Putting the West into Westminster

Establishment of a Legislation Committee of the Western Australian Legislative Assembly

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Summary

The Government of Western Australia introduced a new Public Health Bill to replace the outdated and inadequate Western Australian *Health Act 1911* in November 2014.

The 1911 Act still referred to removal of nightsoil, custody of lepers, regulation of bone mills, knackeries and protection of water holes from trespassing pigs, dogs, ducks and geese.

The need for modern, comprehensive and flexible legislation regulating public health in Western Australia had been long recognised and anticipated.

The West Australian Public Health Bill 2014 was best described as vast and further complicated by the consequential amendments which required scrutiny by the Parliament on behalf of the community.

The Bill was introduced into Parliament subsequent to extensive consultation but languished.

The lack of progress combined with the need for extensive scrutiny led the Government and Opposition to agree to refer the bills 'consideration in detail' stage to a Legislation Committee.

The Legislation Committee which sat in a "second chamber" was an unusual step for the Parliament of Western Australia and had not occurred for over ten years. Initially the Opposition was of the opinion that the bill should be dealt with in the Legislative Assembly chamber. However continued delays resulted in the Opposition's agreement to a "second chamber" in November 2015.

What is a Legislation Committee?

It is important to note that while the Legislation Committee took the 'committee stage', known in WA Parliament as consideration in detail, to another chamber, it did not entirely replace the chamber process but instead streamlined it.

The Legislation Committee operated like the Federation Chamber of the Commonwealth Parliament, a process last used to consider the Workers Compensation and Reform Bill in 2004, and the Environmental Protection Amendment Bill in 2002.

The creation of a Legislation Committee allowed the Legislative Assembly to operate in two places concurrently. Complex legislation was considered in detail in the Legislation Committee, while the rest of the business of the Legislative Assembly continued uninterrupted.

The Legislative Committee had a number of benefits that distinguish it from the Assembly, including:

- a smaller quorum of three members
- senior public servants participated directly to provide detail and shared their knowledge of the drafting process
- the deliberative process allowed for the questioning, answering, and clarification to both Minister and by reference to advisors
- the possibility and desirability of amendments were discussed prior to being drafted and tabled.

The process was more congenial than typical in the assembly chamber and while the 5 minute time limit for questions remained, in practice the format was usually an interactive series of *question, answer, clarification*.

In the Legislative Assembly, Opposition amendments are often hastily proposed, drafted with assistance of the Clerk, and placed on the Notice Paper. When proposed by the Opposition, they are often treated with suspicion by the Minister and their advisors and rarely accepted.

The Legislation Committee, in contrast, enabled amendments. The possibility of amendments were generally discussed before being drafted, with guidance from advisers as to suitable amendments and drafting assistance.

The committee could then vote on amendments once they were agreed to. Any clauses or amendments which were contentious were referred back to the Legislative Assembly for full debate in the chamber.

As the Senior Public Health advisor on the Committee stated:

> *I am totally committed to parliamentary and public scrutiny of government departments and legislation, and the in-depth questioning by Committee members was at all times respectful and purposive, and indeed led to changes in the legislation that were accepted by the Government.* (email to author)

The case against a Legislation Committee

One argument against a Legislation Committee is that a second chamber can be a strain on resources given the size of the Legislative Assembly and the increased pressure on public sector and parliamentary staff.

Michelle Roberts MLA, Opposition Leader of the House, said in response to the referral to Legislation Committee motion "*this committee process is a bit more cumbersome for our house, having only 59 members, than it might be for some bigger Parliaments such as the federal Parliament".*[1]

Further comments from a Senior Health Official illustrated that the process did incur a significant cost but also offered a genuine benefit:

> *The process undertaken for Lower House scrutiny of the Health Services Bill 2016 of convening a separate Legislation Committee, while costly and labour intensive on parliamentarians, parliamentary staff and public servants was very productive in that it enabled a very complex Bill to be explained to those present in far greater detail smoothing its passage through the House*. (email to author)

Another concern expressed is that, like the counterpart Federation Chamber, the Legislation Committee could place pressure on a few Members to perform the necessary scrutiny. As the Shadow Health Spokesperson Roger Cook MLA pointed out:

> *One weakness is that our colleagues didn't get exposed to the debate. Whereas they probably weren't all that interested in the detail they were relying on us to 'get it right', which does place pressure on the committee members when the legislation goes back to the main chamber.* (email to author)

However it seems that despite these concerns the Legislation Committee process expedited the stalled historic legislation which had significant community interest. As highlighted by a Senior Public Health advisor:

> *Many hundreds of 'public servant person-hours' were utilised in developing, refining and negotiating the legislation, through internal discussions, public consultation, ministerial briefing notes, stakeholder briefings and the like. More importantly, the significance of the Bill, in replacing the Health Bill 1911 was deeply felt by the public health community, both within and outside the Department of Health.* (email to author)

How well did it work?

The success of the Public Health Bill (and subsequently the Health Services Bills) in the Legislation Committee was assisted by the leadership of the Minister and the Shadow Minister for Health, neither of whom were defensive or combative during the process.

As Roger Cook MLA, then Shadow Minister for Health, stated in the House on 24 November 2015:

> *It also freed up the Minister to … step back … and watch it [the debate] with a fresh set of eyes and provide further cross-examination on the Public Health Bill to make sure that we did our job competently as a committee … I am indebted to the Minister for Health for the attitude he bought to that process. It was done in good faith and allowed us to consider a range of amendments*.[2]

[1] Michelle Roberts MLA, Legislative Assembly, *Parliamentary Debates (Hansard)*, 17 March 2016, p1376.

[2] Roger Cook MLA, Legislative Assembly, *Parliamentary Debates (Hansard)*, 24 November 2015, p8826.

The then Shadow Minister also noted in his third reading speech of the Health Services Bill that, "*he [the Minister] provided ample opportunity for us to discuss each of the clauses … he was also prepared to back the judgement of the committee in the face of contrary advice from the advisers and make some changes to the bill.*"[3]

Additionally, in his third reading speech on the Public Health Bill Hon Dr Kim Hames MLA, the then Minister for Health, said *"It was a great way of dealing with detailed legislation, as it gave members, particularly opposition members, a chance to ask detailed questions".*[4]

But the greatest commendation was in the comments given by the Senior Public Health advisor that, "*It truly felt like the Westminster system operating at its best. Lastly, from a personal point of view, being able to explain parts of the legislation in detail and be named as part of the 'historical record' via Hansard, is one of the absolute highlights of my public health career."* (email to author)

The then Shadow Minister for Health argued that the process was beneficial for the Opposition in understanding the bill, and the reasoning used to draft it, saying that it "*provided us with an opportunity to speak to the advisers and get a better appreciation for not only the technical merits of the legislation, but also the extent to which I think the advisers though were crafting good legislation, not just technically competent legislation."*[5]

In an email exchange with the author the then Minister for Health also outlined that:

> (t)*he main benefit of debating the legislation in the secondary chamber was the ability of advisors to directly respond to questions by the opposition. In the main chamber …all answers must be done through the minister. Advisors try to communicate the answers to the Minister on opposition questions, but hearing can be difficult, and understanding of complex issues often less than adequate.*
>
> *Where opposition have significant expertise on a particular component of the legislation, it is of great benefit for that member to have a direct discussion with either the drafter or the advisor with expertise in that area.*
>
> *From the government perspective it saved considerable time in the main chamber, and also allowed a clear understanding by the opposition of the legislation. It also exposed areas where either the drafting was poor, or the legislation was inadequate, allowing amendments to be made where required*. (email to author)

The physical environment of sitting across a table also helped to encourage a different style of interaction. It facilitated agreement on amendments that enhanced the bills for the benefit of the community such as consumer representation. The following excerpt of *Hansard* is illustrative of this point:

> *Clause 71: Constitution of health service provider's board- …*
>
> *Ms Freeman: Can we put an amendment in to have a consumer rep on there?...*
>
> *Minister: During the second reading debate I think that three or four members made the point that there should be consumer representation on there … I am not insensitive to the concept.*
>
> *Ms Freeman: Would you put an amendment in there …*
>
> *Minister: I think I probably would. … I move … to insert*
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> *(fa) experience as a consumer of health services or a carer;* [6]

In summary, the Legislation Committee was a valuable tool, which enhanced the ability of Parliament to investigate and improve legislation, outside of the adversarial environment of the main Assembly chamber.

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[3] Roger Cook MLA, Legislative Assembly, *Parliamentary Debates (Hansard)*, 10 May 2016, p2540.

[4] Hon Dr Kim Hames MLA, Minister for Health, Legislative Assembly, *Parliamentary Debates (Hansard)*, 24 November 2015, p8828.

[5] Roger Cook MLA, Legislative Assembly, *Parliamentary Debates (Hansard)*, 24 November 2015, p8826.

[6] Legislative Assembly, *Parliamentary Debates (Hansard)*, 23 March 2016, pp1826-28.

The experience of the Federation Chamber in the Australian Commonwealth Parliament suggests, however, that it should remain a tool that is only used for specific purposes.

As a permanent second chamber in the Commonwealth Parliament the Federation Chamber has gone from scrutinising legislation (to prevent guillotining), to a "speech making" chamber for Members. This is illustrated in the June 2015 report which documented in 1994, 78% of the time in the Federation Chamber was spent on Government legislation reduced to 30% in 2014. In contrast no time was spent on private member grievances and constituent issues in 1994, however in 2014 this constituted 36% of the time in the chamber.

Current 'state of the house'.

The March 2017 State Election, in addition to changing Government, delivered a very different makeup of the chamber. The newly elected Labor Government came into the Parliament with 41 members, 15 Opposition Members (13 Liberal, 4 National Party).

The capacity to establish a Legislation Committee in a second chamber is limited by the numbers of opposition members but would give the opportunity for a number of Government back benchers to participate in consideration in detail on complex legislation.

Conclusion

The Legislation Committee allows the Legislative Assembly to create a second chamber where legislation can be scrutinised and improved in a deliberate and deliberative manner. It enables advisers to contribute to the consideration and discussion, detailing the intent and drafting of legislation, and providing advice on the workability and necessity of amendments proposed throughout the course of consideration in detail.

In my view these benefits outweigh the costs of this process, in terms of the additional strain it can place on parliamentary and public service resources. However given the primacy of the Assembly chamber as the place of Government, the Legislation Committee process should remain an occasional option used to scrutinise a particular type of bill. It should remain only by agreement from the Opposition and for bills that are technical, bipartisan and struggling to compete for time and attention against more high profile or controversial legislation.