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“BEING IN OPPOSITION – OPPORTUNITIES LOST”

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Introduction

This paper will highlight some of the opportunities lost to those in opposition and is based on observations of the Legislative Assembly of New South Wales. First the paper will provide a framework for the role of oppositions in modern Westminster parliaments. This will be placed in the historic context of the “winner takes all” culture of the Legislative Assembly and then focus on opportunities “lost” by oppositions in contemporary times. The lost opportunities include: consideration of the Budget; procedures in the House; monitoring and access to the media; resourcing and funding; relationships with outside interest and lobby groups; and, relevance in various political negotiations.

The Role of Opposition

In a house of parliament where Government is formed by the party with the majority of seats there is at times the seemingly increasing combative relationship between Government and Opposition. However, how does one get the balance as the competing protagonists right? Ultimately in the Westminster system, the will of the majority has to prevail whilst maintaining the right of the voice of the minority to be heard. Erskine May mentions that from early times Opposition “has long received practical recognition in the procedure of Parliament. Even before the first Reform Act, the phrase ‘His Majesty’s Opposition’, had been coined”.¹ The emergence of the two party system has also formalised the distinction between Government and Opposition. In more recent times the practice of appointing a shadow cabinet has developed and been used to question the Government and to promote the policies of the Opposition.

¹ p 211 D Limon and WR McKay (eds). Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament. 22nd edition. Butterworths (1997)

While the floor of the House is the traditional opportunity for Oppositions to undertake their main customary procedural roles, including holding the Government to account through the debate, scrutiny, critique of and voting on legislation, appropriations and expenditure and asking questions.² By definition Oppositions have the odds stacked against them in Parliament. This is particularly so when there is a majority and where arguably Governments are able to relatively easily blunt and mute Oppositions. In recent situations around the various states of Australia and in the New Zealand House of Representatives, with few exceptions, Governments have even been able to survive and govern fairly effectively without absolute majorities.

With less opportunity to dent Governments in the House, it is not surprising Oppositions have expanded roles, like Governments, outside the House. These include turning directly to listen and consult with the electorate and enhancing relationships with key interest groups and the media to publicise and communicate its messages, criticisms and policies.

Historical Context in New South Wales

It is often observed that the quality of Government improves when facing a strong, unified and talented Opposition. Historically this can be seen to be the case in New South Wales.

The Legislative Assembly has for over 100 years had the sobriquet of the “Bear Pit”. This is a reference to the confrontational style of the more heated moments during proceedings in the House. This can be attributed in part to executive dominance. In turn exacerbated by forceful Premiers

² see pp 79 - 80 I Harris (ed). House of Representative Practice. 5th edition. Department of the House of Representatives (2005)

such as Lang, Askin, Wran and Carr to name a few of the more prominent.

Partly through forceful leaders a winner takes all attitude has permeated the Parliamentary culture. This is typified by throwaway comments from Governments to Opposition such as 'never give the sucker an even break'. The confrontational style is then perpetuated in a cycle of they did it to us thus setting a precedent for incoming Governments.

In the Legislative Assembly the "winner takes all" attitude applies to the spoils of being in government and even descends to the unremunerated office of Deputy Chair to a Parliamentary Committee. In the Australian House of Representatives for example the position of Deputy Chair is held by an Opposition member. In the House of Commons, and many Westminster parliaments including African parliaments, an Opposition member holds the position of Chair to the Public Accounts Committee. In the Legislative Assembly, as a rule, the post of Deputy Chair is held to Government members. However, this trend has been broken in very recent times as two Legislative Assembly administered committees, and hence with a Government majority, have elected Opposition members as Deputy Chair.³

Parliamentary Procedure

During the hung 50th parliament (1991-95) there were a number of amendments to the standing orders to reform and improve Parliamentary procedure. Two of these were: removing the right for Oppositions (in reality all backbenchers) to move a motion of urgency to suspend standing orders during question time; and the consideration of the

³ Judy Hopwood (Lib) is Deputy Chair of the Committee on the Health Care Complaints Committee; Steve Cansdell (Nat) is Deputy Chair of the Public Bodies Review Committee.

appropriation bills, including estimates committees. However, subsequently, one could contend that these two particular changes have ironically weakened opportunities for Oppositions.

Prior to the 50th parliament, a backbench member could obtain the call during question time, as a matter of practice when there is no other question before the Chair, and move a motion to suspend standing orders. This was done under former Standing Order 395 that in broad provided a member with the three step opportunity to

1. Move without notice “That it is a matter of urgent necessity that this House should forthwith consider the following motion...”. This enabled a member to make a statement of up to 10 minutes to establish their case. One other member could make a statement in reply for 10 minutes. The Leader of the Opposition could make a statement in reply if this motion was moved by a Minister.
2. If the urgency was established by the House then the member would move “That so much of the standing orders be suspended as would preclude the consideration forthwith of the following motion...”. Members could speak to that motion for 10 minutes each with debate of up to one hour.
3. If the suspension was agreed to then the member would move the particular motion to which, by current limits, more generous time limits of a substantive motion applied.

Thus, usually, Oppositions and in particular the Leader of the Opposition would get to speak for ten minutes to put a case to consider a motion for debate. This practice was the Opposition’s attempt to ambush the Government. The trade off was that a large portion of the, if not the entire, 45 minutes of question time would be foregone. However, from time to

time the motion proposed by the Opposition was such that strong leaders, like Neville Wran and Nick Greiner, would consent to the motion being debated. This would test the mettle of the Premier, senior ministers and the Leader of the Opposition.⁴

Standing order 395 was amended as much as anything because of its convoluted nature. In its place there is now a procedure under standing order 109 to consider motions accorded priority. This allows any two members to give notice of a motion and then subsequently to speak for five minutes as to why their motion should have priority. The rationale was that one Government member and one Opposition member would each propose a motion for consideration and the House would, based on the merits of each case, determine the motion, if any, to be brought on. If agreed to, the debate on a motion accorded priority is limited to 40 minutes with five speakers plus the reply. This was fine during the hung parliament and preserves question time to 45 minutes or the answering of 10 questions. However, in the 14 years since then not one Opposition motion has been brought forward for debate over a Government motion. In addition to the lesser time for debate it could be argued that this is a lost opportunity in that the theme of the Government motions are: self-congratulatory; critical of the Opposition; and, depending on which party is in power federally praises or condemns the Federal Government. A further loss is that under standing order 365, regarding suspension of standing orders, members (other than ministers) may only move a motion to suspend standing orders with the leave (unanimous consent) of the House. Then there are only two speakers of 5 minutes each. When

⁴ One example of this procedure is *Legislative Assembly Votes and Proceedings*, 24 September 1984 Session 1984-85-86, entry 7 at pp. 94 –95. This is also an instance where the House agreed to the urgency and suspension to allow the Leader of the Opposition to move a censure motion against the Attorney General that was ultimately negated.

Opposition members seek leave to do so, leave has overwhelmingly been denied. This change has thus removed one tactical option from the Opposition's limited procedural armoury.

Another significant procedural change was to provide for the establishment of estimates committees in procedure for examining the Appropriation Bill. Joint estimates committees were an avenue to open up to scrutiny the estimates for various government departments with the appearance of the relevant Minister and senior departmental officers at an estimates hearing. Reports from estimates committees stood referred to the old Committee of the Whole stage on the Appropriation Bill. Prior to the 50th parliament the Appropriation Bills were the subject of quite lengthy debate at the second reading stage and scrutiny during extensive periods of Committee of the Whole. In the post 50th parliament the Government has not agreed to joint estimates committees with the Legislative Council. However, there has not been a commensurate replacement for detailed consideration of the estimates. During the period 1995-2000 Committee of the Whole consideration of the Appropriation and cognate Bills has been scant. And since then, the Appropriation Bills have not been committed to the Committee of the Whole at all.

Also, pre 50th parliament it was not uncommon for up to 66 members (in a House of 99 members) to speak during the second reading debate on the Appropriation Bill and to spend 20 hours considering estimates in Committee of the Whole. The shortest debate took significantly more time than the most recent second reading or agreement in principle debates. Further, over the last five years the Legislative Assembly has spent about three hours each year on the second reading debate on Appropriation bills. This has consisted of only four speeches: the Treasurer; the Leader of the Opposition; the Leader of the Nationals; and, the reply. This year

the Budget passed the Legislative Assembly in 90 minutes with only three speakers. To appease backbench members a replacement for a second reading debate on the Appropriation bills the Government has provided time to debate the motion “That the House take note of Budget Estimates”. These debates have not been conducted in a timely manner and in some cases have remained on the business paper for months, sometimes years, after the actual budget has passed.⁵

As an observation over time, particularly with the move to family friendly hours, is that time limits for many debates have been reduced, most notably on the limits for substantive motions, motions for urgent consideration and matters of public importance. And a provision has been inserted into the standing orders to enable the closure to be moved on motions of no confidence in the Government after eight speakers. Also of significance is that the Opposition in the Legislative Assembly have accepted that they do not have the numbers to amend bills. Shadow Ministers often preface speeches on bills with “the Opposition reserves its right to move amendments in the Upper House”. Further, there has been a sharp decline of consideration of bills in Committee of the Whole, or nowadays, consideration in detail stage. These represent lost opportunities for all members not just the Opposition.

Other Opportunities

There are numerous advantages of incumbency apart from the obvious opportunities of Government! Thus being in Opposition also means fewer opportunities to access the media, lower levels of resourcing and funding, lesser relationships with outside bodies and to disadvantage in some political negotiations.

⁵ Buchbach, pp. 6-10

The Government has access to the media monitoring units of government, as well ministers having press secretaries on their ministerial staff. This advantage is used in the House by the Government, particularly in question time, to criticise proposed Opposition policies. Outside the House they have dedicated resources to prepare material to access the media to get its message across. In New South Wales it is only the Leader of the Opposition and the Leader of the Nationals who have press secretaries.

In NSW the Opposition have far fewer staffing resources available to it than Ministers. Fewer staff makes it very difficult to get the Opposition message out there. It is only the Leader of the Opposition, Deputy Leader of the Opposition and the Leader of the Nationals who have expanded office staff. In New South Wales shadow ministers do not receive additional remuneration or resourcing of any kind. This limits the capacity to employ the quantity or quality of research staff to assist with policy development. Backbench members tend to use their staff to keep on top of the ever growing “bread and butter” constituency demands.

Additionally, the opportunity for political fundraising is limited for Oppositions. It has been argued that Governments are more likely to attract donations from organisations, individuals and groups wishing to influence their decisions. Also an audience with a minister is more attractive than one with a shadow minister. Large corporations invariably make donations to both the Government and Opposition but not usually in equal amounts. Governments always tend to get more. This fundraising capacity therefore provides Governments with greater spending power during elections, thus limiting the capacity of the Opposition to challenge the Government. These issues have been raised by the Leader of the

Opposition himself, who has expressed concerns about a “decisions for donation culture” that may be the result.⁶

In the Legislative Assembly there is no potential power for the Opposition as the Government does not require its support to pass its legislation. Unlike the situation in the Legislative Council, where the Government only has to come to agreement with a portion of the cross bench members to pass legislation. Again this is a limitation on the capacity of the Opposition to exert influence on the passage of legislation.

Conclusion

The reality is that the Legislative Assembly is not only a party dominated House but that Governments do tend to dominate the Assembly and in turn the Executive dominates the governing party. It is unfortunate that the major reforms introduced during the 50th parliament only worked in the temporal bloom of the particular circumstances of a hung house. Some of those reforms to Assembly practice and procedure were perhaps flawed as they do not work in the idealistic manner they were intended. Since 1995, there have been majority governments and, some of the practices in the way the Assembly operated have in fact have inevitably re-inforced government dominance by avoiding its intent by use of its numbers or simply by not using some of the procedures. Most recently family friendly hours of the Legislative Assembly have marginally cut sitting hours and put on pressure to confine debate.

⁶ Barry O'Farrell, "Campaign-finance reform long overdue". Sydney Morning Herald. 18 August 2009

One has to agree with Clune and Griffiths that “the more opportunities the Opposition has the more effective such scrutiny is” ⁷ of the Government. The experience of the 50th parliament demonstrated that with the reforms in practice and procedure opportunities could be expanded without unduly disrupting the stability and machinery of government and obstructing the passage of legislation. Generally speaking a Government will always have the odds in its favour. Governments could therefore afford to be more generous in providing more sitting time and greater resources. At the same time Oppositions need to make the most of those opportunities that are available to it. Maximising their opportunities for the Opposition in the forum of the House played a large part in the past four changes of government in 1965, 1976, 1988 and 1995. With the prize of Government at stake it is easy to see why opportunities for Opposition are limited.

⁷ p 692 D Clune and G Griffiths. *Decision and Deliberation: The Parliament of New South Wales 1856 – 2003*. Federation Press (2006)

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