

From Breaking Governments to a Brake on Government: A New Bicameralism in Victoria?

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Shortly after its victory in the 2002 general election in Victoria, the Bracks Labor Government introduced a number of changes in the composition and powers of the Legislative Council. These changes, it has been argued, are a precondition for development of an effective house of review. This article provides an account of the changes, and an analysis of the likely impact.

Since the passage of the Constitution Act (1855), Victorian bicameralism has provided a classic example of Meg Russell's observation that 'despite the frustrations with many second chambers . . . , experience shows that aspirations for reform are seldom realised'.¹ Originally the Victorian legislature's two houses (Legislative Council and Legislative Assembly) were symmetrical (near equal in powers) and incongruent (elected on a different franchise). This dissimilarity was the product of the clash between the established pastoral and commercial colonial elite and a gold rush-inspired radical democracy.² After 1856 governments of all political persuasions regularly engaged with a powerful and undemocratically elected (until universal franchise was adopted in 1950) upper house over supply and general legislation in which the Council was, as often as not, the victor. Simultaneously, the upper chamber proved adept at defending its structure and powers against multiple onslaughts. The passage of the *Constitution (Parliamentary Reform) Bill 2003* may then prove to be a watershed in bicameralism in Victoria by instituting the most extensive renovations to the State's constitutional architecture since 1855.

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¹ Meg Russell, *Reforming the House of Lords*, 2000, p. 339

² N. Economou, B. Costar & P. Strangio, 'Victoria' in J. Moon & C. Sharman (eds), *Australian Politics and Government: The Commonwealth, the States and the Territories*, Cambridge University Press, 2003, pp. 154–57.

The purpose of this article is to describe and analyse the changes wrought by the Act. We argue that the introduction of a proportional voting system (STV PR), the removal of the right of the Council to reject supply and a new method of resolving legislative conflict creates the precondition for the development of the upper chamber as an effective 'house of review'. However, we contend that, as was the case with the Senate, an enhanced capacity for accountable government is neither inevitable nor will it be immediate. Much will depend on the balance of party, and perhaps Independent, representation in the Council after the 2006 scheduled election, the development of an 'accountability culture' and the adoption of Standing Orders which privilege scrutiny of the Executive over government management of the chamber.

Here is not the place to retell the story of bicameralism in Victoria, but it is worth recalling that the Legislative Council shared the function of other Australian colonial second chambers to act as a restraint on 'radical' initiatives likely to emanate from the somewhat more democratically elected lower houses. For a long time the structure of the Council well-suited its function: a very high property qualification to sit and vote; non-payment of members; plural voting; malapportionment in favour of rural areas; indissolubility; power to reject Appropriation bills and general legislation; and terms not co-terminous with and twice as long as the Assembly's. The consequence was a powerful chamber representative of wealth and property regularly engaged in debilitating contests with successive governments of liberal inclination.

Reformists, however, were not always defeated and the Council has undergone significant change, especially in regard to its electoral procedures. Yet such reforms have been strongly resisted and have generally occurred later than the equivalent changes for the Assembly — for instance, universal suffrage was not applied to the Council until 1950. The Council's capacity to force an Assembly election on an unwilling government by the denial of Supply was constrained by the bipartisan passage of the *Constitution (Duration of Parliament) Bill 1984*, but the power to reject or amend general legislation, in ways which were final, remained until March 2003.

'Review' in the nineteenth century meant to review democracy: whereas 'review' in the twenty-first means to hold governments accountable for their actions. This must extend beyond scrutinising individual pieces of legislation to embrace notions of checking Executive power in the interests of the citizenry and good governance. Such a contemporary 'review' role encompasses detailed examination of government decisions and administration and is crucial for an upper house in an era when lower houses are often little more than standing electoral colleges.

Earlier attempts to 'reform' the Council have been aimed at democratising its electoral procedures and/or curtailing its legislative powers. In one sense, the 2003 reforms are in that tradition, but they have also created a better fit between the desired review functions of the upper house and its structure. Ironically, then, by

reducing the upper house's specific powers, its general status and authority may be enhanced.

The path to reform

Given that before the 2002 election the Labor Party had enjoyed a majority in the Council for only three months (in 1985) in its one hundred year history, it is hardly surprising that the party has been less than enthusiastic about the Victorian version of bicameralism. Prior to the late 1970s the ALP's policy was one of abolition of the Council, which was replaced by reform through proportional representation in 1981. The Cain and Kirner governments (1982–92) made no fewer than six attempts to change the Council's voting system to PR, but all foundered. Following its surprise 'victory' in September 1999 the Bracks minority Labor Government moved on a promise made to three Independents, who held the balance of power in the Legislative Assembly,³ and introduced a broad-ranging *Constitution (Reform) Bill* on 24 November 1999. The bill encountered difficulties when some of the Independents expressed reservations about removing the Council's power to block supply and the geographical size of proposed regional Provinces. The bill was formally withdrawn in June 2000 and replaced by a *Constitution (Amendment) Bill*, which dealt with parliamentary terms and supply, and a *Constitution (Proportional Representation) Bill* which concentrated on electoral and related matters. Both Bills were rejected in the Opposition-controlled Council in October 2000.

Confronted by such opposition, the Government then established the Constitution Commission Victoria (www.constitution.vic.gov.au) on 19 March 2001 and empowered it to make such recommendations as would 'enable the Legislative Council to operate effectively as a genuine House of Review'. The Commission was chaired by recently retired Supreme Court judge, George Hampel, assisted by former Liberal federal and state parliamentarians, Ian Macphree and Alan Hunt — the latter having been President of the Council in the 1980s. The political credentials of Macphree and Hunt did not mollify the Opposition which rejected the Commission as 'a blatant political con'.⁴

The Commission issued a *Discussion Paper* in August 2001, conducted seminars, regional consultations and invited submissions from the public. A *Consultation Paper* containing a summary of the views received was released in December 2001 and the final report — *A House For Our Future* — on 1 July 2002. The recommendations of the Commission were to form the basis of the Government's new legislation, but few predicted that it would be presented to a parliament which,

³ D. Woodward and B. Costar, 'The Victorian Election of 18 September 1999: Another Case of Electoral Volatility?' *AJPS*, 35(1), 2000, pp. 125–33.

⁴ *Australian*, 20 March 2001.

as a result of the November 2002 election,⁵ would have Labor majorities in both chambers (62 of 88 in the Assembly and 25 of 44 in the Council).

The major Commission recommendations which the Government incorporated into what became the *Constitution (Parliamentary Reform) Bill 2003* were:

- New multi-member Council electorates (Provinces) using the single transferable vote proportional representation (STV PR) method;
- Australian Senate system of ‘above and below the line voting’ i.e. a modified list system;
- Optional preferential (contingent) voting ‘below the line’;
- Fixed concurrent terms for both houses of four years;
- Candidate’s address to be printed on the ballot paper;
- Government mandate to be recognized;
- A system for resolving deadlocks between the Houses;
- A prohibition on the Council blocking supply;
- Entrenchment (by way of plebiscite and special majority) of fundamental provisions of the Constitution Act.

The Government decided not to incorporate the following Commission recommendations:

- The strengthening of the Council’s committee system;
- The establishment of regional committees comprising local Legislative Councillors;
- The phasing out of ministers from the Council;
- The development of a Code of Parliamentary Conduct;
- The Human Rights of Victoria’s citizens to be recognized as guiding principles in the Constitution.

In broad terms, the Commission sought a less powerful, yet more effective and responsive Upper House. While losing the power to block supply, the Council would retain the right to initiate, amend and reject ordinary legislation. In the Commission’s view ‘review’ was closely allied to ‘scrutiny’, and the latter had to be underpinned by the power of the chamber to be legislatively proactive. In relation to the introduction of a PR voting system, and multi-member electorates, the Commission argued that the changes would produce a Council that was more representative of political opinion, with enhanced powers of review and accountability, and which would satisfy the desire for differentiation (incongruence), between the houses.⁶ The

⁵ B. Costar & J. Campbell, ‘Realigning Victoria: The State Election of 30 November 2002’, *AJPS*, 38(2) 2003, pp. 313–23.

⁶ Bruce Stone, ‘Bicameralism and Democracy: The Transformation of Australian Upper Houses’, *AJPS*, 37(2) 2002, p. 271.

new electorates would, in the Commission's view, shift the emphasis away from a local constituency role for upper house members, towards a broader role of policy review and scrutiny of the Executive.

When deciding how to apply multi-member STV PR to the geography of Victoria, the Commission rejected the 'whole of State' method employed in New South Wales and South Australia, opting instead to present four models which divided the State into electorates of variable size and membership. The models were: six electorates of seven members; seven of seven; eight of five; and nine of five.⁷ The Commission preferred the six by seven model on the grounds that a quota of 12.5% would provide for diversity of representation and would retain regional representation in the Council without the need to entertain any form of rural vote weightage.

The Constitution (Parliamentary Reform) Bill 2003

In September 2002, prior to the State election, the Government had unveiled its legislative response to the Constitution Commission's report. The bill presented to the 55th Parliament in 2003 was based substantially on the one that had lapsed with the 54th, with some additions and re-ordering; and, with some further amendments, the bill received by the Council on 20 March 2003 from the Assembly was the same as the one introduced to the Assembly the previous month. The important changes to occur during this period were: the addition of new clauses conferring a deliberative vote on the President of the Council; the stipulation that each region be comprised of eleven contiguous districts; the removal from Council members of the title of 'Honourable'; and the deletion of a sub-clause requiring the Auditor-General to certify a bill as an Annual Appropriation Bill. The bill, as amended by the Assembly, was passed by the Council without any further alterations, despite an attempt by the National Party to replace attendance with postal voting for Council elections.⁸ The Constitution (Parliamentary Reform) Bill 2003 amends *The Constitution Act 1975*, *The Electoral Act 2002*, *The Electoral Boundaries Commission Act 1982*, and makes other consequential amendments. What follows are those key features of the Act pertaining to the Council and its reform (the bill contained some other measures in relation to local government, officers of the parliament, and electoral matters).

Key features of the Act

The 2003 Act ties the term of the Council to that of the Assembly, and provides for a fixed four year parliamentary term, with coincident elections for both houses to be held on the last Saturday in November of the conclusion of each electoral cycle. The dissolution of the parliament can occur earlier than the fixed term in the event of: a successful motion of no confidence in the government passed in the Assembly (including a cooling off period of eight days, and notice of motion of three days);

⁷ Constitution Commission Victoria, *A House for our Future*, 2002, p. 31f.

⁸ *Victorian Parliamentary Debates* (Council) 27 March 2003, p. 42f.

the Premier advising the Governor to dissolve the Assembly in the case of a deadlocked bill, following the failure to resolve a disputed bill. Following constitutional convention, the legislation makes no reference to the Governor's discretion not to grant a dissolution. An election can be postponed in exceptional circumstances by agreement between the Premier and the Leader of the Opposition.

The Act re-constitutes the Council to consist of 40 members (a reduction from 44) elected from eight regions with each region returning five members. Each region must consist of eleven contiguous districts. The Act provides for proportional representation with limited optional preferential voting. Voters have the choice of an 'above the line' vote (a ticket vote), or a below the line contingent vote (numbering candidates one to at least five). The quota formula ensures that with five member regions a quota of just over 16.66% is required for successful election of a candidate. The Act outlines, in detail, the process for transferring surplus votes (the Australian Senate STV system) from successful candidates to other candidates based on preferences. The Act amends *The Electoral Boundaries Act 1982* to provide the Commission with authority to divide the state into new electoral regions in 2005. In the event of an early election, the regions outlined in the Act's schedule would apply.

The Act provides for the filling of casual vacancies in the Council by a process of a joint sitting of both houses rather than by a count-back of votes. The party of the vacancy will nominate their replacement candidate. In the case of Independents, a nominee will be required to have resided in the region for at least 12 months, and to have not been a member of a political party for a period of five years (the bill is opaque on the process of Independent nomination and this may produce conflict in the future). Vacancies need not be filled within three months of a general election.

New section 16A of the Constitution Act recognises the principle of Government mandate, but is essentially a statement of principle. The section defines a government's mandate in two forms: the specific mandate, based on election campaign policies; and the general mandate deriving from the Government's election.

Appropriation bills must originate in the Assembly, and may be rejected by the Council. However, an annual Appropriation Bill, (Supply), as defined, which is returned to the Assembly by the Council with amendment(s), or is rejected by the Council, must be presented for assent within one month of its having passed the Assembly, regardless of whether it has passed in the Council. This part of the bill originally included a sub-section which provided for the Auditor-General certifying that the Annual Appropriation Bill as presented to the Assembly was, indeed, an Annual Appropriation Bill, but the section was deleted following a representation to the Government from the Auditor-General who was concerned that it required him to make a legal rather than an accounting decision.⁹ The Speaker of the Assembly now certifies the Bill as such, and this certification is not subject to judicial review.

⁹ *ibid.*

A resolution process for disputed bills is established by creating a new committee of parliament, the 'Dispute Resolution Committee', with seven Assembly and five Council members. 'Disputed Bills' are defined as bills which, having passed the Assembly, have either not been passed by the Council or have not been passed with amendments agreed by both chambers, within two months of their passage in the Assembly. If the Committee cannot reach agreement on a resolution, the bill becomes a 'Deadlocked Bill', which may then be the trigger for an election or, alternatively, can be held over until after the following election. If a re-introduced deadlocked bill is not subsequently passed in the next parliament within two months of its Assembly passage, the Premier can advise a joint sitting to determine the fate of the bill.

The bill also entrenched certain sections of the Victorian Constitution. Hitherto, Victoria's has been the most flexible of the federation's constitutions, amendable by the passage of bills by absolute majorities through both chambers. The Act, which itself does not need to be approved by referendum, amends the Constitution Act 1975 by the inclusion of two additional forms of entrenchment; by referendum, and by a special three-fifths majority of the total number of members in each house. The result is, of course, 'double entrenchment' which may have unintended consequences and complicate future attempts at constitutional adjustment by requiring the people's approval by way of referendum.¹⁰

The parliamentary debate

The debate in the Legislative Council on the bill was often passionate, but not as informed (save for the Committee stage) as it may have been. Government members were keen to portray the bill as a long overdue reform of the Council that would enhance democracy in Victoria. Problems with the high quota were overlooked, or downplayed, with the emphasis on the need to transform the house into a 'genuine' house of review. By contrast, Opposition rhetoric centred on the advantages of the status quo, and the negative effect that the new system would have on the capacity of members to represent their communities. Many Opposition MLCs regarded the changes as an attempt by Labor to strip the Council of its real powers, and advance a Labor/Green political alliance. The bill was passed on 27 March by a vote of 24 to 19, after a three day debate in which all members sitting on the floor of the chamber spoke. The bill was assented to by the Governor-in-Council on 4 April. The key arguments presented on both sides were as follows:

The Government argued that it had a clear mandate following two general elections in which upper house reform was a key ALP policy issue. Government MLCs represented the status quo as undemocratic and unfair, with a huge and traditional

¹⁰ D. Lumb, *The Constitutions of the Australian States*, 5th edn St Lucia, UQP. The extent of the entrenchment was greater than expected and has transformed Victoria's Constitution from the most flexible to the most rigid of the states. Because it is not strictly relevant to the question of bicameralism, a detailed discussion of the likely impact of entrenchment is beyond the scope of this article.

wastage of the Labor vote under the present system. Moreover, the Council was denounced as unrepresentative, unresponsive, and either obstructionist when Labor formed government, or a mere rubber stamp when the conservatives were in power. One member described the Council as suffering a clear ‘crisis of legitimation’ due to its unrepresentative character. Other members pointed to the failure of the upper house to have any connection with Victorians, using the results of the Constitution Commission survey on voter attitudes to support this assertion (95% of respondents could not name one MLC). For the Government, the PR system would create a house which reflected the broad interests of the community, replace the dominance of the two-party system by encouraging smaller parties, and generate greater responsiveness. Government members argued (somewhat misleadingly) that the changes would increase the level of rural representation in the chamber, and (more convincingly) that no long term advantage to the ALP would accrue from the changes. Several members observed that the Government had reached a high water mark in terms of its vote in the 2002 election, and that Labor would subsequently never again enjoy its current Council majority — and certainly not under the proposed PR system.

Many Government MPs used the phrase ‘house of review’ to describe the future role of the Council, but few members articulated what this might actually mean in practice. The high quota was defended by one MP on the basis that it would ensure that fringe political elements would not gain a parliamentary platform, as they have under the low quota, PR system that exists in New South Wales.

The Liberal and National parties attacked the bill on the basis that the status quo already delivered a representative and effective chamber, which was responsive to its various communities of interest. The 2002 election of the ALP to a majority in the Council was cited as clear evidence that the system was not undemocratic. The most effective arguments (but, in the end, perhaps the least relevant to the intention of the changes) put forward by the Opposition concerned the new multi-member regions, and the expected losses that the new system portended for electoral accountability, responsiveness and representation, particularly in rural Victoria. The Opposition was on strong ground arguing that there would be less rural representation in a reformed house, both in absolute and proportionate terms. But the core of this part of their argument was more concerned with parliamentary representation than accountability, with one member remarking that a constituency role in the new regions would be impossible: There would be a loss of communities of interest, candidates and MLCs would congregate in the larger regional population centres, and the new electorates were too vast for effective representation. MLCs would be elected through their position on a party ticket, as in the Senate, not through their popularity and work in their constituencies — thus, party machine politics would dominate.

The quota was singled out for particular attention, with many Opposition members criticising its high level, on the basis that it would not allow smaller parties entry to the political system. The Opposition made much of the apparent lack of clarity

surrounding both the identification of Appropriation Bills, and the procedures that will apply to bills in dispute. One member described the bill as entrenching the rights of the Executive over the Council, and thus the parliament, with a severe loss in its traditional powers to effect legislative change.

While there were these clear and predictable differences, there were also some significant areas of agreement: the four year term was broadly supported (but see below); the process for filling casual vacancies was generally agreed; as was changing the President's vote to that of a deliberative one. Notwithstanding Opposition disquiet over the certification of 'Appropriation Bills', there was little objection to the loss of the power to block Supply.

Few speakers drew on theories of bicameralism or, indeed, the experiences of other jurisdictions, either in Australia or elsewhere, to support or oppose the introduction of a PR system in the upper house. Labor members concentrated on the long history of the Council as an anti-Labor house of conservative resistance, while the Liberals and Nationals claimed the status quo conformed to Westminster standards. However, the issue of incongruence did gain some coverage through discussion of the electoral cycle, with one Liberal arguing that the staggered-term system performed the function of limiting executive power. Labor members, however, described the current system as producing a chamber with a 'stale mandate'.

Assessment of the new regime

Given that the Council's pre-2003 electoral system was neither gerrymandered nor malapportioned and was based on the same principles as those of the lower house, did it require changing? In terms of fairness of outcomes, yes, because the unreformed system exhibited some of the negative features of the 'block preferential' method used to elect the Senate between 1919 and 1946. Council Provinces were relatively large, containing four times the enrolment of lower house seats. District 'magnitude', i.e. geographic size, combined with STV PR can enhance proportionality of outcomes, but when combined with single member alternative voting (which was the system employed at Council elections from 1922 to 2002) it has the opposite effect because of the capacity of such a majoritarian system to waste votes. For example, at the 1999 Council election the ALP wasted 51% of its primary vote to the Liberal Party's 31% and, despite polling an average 44% of the two-party preferred vote in 1992 and 1996, Labor held only 10 of the 44 Province seats (23%). The situation was reversed in 2002 with the Liberal Party wasting 66% of its primary Council vote to Labor's 14%.

Government members in the Council also argued that a PR system would produce a chamber of diverse views and interests, more broadly reflecting those of the community at large.¹¹ PR systems are often advocated because they are: more

¹¹ VPD 2003; Gould 2001

representative of voters' actual preferences; can reduce or minimise the stranglehold of the two-party system on a chamber; can increase the role of Independents and minor parties; and, where a lower house is elected under a majoritarian system, PR can provide a necessary differentiation between the houses vital to a healthy bicameralism.¹² Alternatively PR systems are decried because, in prioritising diversity, they can produce political fragmentation and weak government.¹³ Political scientist Arend Lijphart goes beyond these contrasting contentions to argue that PR systems have a much better record than majoritarian ones in producing good governance. Lijphart also argues that bicameralism is enhanced when one of the houses operates under PR, producing a more consensus style of government. But he also stresses that bicameralism's strength rests on a combination of symmetry (balance) and incongruence (difference); where two houses possess equal or near-equal powers, have been democratically elected, yet are clearly differentiated by composition and voting system.¹⁴

While the strengths of PR systems can be analysed and promoted generically, the question here is, will the introduction of this particular PR system for Victoria's upper house — with its eight, five member Provinces, and 16.66% quotas — produce the type of outcomes generally associated with consociational electoral methods? What impacts will the new system have in terms of fairness, broader representation, differentiation, loosening the grip of the major parties and, that most desired goal, more accountable and better government?

The proposed multi-member electorates combined with STV PR will achieve a significant reduction in vote 'wastage' for the two major parties across Victoria. However, the outcomes for minor parties and Independents are less certain. With a quota set at just over 16.66%, and geographically large Provinces with diverse constituencies, most candidates will require the support of a State-wide political organisation to achieve consistent electoral success. Few minor or 'issues' based parties in Victoria fulfill this criterion, with the exceptions of the Nationals and the Greens. Votes for other minorities will either be wasted, exhausted or contribute, by way of preferences, to the election of 'major', or major 'minor', parties. The reduction in the size of the house, from 44 to 40 members, will also militate against greater diversity.

A predictive analysis of the likely impact of STV PR at the first election of the new Legislative Council (scheduled for November 2006), based on the results of the 2002 Victorian state election for the Legislative Assembly,¹⁵ reveals that only four political parties will achieve representation in the newly-constituted chamber, with

¹² Solomon 2001; Eckersley and Zifcak 2001; Donald 1999.

¹³ *VPD(A)*, 6 September 2000, p. 136.

¹⁴ Arend Lijphart, 'Australian Democracy: Modifying Majoritarianism', in Marian Sawer and Sarah Miskin (eds), *Representation and Institutional Change — 50 Years of Proportional Representation in the Senate*, 1999, pp. 55–70.

¹⁵ Greg Gardner and Brian Costar, *Information Paper: Legislative Council Reform*, Research Service, Parliamentary Library, Victoria, March 2003, pp. 1–11.

the Greens being the only new entrant. The following Table gives the predicted maximum and minimum number of members likely to be elected for all regions by party affiliation. It should be borne in mind that these results are based on an election outcome which produced the highest ALP proportion of members of both the Assembly and Council on record, a victory generally regarded as a high water mark for Labor.¹⁶

TABLE 1:
Legislative Council — Predicted 2006 composition by party for all regions combined*

	<i>Labor</i>	<i>Liberal</i>	<i>National</i>	<i>Greens</i>
Max no. of members	20	15	4	5
Min no. of members	19	14	1	2

* NB. Based on 2002 Victorian election first preference votes achieved in Legislative Assembly Districts in each of the proposed eight Provinces (11 Districts per region)

The four parties listed here achieved just under 96% of the total of all first preference votes in the 2002 Assembly, and more than 97% of first preferences in the Council election. The results for other parties were insignificant, with the demise of the Australian Democrats at the Victorian election reflecting their political implosion nationally throughout 2002. Under the above scenario, Labor representation would fall by at least five members, the Liberals could retain their current seat share, while the Nationals are in danger of losing up to three seats. While, at first glance, PR appears to punish the National Party, it may not. At the 2002 election the Nationals stood candidates in only 17 of the 88 Assembly Districts. There is therefore a significant theoretical potential for the Nationals to increase their overall vote across each non-metropolitan upper house Province simply by having candidates listed on the Council ballot paper thereby potentially expanding the pool of National Party voters.

By contrast, in 2002 the Greens stood candidates in all but a handful of Assembly seats, and received a record primary vote (9.73%), more than twice that of the Nationals (4.30%). The question is whether support for the Greens peaked in 2002, or whether it has a further capacity for growth. The 2002 Green vote contained a 'protest' element related to then current federal issues, particularly dissatisfaction with the federal Labor Party's stance on asylum seekers and the looming war on Iraq — issues unlikely to be salient in 2006.

Based on the 2002 election returns, the two major parties' hold over the Council would reduce from its current level of 91% of all members to 82.5% after the 2006 poll. This would appear to open the way for greater diversity in representation. However, the high quota, and the reduced size of the house, may ensure that that diversity will be of a limited dimension. The prospect of regular Independent candidate success appears unlikely and, with an eventual return to more usual,

¹⁶ Costar and Campbell, *op cit.*, p. 313.

historical voting patterns, a future Liberal/National majority in the Council is a distinct possibility.

Accountability or representation?

In its Report the Constitutional Commission argued that ‘the review role is the most important feature of an Upper House’.¹⁷ Many of those who participated in the parliamentary debate, however, were more concerned to assert a *representative* function for the Legislative Council. Opponents of the adoption of multi-member constituencies consistently asserted that the large geographical area of the eight Provinces would render it impossible for members to represent the interests of voters.¹⁸ Much of the debate implied that STV PR was being proposed for *both* chambers and there was scant appreciation of the incongruence contention that bicameralism works best when there exist dissimilarities in the function and composition of the two houses. Craig Ingram (Ind. Gippsland East) was one of the few who did when he argued that ‘the local member really belongs in the Legislative Assembly. The role of the upper house is to act as a house of review’.¹⁹ Overall there was little sympathy for the view that upper house members should ‘not be driven into constituency work’,²⁰ with one MLC lamenting that ‘that there will be no time for electoral pastoral work’.²¹

Throughout its public consultation process the Constitutional Commission encountered ‘. . . an overwhelming concern expressed in the non-metropolitan regional communities that they are being overlooked’.²² Rural Victoria, like the rest of Australia, was having to cope with major structural adjustment and the privatisation and other policies of the Kennett Coalition Government were widely resented in regional areas.²³ The Bracks Labor Government was receptive to the aspirations of regional voters because it was their desertion of the Coalition which put the ALP into power at the 1999 election and because the Government was maintained in office by three Independents who held rural Assembly seats. The desire to introduce a multi-member PR voting system into Legislative Council elections while, at the same time, maintaining a level of regional representation, influenced the Government’s decision to adopt the model of eight Provinces returning five members each. In so doing, three of the Provinces may be described as ‘predominately rural’²⁴ but the quota for election is a high 16.66% which will

¹⁷ Constitution Commission, op cit p. 25.

¹⁸ VPD (A), 5 September 2003, p. 63; 6 September 2003 pp. 39-40, 85, 96 and 102.

¹⁹ VPD (A), 6 September 2003, p. 66.

²⁰ Russell op cit, p. 291.

²¹ VPD (C), 27 March 2003, p. 18.

²² Constitution Commission, op cit, p. 51.

²³ B. Costar and N. Economou (eds), *The Kennett Revolution: Victorian Politics in the 1990s*, Sydney, UNSW Press, 1999, pp. 88-98.

²⁴ VPD (C), 27 March 2003, pp. 54-5.

reduce diversity and perhaps accountability. Nevertheless, the Opposition denounced the changes as an attack on regional Victoria.²⁵

Conclusion

When arguing against a 1937 proposal to insert a double dissolution provision into the Victorian Constitution, Sir Clifden Eager MLC (President of the Council 1943–58) declared that ‘the upper house differed from the lower in terms of its constituency, its perspective and its experience . . . it did not have to be wholly representative’.²⁶ This was an accurate account of the Legislative Council, but largely because it was not as democratically constituted as the Assembly. Between the adoption of universal suffrage in 1950 and the reforms of 2003, the two chambers became increasingly asymmetrical and congruent, despite the Council’s strong legislative powers. The recent changes simultaneously increase congruence by introducing fixed four-year terms for both houses and decrease it by replacing alternate voting with multi-member STV PR for the Council. Typical criticisms of the Council have been that when controlled by the government it is quiescent and when controlled by the Opposition it engages in partisan obstruction.²⁷ Both corrode the review function. Given that ‘even true democrats [once] in government will find it hard to prioritise a parliamentary reform which will involve their work being scrutinised more closely’,²⁸ denying major parties control of the upper house is a necessary condition for accountability. It is not, however, a sufficient condition: proportional representation came to the Senate in 1949–51, but consistent and effective scrutiny of the Executive did not commence until the establishment of a policy review committee system in 1970.²⁹ In this regard the Legislative Council has some ground to make up since it currently has no Standing Committees of its own. All such committees in the Victorian Parliament contain members from both chambers.

The introduction of a PR voting system to the Victorian Legislative Council does create the opportunity for a review culture to develop in place of adversarialism. Whether such a culture develops swiftly, slowly or not at all will depend on the party balance produced by successive elections and to what extent the majority of Council members embrace accountability as their primary function. We hope that the transformation of the Victorian upper house will not take as long as the Senate’s, but the high electoral quota may prove to be the fatal flaw in the reform package. ▲

²⁵ VPD (A), 6 September 2000, pp. 87, 89, 109 and 148.

²⁶ Quoted in Ray Wright, *A Peoples’s Counsel: A History of the Parliament of Victoria, 1856–1990*, Melbourne, OUP, 1992, p. 171 .

²⁷ Coghill 1997.

²⁸ Russell, *op cit* , p. 340.

²⁹ B. Costar (ed.), *Deadlock or Democracy? The Future of the Senate*, Sydney, UNSW Press 1999, pp. 9–11.