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## **Resisting executive control in Queensland's unicameral legislature — recent developments and the changing role of the speaker in Queensland**

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Queensland has long been criticised for the limitations of its parliamentary system and its excessive dominance by executive government. The 1989 Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (henceforth called the Fitzgerald Inquiry), pinpointed Queensland's system of government and particularly its weak parliamentary system as one of the main causes for the State's endemic corruption. As the Fitzgerald Report (1989: 123) lamented:

Any government may use its dominance in the Parliament and its control of public resources to stifle and neuter effective criticism by the Opposition ... A government can use its control of Parliament and public administration to manipulate, exploit and misinform the community, or to hide matters from it.

According to Fitzgerald (1989: 123–5) debate was stifled, parliamentary sitting days too few, the Opposition restrained, question-time redundant and the committee system minimalist. Also, the Speaker of Parliament, the supposed independent chair, was perceived as too partisan, one of the prizes bestowed on party stalwarts by executive government (Fitzgerald 1989: 123). While these criticisms were legitimately aimed at Queensland's National Party government (1983–89), they applied equally to previous Coalition (1957–1983) and Labor administrations (1915–1929; 1932–1957). Strong executive control of parliament was a Queensland tradition. Although not too different from other states, the problem was exacerbated by Queensland's lack of an upper house — abolished by Labor in 1922 despite a referendum to the contrary. The lack of an upper house that had a vibrant committee system has been admitted by former Labor premier Wayne Goss (Goss 2001) and more recently by the current Leader of the House, Judy Spence (2011a: 2), as leading to a decline in the value of committee oversight.

Despite many worthwhile changes to parliamentary procedures since the Fitzgerald Report, mainly by Labor governments, the consensus has been that executive dominance of the Queensland legislature remains largely intact. Parliament still sits too infrequently, legislation is often rushed, debate truncated, the expanded committee system was still limited and remain dominated by governing party members and the Estimates committee process too restricted (Ransley 1992; Ransley 2008; Solomon 1993). However, in the wake of the former Labor Minister Gordon Nuttall going to jail for receiving monies from a mining magnate, issues about lobbying by former ministers and staff and public criticism by former commissioner, Tony Fitzgerald (Fitzgerald 2009), about secrecy and the lack of progress with reform, the Bligh Labor Government embarked on changes to Queensland's integrity processes concerning pecuniary interest, donations to political parties and lobbying. This included a green paper on integrity (Queensland Government 2009a) and subsequent response (Queensland Government 2009b) with new legislation governing lobbying, a single code of conduct across the public sector, improved pecuniary interests arrangements and an expanded role for the existing Integrity Commissioner to name just a few of the changes. In addition, the Bligh Government, to its credit, had made major reforms previously to Queensland's emasculated freedom of information legislation (Solomon 2008).

Part of this integrity review also extended to parliament. It included the appointment of a select committee of parliament in February 2010, the *Committee System Review Committee* (CSRC), to report on 'how the parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability' (CSRC 2010: xi). The CSRC reported in December 2010 and made 55 recommendations directed towards these two distinct and complex areas. What has aroused considerable interest and debate was not the new parliamentary committee system proposed by the CSRC, largely accepted by the Bligh Government and representing a major step forward in terms of breadth of coverage, powers and membership of committees. Rather, the issue of concern has been the unexpected recommendations (CSRC 2010: recommendations 8–12) for a new bipartisan committee, the Committee of the Legislative Assembly (CLA) that would take over key functions concerning the management of parliamentary administration, most of which had long been under the control of the Speaker. The Bligh Government accepted this proposal, meaning that the CLA would be responsible for the administration and management of parliament, not the Speaker as occurs in most other Westminster systems and previously in Queensland. In addition, the Speaker would no longer chair the Standing Orders Committee. These new arrangements concerning the CLA have now been established with the passage of the *Parliamentary Service and Other Acts Amendment Bill* in August 2011 with the support of the Opposition. Only a couple of Independents opposed the changes. The current Speaker, the Hon John Mickel and many others, regard the changes, not as improving executive accountability, as contended by the CSRC and the Bligh Government, but as undermining the traditional role of the Speaker as the manager and representative of parliament, increasing executive intrusion in the running of parliament and a major departure

from Westminster practice. Queensland, through this new and unusual arrangement it is argued, continues to be different in its interpretation of Westminster democracy. Just as it is the only state in Australia without an upper house, its new CLA and its displacement of the Speaker by this and other accompanying changes, represent another departure from Westminster tradition, another Queensland first.

This article analyses these particular developments in relation to the role of the Speaker and the new CLA.

### ***The Committee System Review Committee (CSRC) and its report***

The Queensland Parliament had a functional parliamentary committee system during the 19<sup>th</sup> century and until the abolition of the upper house, the Legislative Council in 1922 (Goss 2001). Thereafter the committee system in the Queensland parliament fell into disrepair until it was resuscitated in the late 1980s (Alvey 2008; CSRC 2010, xiii). Indeed, whether Queensland should have a public accounts committee was one of ostensible reasons for the split between the National and Liberal parties in 1983 which resulted in a National Party only government and the near destruction of the Liberal Party at the subsequent 1983 and 1986 elections (Prasser 1984; Prasser and Wear 1990). In 1988 a public accounts committee and a public works committee were established by the Ahern National Party Government and by the end of 1990 another five committees had been established by the Goss Labor Government elected in December 1989 (Alvey 2008; Goss 2001). In 1991 the Electoral and Administrative Review Commission (EARC), established as a recommendation of the Fitzgerald Inquiry to review Queensland's institutional arrangements (Fitzgerald 1989: 14, 347), conducted an inquiry into the committee system. Its 1992 report (EARC 1992) proposed a range of committees largely mirroring public service departments. This report was referred to the Parliamentary Committee for Electoral and Administrative Review (PCEAR), which did not support the EARC recommendations, but instead made its own proposals (PCEAR 1993). Consequently, in 1995 the *Parliamentary Committees Act* was passed, establishing six permanent statutory committees and providing for the establishment of other statutory, select and standing committees. Although not exactly what the Fitzgerald-inspired EARC had proposed, this represented a considerable advance on previous committee arrangements.

Nevertheless, the new committee structure and especially pivotal ones like the Parliamentary Criminal Justice Committee (PCJC) attracted criticism even from the Goss Government's own ranks (Beattie 1992). Academics and those who had worked with Queensland parliamentary committees also questioned whether the new committee system with its dominance by government members, limited resources and narrow policy breadth, would really improve parliamentary scrutiny of the executive or provide conduits for input into decision making for either the public or the Opposition (Ransley 1992). Members of the EARC believed the new committee arrangements were a lost opportunity for real reform (Solomon 1993).

There were further changes to committees in 2009 announced by Premier Anna Bligh in the aftermath of the March elections. That these changes were announced by the executive with limited consultation with the Liberal National Party (LNP) Opposition did little to allay concerns about their intent and impact. So by 2009 and prior to the recent review, Queensland's Legislative Assembly had the following 10 committees:

- Economic Development Committee
- Environment and Resources Committee
- Integrity, Ethics and Parliamentary Privileges Committee
- Law, Justice and Safety Committee
- Parliamentary Crime and Misconduct Committee
- Public Accounts and Public Works Committee
- Scrutiny of Legislation Committee
- Social Development Committee
- Speaker's Advisory Committee
- Standing Orders Committee

Matters may have rested there, but for reasons noted above the Bligh Government initiated a review of the parliamentary committee system by a bipartisan parliamentary committee (the CSRC), chaired by the Leader of the House, the Hon Judy Spence and joined by four other Government members, three from the Opposition and one Independent. The importance of the CSRC is indicated by the fact that it included not only the Leader of the House, herself a former senior Bligh and Beattie government minister, but also the Hon Robert Swarten at the time Minister for Public Works and Information and Communication Technology (until February 2011); Lawrence Springborg, then Deputy Leader of the LNP Opposition (and a former Opposition Leader); and Opposition frontbenchers Mike Horan and Jeff Seeney, who in April 2011 became the Leader of the Opposition in parliament. In other words, the CSRC had a high preponderance of members drawn from the frontbench of both sides.

In addition to considering 'how parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability' (CSRC 2011: xi), the CSRC was also required to consider:

- The role of parliamentary committees in both Australian and international jurisdictions in examining legislative proposals, particular with unicameral parliaments;
- Timely and cost effective ways by which the Queensland parliamentary committees can more effectively evaluate and examine legislative proposals
- The effectiveness of the operation of the committee structure of the 53<sup>rd</sup> parliament following the restructure of committee system.

The CSRC proposed a new committee system with the following 11 committees — nine statutory portfolio committees, a Crime and Misconduct Committee and a Committee of the Legislative Assembly:

- Economics and Industry Committee
- Education Committee
- Environment and Resource Management Committee
- Finance and Administration Committee
- Health Committee
- Legal Affairs Committee
- Police and Public Safety Committee
- Social Affairs Committee
- Transport and Infrastructure Committee
- Parliamentary Crime and Misconduct Committee
- Committee of the Legislative Assembly

The first nine of these would be portfolio committees aligned to the current Queensland Government structure and overseeing government departments, statutory authorities and government owned corporations. The Parliamentary Crime and Misconduct Committee would oversee the Crime and Misconduct Commission — Queensland's anti-corruption body. Importantly, as will be explored later, the Public Accounts Committee, whose final emergence in 1988 was so important in Queensland's parliamentary and political history,<sup>1</sup> completely disappeared with its functions absorbed by the other nine portfolio committees. It had under the 2009 Bligh Government changes been merged with the Public Works Committee.

As noted, the focus of this paper is on the Committee of the Legislative Assembly (CLA). The CLA under these new arrangements would be an umbrella committee to oversee all those issues relating to parliamentary power, rules, behaviour, ethics and privileges that have traditionally (in Queensland and elsewhere) been the province of individual committees and the presiding officers. The roles and powers of the CLA were set out in recommendations 8–13 of CSRC report:

8. The Committee recommends that a Committee of the Legislative Assembly be established under the Parliament of Queensland Act 2001
9. The Committee recommends that the Parliament of Queensland Act 2001 be amended to provide for the establishment of the Committee of the Legislative Assembly with the current functions of the Standing Orders Committee and the

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<sup>1</sup> Queensland lagged behind other Australian jurisdictions in establishing a public accounts committee. In 1983 Liberal Minister Terry White joined with several Liberal backbenchers in support of a unsuccessful motion to establish a public accounts committee. White was sacked as minister, then became Liberal leader, but Premier Bjelke-Petersen would not accept him back into cabinet. The Coalition then ended. The National Party won the subsequent 1983 election and ruled in their own right without Liberal support (see Prasser 1984). Only on Bjelke-Petersen's replacement by Mike Ahern was a public accounts committee finally established.

Integrity, Ethics and Parliamentary Privileges Committee, without the oversight function under the Integrity Act 2009 (which is to be carried out by the Finance and Administration Committee).

10. The Committee recommends that the Parliamentary Service Act 1988 be reviewed. The Committee of the Legislative Committee should determine the budget and resources of committees and make submissions to government to ensure the committees of the Parliament are sufficiently resourced.

11. The Committee recommends that this committee should oversee the establishment of the committee facilities (recommended by this Committee) in the parliamentary precinct.

12. The Committee recommends that the responsibility for the management of construction and maintenance of the Parliamentary buildings and electorate offices (along with the relevant budget) be transferred to the Department of Public Works.

13. The Committee recommends that the membership of the Committee of the Legislative Assembly be:

- Leader of the House (chair)
- Premier (or nominee)
- Deputy Premier (or nominee)
- Leader of Opposition Business
- Leader of the Opposition (or nominee)
- Deputy Leader of the Opposition (or nominee)

The Bligh Government tabled a response to the CSRC report in March 2011. It supported the recommendations in all except three respects. The first was that it preferred a separate ethics and privileges committee. Second, it wanted seven rather than nine portfolio committees. Third, it supported the proposed CLA, but suggested the Speaker would be invited to attend Committee of the Legislative Assembly meetings in an ex-officio capacity when Standing Orders matters were being considered. Legislation to implement the recommendations, the *Parliament of Queensland (Reform and Modernisation) Bill 2011* and the *Parliamentary Service and Other Acts Amendment Bill 2011* was introduced into the Legislative Assembly in March 2011 and June 2011 respectively. The two bills were passed in May and August 2011 with the support of the LNP Opposition. Some attempts at a compromise concerning the role of the Speaker included an Opposition proposal to make the Speaker the chair of the new CLA (Seeney 2011: 1247). This was rejected by the Government as it would, under the Opposition's proposal give the Speaker a casting vote and because of the CLA's role in the disciplining of members (Bligh 2011: 1494).

In summary, Queensland Parliament now has the following committees:

- Community Affairs Committee
- Environment, Agriculture, Resources and Energy Committee
- Ethics Committee
- Health and Disabilities Committee
- Industry, Education, Training and Industrial relations Committee

- Legal Affairs, Police, Corrective Services and emergency Services Committee
- Parliamentary Crime and Misconduct Committee
- Transport, Local Government and Infrastructure Committee
- Committee of the Legislative Assembly

A revised and improved estimates committee system was also agreed upon and is now operating.

Overall, the Government believed the reforms were 'big and bold in its vision' and 'generally supported by members of this parliament and by commentators' (Bligh 2011: 1493; see also Spence 2011b). In relation to the general thrust of the changes this statement is true. However, concerning the new CLA and its impact on the role of the Speaker, the merits of the changes are open to more debate.

### ***Concerns about the proposed Committee of the Legislative Assembly (CLA)***

There have been four main concerns about these new arrangements concerning the CLA and the way they were done.

First, it has been argued that the CSRC's proposals concerning the administration of parliament and hence subsequent changes to the role of the Speaker were not part of its terms of reference. It came as a big surprise to those outside the CSRC and to those most affected by the changes, namely the current Speaker, John Mickel. At a national meeting of Presiding Officers and Clerks of Parliament held in Brisbane in July 2011, Mickel (2004: 4) could not understand,

how we started out with a Review Committee to examine the Parliament's committee system so as to strengthen the oversight of legislation and improve accountability and ended up not just with an overhaul of the committee system, but also my position of Speaker skewered and the balance in the relationship between the executive and the legislature fundamentally changed.

That the CSRC report (2010:14) itself notes that 'the functions of internal committees were ... not canvassed widely in the submissions' and that these were matters raised in 'private meetings' does not inspire confidence in the process let alone the outcome. Further, was the subsequent way the government managed the establishment of the CLA and later discussions about the issue. The CLA was quickly established by resolution of the parliament prior to the later legislative changes which were then overseen by the CLA itself (Queensland Government 2011a: 4–5).

Second, and this is the crux of the issue, the Speaker is omitted from the proposed new Committee of the Legislative Assembly. Yet the Australian and overseas examples cited by the CSRC that best resemble the new Committee such as the Committee of the legislative Assembly of the National Assembly of Quebec (CSRC: 14) is chaired by the President (Speaker). New Zealand and other provinces visited by the CSRC are not mentioned in relation to the CLA recommendation.

Not only will the new Committee of the Legislative Assembly not include the Speaker, but with three members from executive government — the Premier, Deputy Premier and Leader of the House — and the three senior Opposition frontbench members, the new arrangements represent a ‘collusion of the executives’ as backbenchers and Independents are also excluded from any role on the CLA despite its role in the overall management and resourcing of parliament and its other committees. Also, with equal members from each side and no casting vote with the chair, any tied votes will be resolved on the floor of parliament where the government of the day has the numbers. It has therefore been argued that the executive government now fully controls parliament in Queensland in a way not exercised previously — even under the National Party and previous Coalition governments. And let there be no confusion about this new arrangement to exclude the Speaker from the CLA — it was deliberate strategy. As Judy Spence (2011a: 5) herself pointed out:

We did not include the Speaker on this Committee (the CLA) because we wanted to redefine the Speaker’s role as the person who chairs the Parliament rather than the person who makes all the decisions about the precinct.

John Mickel (Mickel 2011) argues these changes demean the office of Speaker, undermine the separation of powers and reduce executive accountability. While the Speaker’s powers to adjudicate on parliamentary debates remains intact, the traditional and important role of managing parliament’s administration, representing the interests of parliament to the executive in relation to resourcing and acting as a bulwark against executive government encroachment on the legislature’s independence, have been allegedly destroyed by these changes. He is not alone in these concerns. In January 2011, Queensland’s Integrity Commissioner Dr David Solomon prepared a commentary on what he saw as some of the major issues arising out of the Committee System Review Committee’s report. Dr Solomon (Solomon 2011) had this to say:

...the Committee, in Recommendation 12, also wants to transfer responsibility for the management of construction and maintenance of the Parliamentary buildings and electorate offices, and the relevant part of the parliament’s budget, from the Speaker to the Department of Public Works. No reason is provided for this unprecedented transfer of power over part of the physical structure of the Parliament from the Parliament to the Executive Government. Making such a change would constitute a significant departure from the traditional independence of Parliament, and further diminish the role of the Speaker (and of the Clerk, who under the Parliamentary Service Act is the chief executive of the Parliamentary Service).

In my view the Parliament should retain both the Standing Orders Committee and the Integrity, Ethics and Parliamentary Privileges Committee, with the latter having oversight responsibilities in relation to the Integrity Commissioner.

In relation to the proposed Committee of the Legislative Assembly, Dr Solomon stated: ‘Regrettably, once again, the Committee makes no attempt to justify or explain its recommendations.’ Dr Solomon also notes that the Speaker has been removed from any role on the Committee of the Legislative Assembly.



Criticism of the proposal also came from two former Labor Speakers of the Queensland Legislative Assembly, Jim Fouras and Mike Reynolds (Reynolds and Fouras 2011; Fouras 2011). They argued that the recommendations regarding the Committee of the Legislative Assembly were outside the CSRC's terms of reference, which tasked it with inquiring into 'how the parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability' (CSRC 2011: 75) and that they flouted the principle of the separation of powers by bringing the parliament under the control of the executive. Fouras (2011) summarised the principle of the separation of powers in this context in the following terms:

The Premier runs the government. The Speaker runs the Parliament. The government (Executive) and the Parliament (Legislature) should operate independently of one another as far as possible.

The Speaker's exclusion from the CLA and the inclusion of the Executive's two most senior members — the Premier and the Deputy Premier — is an anathema to the separation of powers.

The *Accountability Round Table*, a leading non-partisan group that argues for increased executive government accountability, supported the former Speakers' views that the recommendations were an attack on the separation of powers (Accountability Round Table 2011).

More pointedly the Speakers and Presidents at the Conference of the Presiding Officers and Clerks of the Australia–Pacific (2011) held in July 2011 on the eve of the final legislation that cemented the changes, issued a communiqué condemning the changes 'as a substantial diminution of the role and office of Speaker ... a serious breach of the Westminster convention ... (and) weakening the existing separation of powers.' They urged amendment to the proposed legislation.

Professor Carney (2011), a constitutional law expert who tendered advice to the Scrutiny of Legislation Committee on this issue believed the 'status of the Speaker is undermined' and the new Committee 'does not adequately represent the vast majority of Members of the Assembly' and the change 'facilitates Executive intrusion in the management of the Parliament.' Professor Carney's point is that the composition of the CLA with its representation solely from executive government on the one hand, and the front bench of the Opposition on the other, with the Speaker only attending on standing orders issues, impairs the 'effective management and functioning of the House ... threatens the maintenance of the separation of powers' and undermines 'the delicate role of a politically appointed Speaker who must try to retain the trust of both government and opposition' (Carney 2011).

Harry Evans (2011), former Clerk of the Australian Senate, in evidence to the Scrutiny Committee also expressed similar concerns about the restriction of CLA's membership to 'government and opposition executive members ... with no direct backbench representation.' Evans, thought it was 'even more undesirable' that the

the Speaker's was reduced to a temporary member of the CLA or what he termed, 'second-class member' joining it only on matters of procedure. As Evans concluded, he 'had never seen as presiding officer treated in such a way.'

Others including a former High Court judge, five former Speakers of Queensland, both Labor and non-Labor, retired speakers from other jurisdictions (New South Wales and Victoria), several Queens Counsels, academics (including one of the authors of this paper), a former premier and several former Queensland ministers and members (*Courier-Mail*, 20 April 2011) believed these changes were an 'assault on democracy.' They argue it undermined the separation of powers, giving executive government too much direct control over parliament and that the CLA, if it is to be established, should be chaired by the Speaker to ensure a demarcation between parliament and the executive.

A third criticism of the changes was that they represented a departure from the previous roles of the Speaker as understood in Queensland and provided for in the legislation. In his 1980 survey of the government of Queensland Professor Hughes (1980: 119) began his account of the Speaker in the following terms:

The first business of each new parliament after the members have been sworn in is the election of the Speaker to preside over its principal business, to manage its domestic affairs, and to represent it in dealings with the executive.

In their history of the Queensland Parliament Wanna and Arklay (2010: 21) compared the Speaker's role to that of a minister 'responsible for the Department of Parliament as a functioning public service agency.'

The *Parliamentary Service Act 1988* established the Queensland Parliamentary Service to provide administrative and support services to the Legislative Assembly, its committees and members of parliament (Queensland Parliamentary Service 2010: 4). Sections 5 and 6 of the Act also defined the powers of the Speaker in relationship to the parliamentary service:

5 Administration under Speaker's control

The Speaker has the control of

- (a) accommodation and services in the parliamentary precinct; and
- (b) accommodation and services supplied elsewhere by the Legislative Assembly for its members.

6 Speaker's role for parliamentary service

- (1) The general role of the Speaker in relation to the parliamentary service is to
  - a) decide major policies to guide the operation and management of the parliamentary service; and
  - b) prepare budgets; and
  - c) decide the size and organisation of the parliamentary service and the services to be supplied by the parliamentary service; and
  - d) be the employing authority, for the Legislative Assembly, of parliamentary service officers and employees deciding their remuneration and conditions of service; and

e) supervise the management and delivery of services by the parliamentary service.

(2) The Speaker must ensure that the remuneration, conditions of employment and other benefits given to the Clerk, and parliamentary service officers and employees, are comparable to those of State officers and employees who have similar duties.

The excision of these responsibilities from the Speaker's role represents departure from past practice in Queensland.

A fourth criticism is that the changes represented a major departure from wider Westminster practice. There is considerable support for this contention. In his survey of the role of Speakers in Commonwealth parliaments Laundy (1984: 62–63; 105–106, 155–56, 172–73, 183–84, 186) observed that Speakers invariably had a role, to a greater and lesser extent, in the administration of the parliament. The most limited role was in New Zealand, where the Speaker did not control expenditure; the most powerful was in India where 'the Speaker's authority over the staff of the House, its precincts and its security arrangements is absolute' (Laundy 1984: 186). Nevertheless, in *Parliamentary Practice in New Zealand* by David McGee it is observed that the, 'Speaker is the chairperson of the Parliamentary Service Commission and has principal political responsibility for the services and facilities provided to Members of Parliament' and the 'control and administration of the Parliamentary precincts is vested in the Speaker on behalf of the House' (McGee: 2005: 52). In other words, the Speaker has a pivotal role in relation to the operations of New Zealand's unicameral parliament.

In the British House of Commons the Speaker has an administrative role as ex-officio chair of the House of Commons Commission, the body responsible for the management and administration of the House of Commons. The Commission comprises the Speaker, the Leader of the House, a member appointed by the Leader of the Opposition (normally the Shadow Leader of the House), and three other members appointed by the House, normally one senior backbencher from each of the two main parties and a representative of the smaller parties (House of Commons Information Office 2010, 2). The responsibilities of this role were described by Baroness Boothroyd, Speaker of the House of Commons between 1992 and 2000; she described the House of Commons Commission as 'the body which effectively runs the administration of the House' and noted that it had an annual budget of £313 million and 1,500 staff during her period of office (Boothroyd 2010: 142). In *How Parliament Works*, by Rogers and Walters (2006), it is stated: 'Not only does the Speaker have the task of chairing the House, he is also an enormously influential figure in almost every aspect of the way that the House and its administration are run,' and 'the most important of the Speaker's statutory responsibilities is as the chairman of the House of Commons Commission.'

The Speaker's role in the Canadian Parliament, is summarised thus in the *House of Commons — Procedure and Practice*: 'The Speaker is the head of the House of Commons and is responsible for its overall direction and management;' and 'All

matters of administrative and financial policy affecting the House of Commons are overseen by the Board of Internal Economy ... the Speaker chairs the Board of Internal Economy' (O'Brien and Bosc: 2009). And as noted the CSRC itself acknowledges the role of the President (Speaker) in Quebec in chairing the relevant committee.

In Australia, both Commonwealth and Victorian parliaments describe the Speaker's administrative role with respect to parliament as similar to that of a minister's role concerning his or her department. In the Commonwealth Parliament the two presiding officers, the Speaker of the House of Representatives and the President of the Senate are jointly responsible for the parliamentary precinct, while the Speaker is 'in effect "Minister" for the Department of the House of Representatives' (Harris, Wright and Fowler 2005: 178). In Victoria the Speaker has a ministerial relationship with both the Department of the Legislative Assembly and the Department of Parliamentary Services (Victorian Legislative Assembly Procedure Office 2010: 3).

### ***Executive vs Parliament?***

Critics have suggested that the transfer of administrative responsibility from the Speaker to the CLA is part of a conflict between the executive and the parliament. However, it should be remembered that the proposed membership of the CLA consists of the Leader of the House, the Premier, the Deputy Premier, the Leader of Opposition Business, the Leader of the Opposition and the Deputy Leader of the Opposition, thus giving equal representation to the government and the opposition. The Speaker, on the other hand, is almost invariably a member of the government party and there is no convention in Australian parliaments that the Speaker removes himself or herself entirely from party involvements. It could therefore be argued that the Speaker is more aligned to the executive than is the new CLA.

The metaphor of the Speaker as the minister responsible for the parliamentary departments is an attractive one, but also has a number of complications and shortcomings. The role of the Speaker in the administration of parliament or the lower house is a matter of convention which has developed over many years rather than of law, and the conventions themselves have changed according to the preferences of both institutions and individuals (Pender 1990: 147–174). This understanding was fully supported by the opinion of Queensland's Solicitor-General on the transfer of the management of the Queensland parliamentary service to the new committee:

The proposed laws arguably breach the Westminster convention that the Speaker performs the administrative role of the head of the parliamentary services. However, this does not give rise to any legal consequences. We have not examined the existing standing orders or rules of the Assembly to identify any breaches. We assume that if the standing orders and rules are inconsistent with the proposal, that parliament will ensure the orders and rules are changed when the Reform Bill and Service Bill commence operation. Otherwise, we do not consider that the proposed laws breach any other law, doctrine or rule. (Solicitor-General Queensland 2010: 16)

However, it is worth noting in relation to Queensland that the Speaker's role in the administration of parliament had evolved from a matter of convention to a matter of law, with the role specified in the *Parliamentary Service Act 1988*.

In his study of parliamentary administrations Pender has also argued that the role of presiding officers is not immediately comparable to that of ministers because presiding officers, in fact, become involved in administrative matters regarding staffing and finance in a way that ministers do not (Pender: 173).

Paradoxically, the role of the Queensland Speaker perhaps resembles that of a minister more than that of other Speakers because Queensland has a unicameral parliament. In parliaments with two houses administrative power is divided between the presiding officers of the two houses, with control of the parliamentary precinct sometimes being shared.

Another aspect that should be considered is the trend in recent years towards the restructuring of parliamentary administrations. In general bicameral parliaments in Australia have traditionally had five separate administrative bodies: the upper house, the lower house, Hansard, the parliamentary library and a unit or department known as the house committee or the joint house committee looking after salaries, accommodation, finance, catering and any other matters not the territory of the other departments. In 2004 the Commonwealth Parliament restructured its administration by amalgamating the service departments, with the result that it now has a Department of the Senate, a Department of the House of Representatives and a Department of Parliamentary Services (Verrier 2008). State parliaments including New South Wales, South Australia, Victoria and Western Australia have adopted similar structures. This does not necessarily weaken the power of the Speaker (or of the presiding officer of the upper house), but it indicates a trend away from tradition and towards corporate governance that may create a climate more susceptible to the suggestion that the Speaker's role is confined to the House, not in the corporeal parliament. The new arrangements in Queensland's parliament do, however, invite another set of questions, about the role of the Clerk. In Westminster parliaments generally he or she has had a dual role as both administrative head of the relevant department and adviser to the presiding officer on parliamentary procedures and precedents. The Clerk of the Parliament in Queensland appears now to be responsible to two entities, the CLA and the Speaker.

### ***Is Queensland different and has parliamentary practice changed in the Sunshine State?***

The question of whether Queensland's political culture and traditions are different from the rest of Australia has been widely discussed and theories related to rural populism, regionalism and agrarianism raised in explanation (Bulbeck 1987; Fitzgerald, Megarrity and Symons 2009; Head 1986). Bulbeck argued in 1987 that Queensland is not markedly different from the rest of Australia and in fact 'Queensland is not clearly the most rural, the most regional, the most Catholic, the

most Anglo-Saxon, the least educated or the least responsibly governed state' (Bulbeck 1987: 20). Twenty years later, Fitzgerald, Megarrity and Symons (2009: 242–243) pointed out that in fact Queensland is different because of the size and importance of its regional towns. Brisbane, they argue, is not politically dominant in the way that Sydney and Melbourne are.

This leads to the often-asked question of whether Queensland is 'different' in political terms. The brief and superficial answer is that the Queensland Parliament is indeed different from other state parliaments and from the Commonwealth Parliament because it has no upper house. Consequently, it lacks the potential check on the government that can be provided by an upper house where the government lacks a majority. The lack of an upper house is also sometimes seen as the reason for the late development of parliamentary committees (Wanna 2003: 81).

One of the commentators on the CSRC's recommendations, Dr Ken Coghill, a former Speaker in the Victorian Legislative Assembly, described both the recommendations and the speedy introduction of legislation to put them into effect as 'reminiscent of the worst excesses of the Bjelke-Petersen years and of the problems exposed by the Fitzgerald Report' (Accountability Round Table 2011). It can be argued that Queensland is different in that the wide-ranging nature of the Fitzgerald Report was unprecedented in Australian politics and resulted in a set of reforms and institutions that have provided a model for other Australian states (Ransley 2008; Wanna and Arklay 2010: 605–10).

The CSRC came to the conclusion that the absence of an upper house did not affect how the Queensland committee system performed and 'that a strong, independent committee system will serve Queenslanders more effectively than the role Upper Houses perform in other parliaments' (CSRC 2011: vii). This was a bold commitment, particularly in view of the fact that the Queensland parliament no longer has a public accounts committee under these new arrangements. It was first merged with the Public Works Committee to form the Public Accounts and Public Works Committee in 2009 and has now been abolished by the recommendations of the CSRC in 2011. The CSRC (2011, viii) remarked that:

We are proposing our portfolio committees undertake the roles currently performed by the Public Accounts and Public Works Committee.

This was expressed in Recommendation 5:

The Committee recommends that each of the nine portfolio committees have responsibility within their portfolio areas for any public accounts and public works formerly the responsibility of the Public Accounts and Public Works Committee.

The establishment of the Parliamentary Committee of Public Accounts in 1988 marked the beginning of a modern parliamentary committee system in Queensland (Alvey 2008). Public accounts committees themselves have a somewhat chequered history in Australia (Griffiths 2006: 19–23; Jacobs and Jones 2009). Nonetheless they have increasingly been seen internationally as a key method of parliamentary capacity building (McGee 2002; Pelizzo et al. 2006). The abolition of the public

accounts committee coupled with the removal of the Speaker's traditional responsibility for the administration of parliament is a major change in the Queensland parliamentary system and a move away from other Westminster systems.

Another important change in the new committee structure is the disappearance of the Scrutiny of Legislation Committee. Its scrutiny role was a specialist one and its work seen as being effective. Such specialist expertise will be diluted as the committee's role will now be spread across seven committees.

However, it should also be recognised that the 'Westminster system' is not an immutable pattern for parliamentary democracy. It is better described as a set of principles and practices that inform how parliaments descended from the 19<sup>th</sup> century British parliament go about their work or perhaps as a 'constructed notion' without a central core (Rhodes 2005: 150).

### ***Conclusion***

The recommendations of the CSRC on the establishment of a Committee of the Legislative Assembly were outside its terms of reference and were unexpected. These changes marked a major departure in the role of the Speaker concerning the office's broader functions of managing parliament and providing a bulwark against executive government intrusion into the legislature in relation to Queensland's past practices, legislative provisions and compared to the role of the Speaker in most other jurisdictions.

The extent that the changes were a deliberate attack on the separation of the powers or the Speaker or motivated by other factors will remain a matter for debate. The role of the Speaker is not immutable. Although affected by convention and tradition and even legislation, it is also influenced by practice. The changes in Queensland could be interpreted as a move towards a more corporate type of governance within parliament. It could also be part of a more general change in the direction of parliamentary reform that includes, for example, the abolition of the extremely traditional public accounts committee in favour of a more streamlined set of committees aligned with departments and portfolios.

Nevertheless, there are odd aspects about the establishment of the CLA and the changed role of the Speaker that need to be identified, if not fully explained. For instance, it is odd how the Government pursued this part of the 'reform' package so strongly and were unwilling to compromise. This seemed particularly strange to the general public as it was not just an attack against the Speaker, but a Speaker who was from the same party and who openly condemned the changes. Internal party politics might be one explanation. Regardless of the motivation, the Bligh Government's dogged pursuit of this issue undermined its credibility about seeking to improve integrity arrangements in Queensland. It distracted attention from the other worthwhile parliamentary reforms the Government sought to champion. This was bad politics for a government facing a difficult forthcoming election.

However, softening the adverse impact of these actions was the LNP Opposition's actions on this particular issue. They initially supported the changes concerning the CLA and the Speaker, then sought amendments to include the Speaker on the CLA and finally voted with the Government. By so doing, the Opposition got both the principle of parliamentary democracy and the politics wrong. They failed to stand up for an important principle of parliamentary democracy and to exploit internal Labor fissures between the current Speaker and the Government. Yet two days after the legislation was passed in August that brought these changes into force, the Opposition complained about executive dominance of the new portfolio committee system! (Gibson 2011: 2338–43). ▲

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