

8. An Effective Upper House

In a bicameral Parliament, given the growth of a strong party political system, the role of an Upper House as a genuine house of review is crucial. Some of those who responded to the Constitution Commission were of the view that the Upper House should be abolished. The experience of Queensland late in the twentieth century, without an effective house of review, convinced us that this is not the solution. Some of the abolitionists were easily persuaded that the Upper House should remain, provided it could be, and be seen to be, an effective house of review. Further research and consultation have led the Commission to the view that the Victorian Upper House can be improved in ways that meet the concerns of its critics.

In a bicameral parliament, the review role is the most important feature of an Upper House. But it is not an exclusive role. The Upper House has other important functions.

It is generally agreed that a house of review should be able to:

- effectively scrutinise and report on Government activities, policies and legislation, both direct and delegated;
- review and, where appropriate, amend legislation in the immediate and long-term interests of the community;
- ensure time and opportunity for community consultation;
- review and, where appropriate, disallow subordinate legislation;
- identify areas of concern requiring further consideration or action;
- require the Government to justify or reconsider policies, programs or actions;
- provide checks against overbearing or arbitrary exercise of power, on the part of the Government;
- initiate legislation or policy on issues of importance neglected by the Government;

The Upper House should exercise these functions critically, with freedom from party political constraints, while respecting the Government mandate. An investigatory or review body directed by party political considerations as to what it must find cannot do its job.

In carrying out all of these functions, an Upper House should act in accordance with the principles of good governance. It should hold the Government to account in the interests of the community and not on party political lines. It should provide the strongest possible voice for a wide range of community concerns.

To discharge these roles effectively, an Upper House should have:

- a structure, membership, accountability and investigatory mechanisms different from those of the Lower House;
- a membership which shares the democratic legitimacy of the Lower House;

- a strong and well-resourced committee system;
- community and bipartisan support for its review and investigatory roles, and recognition that they can only be carried out effectively where its members are free to do so;
- a determination to understand and serve regional needs (both country and metropolitan);
- effective mechanisms to ensure appropriate community input into its evaluation of issues;
- a more inclusive and less adversarial approach to decision making;
- a culture focused on effective review.

Other important roles of the Upper House are to scrutinise public administration, set standards for compliance in areas of revenue, probity, independence and effectiveness of public officers such as the Auditor General and the Ombudsman, and the Executive Government's response to their reports. Except for appropriation and taxation legislation, the Upper House can initiate legislation if it believes a community need is not being fulfilled by Executive Government action or its legislative program.

Such a house will foster greater understanding and acceptance by and respect from the community. It will enjoy public confidence and will act democratically within the Australian political culture. In describing such a house of review, the Commission recognises that the Victorian Legislative Council fulfils many of these roles. It can do so more effectively, however, if the Commission's recommended changes to structure and operation, in order to make the Council more representative and independent, are made.

If the Parliament lacks the power to curb the Executive Government and respond directly to public opinion, we might expect greater intrusions into privacy and other human rights. It is in the nature of Executive Government that this would happen. For this reason, the Commission recommends that human rights principles, such as those set out in the Universal Declaration of Human Rights, should in the future act as benchmarks for the Legislative Council in its review process.

But to simply confine the Upper House to a review role would render it ineffective. An authoritarian Government could ignore it. An Upper House with no power to amend or initiate legislation would not attract the media coverage or community recognition necessary to assist public understanding of complex issues. The retention of the power to initiate and amend legislation was a conscious and important departure in Australia from the Westminster system developments in Great Britain and reflects the democratic legitimacy of an institution elected on a popular mandate. It should remain so.

**Tony Lupton,
Melbourne,**

If the nature of the Council is made explicitly one of review and the electoral process allows for legitimate representation of minority views, there is no justification for not electing Council members for single 3-4 year terms equivalent to the Assembly. Both houses should be elected simultaneously in all circumstances.