



## LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

### INFORMATION PAPER - UPPER HOUSES

#### 1. BACKGROUND AND PURPOSE OF PAPER

The *Parliamentary Committees Act 1995* (Qld) establishes the Legal, Constitutional and Administrative Review Committee as a statutory committee of the Queensland Legislative Assembly. The broad areas of responsibility of the committee as defined in that Act include administrative review reform, constitutional reform, electoral reform and legal reform.

The purpose of this paper is to inform readers of the role that upper houses have in Westminster-style parliaments and to summarise some of the arguments both for and against their existence. Whilst this paper is not in any way a precursor to the committee conducting an inquiry with respect to the issue, the committee hopes that readers will find the information useful and that it will assist in any future debate in this area.

#### 2. THE ORIGIN AND GENERAL ROLE OF UPPER HOUSES

The evolution of a parliament with two houses (a ‘bicameral’ legislature) can be traced to Britain where the system resulted from the separation of the nobility (the House of Lords) from the commoners (the House of Commons).

The concept that two different bodies should be responsible for making and amending laws was subsequently adopted by evolving representative systems. The rationale for having a lower and upper house is explained in Odgers’:

*The requirement for the consent of two differently constituted assemblies improves the quality of laws. It is also a safeguard against misuse of the law-making power, and, in particular, against the control of any one body by a political faction not properly representative of the whole community.*<sup>1</sup>

Many countries and states also adopted the notion of ‘responsible government’ which in part means that a government (‘the executive’) is formed by a majority in the lower house (and resigns if it loses this majority), and a ministry is formed of persons having the continuing support of a majority of lower house members. Thus, it emerged that upper houses were seen as ‘houses of review’ because they acted as a check on executive action.<sup>2</sup>

Indeed today the majority of democracies have an upper house.<sup>3</sup> As noted by Leonard, “The common international experience seems to be that countries which are populous and/or

complex need a second chamber either to balance the influence of the first, most notably in federal countries, or to share its legislative burden.”<sup>4</sup>

However, whilst upper houses may be common, their role and functions vary. Clearly, there has emerged a distinction between ‘strong’ and ‘weak’ upper houses; the former having a greater influence over the legislative process. This distinction seems to be dependent on the constitution and other features of the jurisdiction in question.<sup>5</sup>

In a recent questionnaire<sup>6</sup> representatives from countries with bicameral legislatures were asked as to why they had two houses. Responses indicated that lower houses were generally viewed to be “representative of the will of the people” whereas upper houses were regarded as having numerous functions, the most common of which was to represent the provinces, states, regions or territories (irrespective of their size, wealth or population) equally in a federal legislature. Upper houses were also seen to balance the national interest with regional or local interests, and to counterweigh powerful lower house groups.<sup>7</sup>

However, others observe that justification for a second chamber has been eroded as is evidenced by the abolition of upper houses in countries such as Denmark and New Zealand in the 1950s, and Sweden in 1970. As one commentator noted, “...where upper houses survive, their functions are often little more than the revision of legislation, initiation of non-controversial bills, and limited powers of delay”.<sup>8</sup>

### **3. BICAMERALISM IN AUSTRALIA**

#### **3.1 The states**

Upper houses were originally created in the Australian colonies to emulate the role played by the House of Lords and as part of the notion of responsible government. Thus, they were intended to draw “the sober second thought of the people, in contradistinction to the impulsive first thought of the lower house”, and to improve the quality of legislation.<sup>9</sup>

Initially these upper houses were based on a restricted franchise because it was thought that “the property-owning classes should have a veto over the house where the lower orders might gain a majority”.<sup>10</sup> However, progressively and in contrast to the House of Lords, the upper houses in the states have become representative rather than appointed bodies.<sup>11</sup>

There is much difference between the various states as to the number of upper house members and their manner of election. However, generally the upper houses have the same legislative power as their lower houses except in relation to money bills which the upper houses cannot initiate or amend (but they can reject). This power is expressly or implicitly recognised in the various state constitutions.<sup>12</sup> Hence today the Australian states, with the exception of Queensland, can generally be said to have relatively ‘strong’ elected upper houses.

Whilst there have been attempts and calls to abolish the upper houses in some states, to date none have been successful.<sup>13</sup>

### 3.2 The Commonwealth

The Commonwealth Senate was established as a somewhat unique upper house in a Westminster-style Parliament. Whilst the lower house was to be modelled on the House of Commons and Australia was to have a Westminster system of responsible government, Australia was also to be a federal nation; that is, a nation constituted by a union of states each with their own legislatures and in addition a national legislature.<sup>14</sup>

In order to ensure that in a country as vast as Australia, the national legislature could not be dominated by representatives from one state or states, Australia adopted the United States-style federal bicameral structure.<sup>15</sup> Thus, it emerged that the lower house (the House of Representatives) was to be elected by the people as a whole and the Senate was to be elected by people in their states. The fact that the Senate was designed to protect the interests of the less populous states by giving equal representation to all states meant that it was dubbed the 'states' house'.

Both the House of Representatives and the Senate must consent to the passing of laws; that is, the Senate shares legislative power with the lower house. However, all financial or money bills must originate in the House of Representatives and the Senate may not amend (although it can in effect reject) such bills.<sup>16</sup> Should the Senate twice reject or fail to pass proposed legislation, the deadlock is resolved by fresh elections for each house. This process is known as a 'double dissolution' and is provided for in s.57 of the Commonwealth *Constitution*.

The operation of the Senate in practice has shown that legislative majorities cannot be made up of solely representatives of the populous states.<sup>17</sup>

However, when it became apparent that the party system brought about unbalanced party majorities in the Senate, proportional representation was introduced.<sup>18</sup> This change to the system of electing Senators in 1948 meant that political parties gained representation in proportion to their share of the vote, and thus made it more likely for minority groups and independents to be elected. The result has been that minority groups have been able to gain the balance of power in the upper house and thus exercise control over both houses of parliament.<sup>19</sup>

Today the Senate acts as a house of review by scrutinising bills and delegated legislation, conducting estimates of government expenditure and scrutinising government administration and policy in general. The additional consideration of proposed legislation by the Senate permits wider understanding of the issues involved, often leading to amendments to legislation.

The Senate performs these functions both through procedures in the chamber and through its committee system. Further, it is argued that, because of the lack of constituency demands and their longer terms, Senators have greater opportunity to be involved in parliamentary-based activities.<sup>20</sup>

Much debate surrounds today's Senate. On the one hand it is argued that as the Senate is currently not under executive control, it frequently takes action and speaks for the country contrary to the wishes of the government. On the other hand, the Senate has been called 'hostile'. This is because with the Senate currently holding the balance of power, it can delay important aspects of the government's legislative program (which it is argued the government as the elected government of the people has the mandate to run).

This latter argument has led to recent calls by the federal Liberal party for reform of the Senate.<sup>21</sup> Alternatives to the current voting system which would potentially remove the balance of power from minor parties and independent members include:

- altering the current quota system so that a party would have to receive, for example, at least 80 percent of a quota before being entitled to receive preferences; or
- dividing the state into ‘Senate’ electorates.<sup>22</sup>

Either change could be effected by legislation without the need for a referendum.

However, the proposition has not been well received by opposition parties and independent Senators who claim that the Australian public do not want the government to be able to force its legislation through without proper scrutiny, debate or review.<sup>23</sup>

## **4. THE POSITION IN QUEENSLAND**

### **4.1 The abolition of Legislative Council in Queensland**

Queensland was established as a separate colony pursuant to Letters Patent issued on 6 June 1859. A simultaneous Order in Council provided for Queensland’s constitution. As set out in these documents, Queensland was to have a bicameral legislature consisting of a Legislative Assembly and Legislative Council. Her Majesty, with the advice and consent of these two houses, was empowered to make “laws for the peace, welfare and good government” of Queensland.<sup>24</sup>

Indeed, the initial establishment of an upper house in Queensland has been remarked by some as “inevitable” considering the need at the time for caution against “the danger of rash and hasty and amateurish legislation”, and the precedence for such in both Britain and the other eastern colonies of Australia. Further, it was envisaged that “a Legislative Council would provide not only a steadying influence, but a useful revisory body”.<sup>25</sup>

Unlike Members of the Legislative Assembly who were to be elected by persons who were then qualified to vote, Members of the Legislative Council were to be appointed.<sup>26</sup> As a result the Legislative Council became largely comprised of persons representing conservative and business interests.<sup>27</sup>

From the outset, the Council experienced some difficulties in carrying out its revisory function. On a number of occasions it found itself (due to a lack of quorum in the Assembly) forced to pass bills in their entirety without the opportunity of suggesting caution or seeking further advice. The Council also invariably found itself with little time to consider bills. In addition, due to its non-elected nature the Council bore the brunt of many attacks by the then *Moreton Bay Courier* newspaper. An article in 1861 so much as called for the abolition of the upper house.<sup>28</sup>

In response to these attacks, the Council asserted its privileges, particularly in relation to finance bills. Conflict subsequently arose out of the power of the Council to amend such bills.<sup>29</sup>

In the following years some significant events occurred. Firstly, the Labor party included the abolition of the Legislative Council in its platform. Secondly, the *Parliamentary Bills Referendum Act* was passed which provided that if the same bill was twice passed by the Assembly and twice rejected by the Council, it would then be submitted to the people in a referendum. Thirdly, in 1914 moves were made for an elected upper house, but the rights of property were to be maintained.<sup>30</sup>

In 1915 the Labor party was elected to government and the new government under Premier Ryan, came into direct conflict with the Council.<sup>31</sup> Soon after the Assembly passed a bill to abolish the Legislative Council. However, the Council twice rejected the government's bill and, in accordance with the *Parliamentary Bills Referendum Act*, a referendum was set down for 5 May 1917. The results of the referendum were overwhelmingly in favour of retaining the Council.<sup>32</sup>

Theodore succeeded Ryan as Premier in 1919 and with the change in leadership came a new strategy for abolishing the Council. Theodore's plan was to gain a pro-abolition majority in the Council. To this end in January 1920 Theodore arranged for the appointment of Speaker Lennon of the Legislative Assembly as Lieutenant-Governor of Queensland whilst the Governor was absent on leave. Lieutenant-Governor Lennon then, by letter to himself, appointed himself President of the Legislative Council and swore 14 new Labor appointees into the Council. The effect was that the Labor party had a majority in the Council - 35 of the 65 members.<sup>33</sup>

A state election was held in October 1920 after being brought forward by a 'loans blockade' by the money lords of London in response to the state government's proposal to increase pastoral rents. Theodore's election policy included his promise to abolish the Council.<sup>34</sup>

Having won the election with a four seat majority (that was subsequently reduced due to illness), Theodore introduced the necessary bill which passed through the Assembly with the assistance of the vote of 17 Country Party members and then by majority vote in the Council brought about by the 'suicide club'.<sup>35</sup>

Despite protestations that the matter should be put to a referendum or considered judicially by the Privy Council, the bill was assented to on 23 March 1922 and thus the Legislative Council ceased to exist.<sup>36</sup> The abolition of the Council was 'doubly entrenched' by s.3 of the *Constitution Act Amendment Act 1934*. (Refer to section 6 below as to the effect of double entrenchment.)

One final point should be made in relation to the abolition of the Legislative Council. Some commentators have noted, the dissatisfaction with the Legislative Council early in Queensland's existence was more dissatisfaction with a particular upper house, and not necessarily with upper houses in general.<sup>37</sup>

## **4.2 The upper house issue in Queensland since 1922**

Queensland remains today as the only one-house (unicameral) parliament in Australia and since 1922 the State Labor party has remained an opponent of the restoration of an upper house.<sup>38</sup> Most recently in November 1996 the party reiterated this position.<sup>39</sup>

However, this is not to say that there have not been calls to again address the issue.

The re-introduction of an upper house in Queensland has been National Party policy since 1981<sup>40</sup> and in 1995 the state Liberal Party passed a unanimous resolution for the establishment of an upper house in Queensland.<sup>41</sup>

The current Queensland government has announced that a referendum will be held on the reintroduction of an upper house, although it is unlikely to be held in the current term of government.<sup>42</sup> A properly established and elected upper house for Queensland would also have the support of the Australian Democrats and Queensland Greens.<sup>43</sup>

Support for the introduction of an upper house has also come from other sectors of the community.<sup>44</sup>

### **4.3 EARC's report on Parliamentary Committees**

As part of its 1992 review of Parliamentary committees, the Electoral and Administrative Review Commission (EARC) canvassed various issues relating to the Parliament, government and scrutiny of the executive. Whilst EARC recognised that the restoration of the Legislative Council was not within its terms of reference, it did agree that the absence of the Council:

*... has had a profound impact on the ability of the Queensland Parliament to carry out its functions under the Constitution and conventions which require it to act responsibly and review the activities of the executive arm of government.*<sup>45</sup>

In this regard EARC noted that the concept of a properly resourced parliamentary committee system could to some extent substitute an upper house in Queensland in that it would have some scrutiny functions over the executive.<sup>46</sup>

EARC's final recommendation that the Queensland Parliament should establish a comprehensive system of parliamentary committees to examine policy and administration across all areas of public administration in Queensland<sup>47</sup> culminated in the passing of the *Parliamentary Committees Act* in September 1995. This Act formally established six statutory committees of the Legislative Assembly. Other parliamentary committees can also be (and have been) established by Act of Parliament or resolution of the Assembly.

## **5. ARGUMENTS FOR AND AGAINST AN UPPER HOUSE**

Identified in the above discussion are some of the key issues in the debate over the need for upper houses. Other arguments are also from time to time raised in this area. The following is a summary of some of the arguments both for, and against, bicameral parliaments.

### **5.1 Arguments for upper houses**

- An upper house will prevent the executive's abuse of its extensive power in the lower house by ensuring greater scrutiny of legislation which may otherwise be pushed through the lower house too hastily.<sup>48</sup> As explained by one commentator, "Why have a

Parliament at all if the government's mandate is going to be put into instant operation."<sup>49</sup>

- Upper house members have a greater ability to participate in other parliamentary activities (such as committees) because of their lack of executive and constituency responsibilities.
- Theoretically upper houses avoid 'pure party government'<sup>50</sup> and so their members bring to the Parliament a value above politics. This is further enhanced if the majority of members are people of distinction, experts and/or are from various walks of life.
- Upper houses provide committees of review not necessarily dominated by the government.
- Upper houses potentially provide additional opportunities for the representation of minority groups, particularly if proportional representation as a method of election is used. (Although as a result some query why minor parties should hold the balance of power given that they only command a small share of the jurisdiction's vote.)
- The justification for strong upper houses has been equated with that for a strong separation of powers:

*...it forces governments to justify their policies, to negotiate with political representatives outside their ranks, and to accept compromises which take account of the interests and opinions of significant majorities.*<sup>51</sup>

## 5.2 Arguments against upper houses

- The party partisan trend in upper houses (that is, party control of both houses and strong party discipline) means that governments have little difficulty in passing their legislative programs with few, if any, amendments. (Although this does not happen where the government lacks a majority in the upper house.) In other words, an upper house may merely 'rubber stamp' government decisions, mirror what occurs in the lower house and therefore not hold the executive accountable.<sup>52</sup>
- Upper houses have been accused of being costly, particularly by those viewing them as 'rubber stamps'.<sup>53</sup>

*Independent upper houses do not fit in with the current system of party government. They are relics of an older constitutionalism which is utterly contrary to the control of government by a party directly responsible to the electorate, because they divide the power of government and the line of responsibility.*"<sup>54</sup>

In other words, they obstruct the government in fulfilling its mandate.

- The creation of an upper house either means more politicians or less members in the lower house (in order to create upper house seats). In the case of the latter this means less representation for constituents particularly in large rural electorates.<sup>55</sup>
- The existence of a parliamentary committee system could be said to replace an upper house.<sup>56</sup>

## 6. REQUIREMENTS FOR THE RE-INTRODUCTION OF AN UPPER HOUSE IN QUEENSLAND

As already noted in this paper, the abolition of Queensland's Legislative Council was 'doubly entrenched' by the *Constitution Act Amendment Act 1934*. Section 3 of that Act explicitly provides that the Parliament of Queensland shall not be altered by providing for the restoration or establishment of another legislative body (whether called a Legislative Council or by any other name) except by a referendum of all electors qualified to vote. This section is 'doubly' entrenched in that it cannot be repealed or amended without a referendum also being held. Thus, the consent of the people is a necessary prelude to reintroducing an upper house in Queensland.

Moreover, if Queensland were to introduce an upper house, it would have to consider a number of matters. There is no set model for an upper house. Upper houses throughout the world vary in terms of their constitution, manner of electing members, powers, procedures and a number of other features. Some of the more fundamental considerations are outlined below.

- What powers should an upper houses enjoy?

In the Westminster system upper houses traditionally have the same power as lower houses with respect to enacting laws. The only limitation is generally in relation to certain financial legislation which can neither be initiated in, or amended by, the upper house. (Although many upper houses can in effect reject such legislation.) Broadly, this is the case in the Commonwealth and state legislatures in Australia.<sup>57</sup> In terms of this issue, an important consideration would be whether an upper house should have the power to block 'supply' (reject or delay the budget).

- How should members of an upper house be elected?

As noted above, since the late 1940s members of the Australian Senate have been elected on a proportional basis which means that parties are represented in proportion to their share of the vote. This electoral system would most likely reduce the possibility of there being a majority in both houses of a major party, and enable smaller parties and independents to gain representation. Alternatively, each upper house member could represent a defined electorate and be elected under a preferential voting system.

It has also been suggested that there could be a selected number of seats in the upper house for representatives of certain groups in the community; for example, Aborigines.<sup>58</sup>

- How should disputes between the upper and lower houses be resolved?

In the Commonwealth Parliament legislation twice rejected by the Senate can result in a dissolution of both houses and a federal election. If the two houses still disagree, the legislation in question may be considered in a joint sitting of both houses.

Some of the states' constitutions also make provision for resolving a deadlock between their houses. For example, in New South Wales the question is ultimately decided by a referendum.<sup>59</sup>

- What terms should members of an upper house serve?

Members of an upper house could serve the same or longer terms as lower house members. The Commonwealth Senate, unlike the House of Representatives, is a house of ‘perpetual succession’; that is, elections are only held for half the number of senators at any one time. Moreover Senators are elected for six year terms as opposed to their lower house counterparts who serve for a term not exceeding three years.

- How many upper house members should there be and what should be the proportion of upper house to lower house members?

Queensland could feasibly establish an upper house without increasing the overall number of parliamentarians, although this would entail reducing the number of lower house seats and lead to larger electorates.

An associated consideration is the proportion of upper house to lower house members. The Commonwealth *Constitution* currently requires that the number of lower house members be as nearly as practicable to twice the number of senators. However, there have been recommendations that the nexus to size to each house should be abolished and that alternative requirements as to size adopted.<sup>60</sup>

- Should there be additional measures introduced to ensure that the upper house acts as a house of review?

For example, it has been suggested that if Ministers were only drawn from the lower house, it would strengthen the separation of the functions of governing and reviewing. In other words, upper house members would not be so constrained to act in accordance with party lines.<sup>61</sup>

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## **FACTS ABOUT THE LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE**

The Legal, Constitutional and Administrative Review Committee (LCARC) is a six member all-party committee of the Queensland Parliament with a broad range of law reform responsibilities.

### **Legislation**

The committee is established under the *Parliamentary Committees Act 1995*.

### **Functions and Responsibilities of the Legal, Constitutional and Administrative Review Committee**

The *Parliamentary Committees Act* provides for the establishment of six permanent statutory committees, one of which is LCARC. Section 9 – 13 of that Act provide that the committee has the following areas of responsibility.

- Administrative review reform including considering legislation about access to information, review of administrative decisions, anti-discrimination and equal opportunity employment. (However, the committee's jurisdiction does not extend to investigating particular conduct or reviewing a decision to investigate a particular complaint or decision.)
- Constitutional reform including any Bill expressly or impliedly repealing any law relevant to the State's Constitution.
- Electoral reform including monitoring generally the conduct of elections under the *Electoral Act 1992* and the capacity of the Electoral Commission to conduct elections.
- Legal reform including recognition of Aboriginal tradition and Island custom under Queensland law and proposed national scheme legislation referred to the committee by the Legislative Assembly. (National scheme legislation refers to a Bill for an Act that is intended to be substantially uniform with, or complementary to legislation of the Commonwealth or another State and whose operation may, under the Act, be changed by amendment of a law of the Commonwealth or another State.)

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<sup>1</sup> H Evans (Ed), *Odgers' Australian Senate Practice*, Australian Government Publishing Service, Canberra, 1995, at p.1.

<sup>2</sup> This was often because upper house members were more independent-minded and less partisan than their lower house counterparts.

<sup>3</sup> A 1987 review of 39 democracies with populations over 200 000 revealed only 10 with no upper house. See D M Farrell and I McAllister, 'Legislative recruitment to upper houses: The Australian Senate and House of Representatives compared', *Journal of Legislative Studies*, vol.1, no.2, Summer 1995, pp.243-263 at p.245. Also see D Leonard, 'Replacing the Lords', *Political Quarterly*, vol.66, no.4, October-December 1995 pp.287-298 at p.288.

<sup>4</sup> Leonard, op.cit., p.288.

<sup>5</sup> See Farrell and McAllister, op.cit., who (at p.246) state that factors which determine whether a particular upper house is 'strong' or 'weak' include the size of the country, whether it has a federal system and the method of election. They also refer (at p.246) to a study which concludes that only four countries have strong bicameral systems: Australia, the United States, Germany and Switzerland.

<sup>6</sup> M A Griffith, 'Report prepared by Mrs Mary Anne Griffith, Deputy Clerk of the House of Commons of Canada', *Constitutional and Parliamentary Information*, no.166, June 1993, pp.136-204 at p.139.

<sup>7</sup> *ibid.*

<sup>8</sup> Farrell and McAllister, op.cit., p.246.

<sup>9</sup> S Ratnapala, 'Australia's Upper Houses and their role in Responsible Government', *Policy*, vol. 6, no.4, Summer 1990, pp.48-52 at p.51.

<sup>10</sup> H Evans, 'Constitutionalism and Party Government in Australia', *Australasian Study of Parliament Group, Occasional Paper no.1*, August 1988 at p. 34.

<sup>11</sup> Ratnapala, op.cit., p.50.

<sup>12</sup> See Ratnapala, op.cit., pp.49-50.

<sup>13</sup> For example, NSW (See Legislative Council debate on 26 November 1996). There have also been calls in Victoria (See 'The upper house at work?' *The Age*, 2 April 1997). Reform of Tasmania's upper house is also a current issue. See N Richardson, 'A snug seat of power', *The Bulletin*, Dec 31- Jan 7 1997 at p.22.

<sup>14</sup> See H Evans (Ed), op.cit., at Chapter 1 for further discussion on the Senate, bicameralism and federalism.

<sup>15</sup> Although the United States did not adopt the notion of responsible government, therefore its executive and legislative functions vest in separate bodies.

<sup>16</sup> See s.53 of the *Commonwealth Constitution*.

<sup>17</sup> See H Evans, 'Federalism: An idea whose time has come?', *Canberra Survey*, vol. 50, no.5, 14 March 1997 pp.2-6 at p.4.

<sup>18</sup> *ibid.*

<sup>19</sup> See generally Sen. the Hon F M Chaney, 'Bicameralism, Australian style: Governing without control of the upper house', *The Parliamentarian*, vol.69, no.3, July 1988, pp.168-171 at pp.169-170.

<sup>20</sup> Chaney, op.cit., p.171.

<sup>21</sup> J Woods, 'Coalition plan to take over Senate', *The Courier Mail*, 5 May 1997 at p.6.

<sup>22</sup> P Weller, 'Beware the Senate fix', *The Australian*, 22 May 1997 at p.11.

<sup>23</sup> C Johnstone, 'Howard's House of horrors', *The Courier Mail*, 23 May 1997 at p.17.

<sup>24</sup> See s.2 of Letters Patent 6 June 1859 and cl.I, II, III, IV, V, and VIII of Orders in Council 6 June 1859.

<sup>25</sup> A A Morrison, 1951, 'The abandonment of Bicameralism in Queensland', Paper presented to the Twenty-First meeting of the Australian and New Zealand Association for the Advancement of Science, Brisbane, May 1951 at p.2.

<sup>26</sup> For members of the Assembly see cl. V and VI of the Order in Council, 6 June 1859. For members of the Council see cl.IV of the same Order which stipulated that members of the first Council were to be summoned by the Governor of NSW and were to hold their seats for five years. All members thereafter were to be summoned by the Queensland Governor and were to hold their seats for the term of their natural lives.

<sup>27</sup> R Fitzgerald, 'On the House', *The Courier Mail*, 22 March 1997 at p.30.

<sup>28</sup> See Morrison, op.cit., p.3-4.

<sup>29</sup> The *Constitution* required finance bills to originate in the Assembly but did not address amendment. This issue was subsequently put to the Privy Council. See Morrison, op.cit., p.6.

<sup>30</sup> *ibid.*, pp.8-10.

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- <sup>31</sup> From the new government's view, *the Council was an anachronism standing in the way of progress, and representing the sanctified rights of property in a democratic world, and interests in a world now to be ruled by brute force of numbers.* *ibid.*, p.10.
- <sup>32</sup> The results of the referendum were 179 105 in favour of retaining the Council and 116 196 against. Sixty one electorates out of 72 were in favour of retention. *Ibid.*, pp.10-15.
- <sup>33</sup> See R Fitzgerald, *Red Ted: The Life of E G Theodore*, University of Queensland Press, Brisbane, 1994 at pp. 118-124.
- <sup>34</sup> Fitzgerald, *op.cit.* p.137.
- <sup>35</sup> With Country Party support, the final vote in the Assembly was 52-15. See Morrison *op.cit.*, p.17.
- <sup>36</sup> *ibid.*, p.17-18.
- <sup>37</sup> *Ibid.*, p.1.
- <sup>38</sup> See the Hansard of debate in the Queensland Legislative Assembly on 24 November 1994. Also see M Macklin, 'The case for an upper house (in Queensland)', *The Courier Mail*, 19 March 1996 at p.15. and P Gillespie, 'A case for an upper house', *The Sunday Mail*, 23 October 1994 at p.63.
- <sup>39</sup> B O'Sullivan, 'Beattie slams idea of an upper house', *The Weekend Independent*, November 1996 at p.11.
- <sup>40</sup> P Gillespie, 'A case for an upper house', *The Sunday Mail*, 23 October 1994 at p.63.
- <sup>41</sup> R Odgers, 'Majority wants upper house back', *The Weekend Independent*, 3 November 1995, at p.2.
- <sup>42</sup> Although funds have been set aside in the 1996-97 budget for the holding of such a referendum, the Premier has also been reported as stating that the referendum is unlikely to be held within the government's first term. See M Madigan, 'Speaker backs return of upper house', *The Courier Mail*, 25 September 1997 at p.5.
- <sup>43</sup> As to the terms of this support see the Communique of the Queensland Parliamentary Reform Round-Table Conference dated 3 December 1994.
- <sup>44</sup> See, for example, E Hewitt QC, *Upper Houses*, Viridia Books, Melbourne, 1996 at pp.155-156 and 175-176.
- <sup>45</sup> See EARC's *Report on a Review of Parliamentary Committees*, October 1992, Goprint, Brisbane at para 2.148.
- <sup>46</sup> See EARC at paras 2.149-2.150.
- <sup>47</sup> EARC at para. 3.287.
- <sup>48</sup> EARC at para 2.145.
- <sup>49</sup> H Evans quoted in an article by M Grattan, 'Man about the House', *Australian Financial Review*, 18 April 1997.
- <sup>50</sup> See Evans, 1988 *op.cit.*, p.38.
- <sup>51</sup> B Stone, 'Constitutional Design, Accountability and Western Australian Government: Thinking with and against the "WA Inc" Royal Commission', *Western Australian Law Review*, vol. 24, July 1994, pp.51-67 at p.58.
- <sup>52</sup> Farrell and McAllister, *op.cit.*, pp.259-260.
- <sup>53</sup> See the Hansard of debate in the Queensland Legislative Assembly on 24 November 1994 where the cost of an upper house for Queensland was estimated to be a one-off cost of \$13.058M and recurrent costs of \$13.275M per year.
- <sup>54</sup> Evans, 1988 *op.cit.*, pp.37-38.
- <sup>55</sup> See also the Hansard of debate in the Queensland Legislative Assembly on 24 November 1994.
- <sup>56</sup> See the Hansard of debate in the Queensland Legislative Assembly concerning PCEAR's report on parliamentary committees, 15 February 1994.
- <sup>57</sup> The New South Wales Parliament has the most significant restriction on upper house power. There the constitution denies the upper house the power to reject or amend bills appropriating bills for "ordinary annual services". (See s.5A which was inserted in 1993.)
- <sup>58</sup> Hewitt *op.cit.*, p.125.
- <sup>59</sup> Ratnapala, *op.cit.*, p.49.
- <sup>60</sup> *ibid.*, p.149.
- <sup>61</sup> *ibid.*, p.166.