilege of the member but the privilege of the House. Only the House can grant the privilege of attendance of a member before a committee of the other House.
10. There is also a useful discussion in Legislative Council Practice and Procedure on “Comity between the Houses” at pages 846-849. Importantly, the principle of one House not interfering in the privileges of the other House.
11. The passage of any Bill to amend the Parliamentary Evidence Act would open the door for the Courts to interfere in the internal proceedings of the Houses. Such matters are best left to the goodwill of the two Houses to resolve between themselves.
12. My suggestion would be for the Houses to adopt Standing Orders to govern the attendance of members (including Ministers) of one House before the other.
13. For example, both the United Kingdom House of Commons¹ and the House of Lords² have adopted standing orders which provide for any Member to attend as a witness before a committee of the other House, if the member thinks fit.
14. The Legislative Council could lead by example in adopting a relevant Sessional or Standing Order.
15. I feel there are ample opportunities for Members of the Council to obtain relevant information from the Executive Government through, for example, Orders for productions of Papers, Questions on Notice and calling Public Servants to appear as a witness before a committee, without resort to amendment of the law.

¹ SO 138

² SO 23

Should it be necessary, I would be happy to discuss the issue further with your committee.

Yours sincerely

John Evans
Former Clerk of the Parliaments