

**A Defence of the South Australian Legislative Council**

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The Premier of South Australia, Mike Rann, has announced that a referendum will be held concurrent with the 2010 state election to decide whether the Legislative Council should be abolished, reduced in size and have its term lengths cut to four years, or be retained unaltered. This paper examines the debate as it has unfolded since Rann announced the referendum, outlining which groups have currently declared themselves to be pro- or anti-abolition. The reasons for Rann announcing the referendum are also examined. The paper then offers a defence of the Legislative Council, arguing that it remains a vital part of the Parliamentary system in South Australia. Several arguments are proposed. First, the electoral system of the Legislative Council allows it to uphold ideal characteristics of a democratic Parliament. Second, the Legislative Council acts as a House of Review, performing an oversight function over the activities of the Government that cannot be equally as well performed by backbenchers in the House of Assembly. To abolish the Legislative Council would remove these oversight functions, to the detriment of good government in South Australia. Third, were the Legislative Council to be abolished, the overall size of Parliament would be reduced from 69 members to 47. Small Parliaments have been shown to experience problems, such as the lack of a sizeable backbench to exert pressure on the executive and keep them to account, and an increase in the dominance of the executive.

In November 2005, the Premier of South Australia, Mike Rann, announced that a referendum will be held concurrently with the 2010 state elections in which the people of South Australia will be asked to determine the future of the upper house of the South Australian Parliament, the Legislative Council. Three options are to be made available: retention of the Legislative Council with no changes; a reduction in the term length of the Members of the Legislative Council (MLCs) from eight years to four years, and a reduction in the number of MLCs from 22 to 16; and abolition of the Legislative Council. (Incidentally, the South Australian Constitution does not allow a referendum where voters must select between a number of options. Section 10A states that referendum proposals must simply ask voters to vote 'yes' or 'no' to a

specific Bill. This is something that Rann will have to address before the referendum is held.) When he made the announcement, Rann clearly indicated that abolition is the option that he favours. He said:

[I]t's time to modernise our Parliament so it reflects the demands and expectations of a confident state as it prospers and grows into this 21st century...Let's face it, in my view the upper house has become a relic of a time in our democratic history that is long gone. It is passed its use-by date.  
(AAP Australian National News Wire; 24 November 2005)

This first part of this paper will explore the reasons behind the announcement of the referendum, and will also examine the reactions to the announcement, identifying those who have come out in support of abolition, and those who are opposing it. The second part of the paper will offer some reasons why the Legislative Council still serves a purpose in enhancing democracy and aiding good government in South Australia.

When the colony of South Australia was granted responsible government, a bicameral parliament was created. The lower house, the House of Assembly, was to be the people's house, and so had a wide franchise. The Legislative Council was formed to protect people with property, the social elite, and so voting rights for the Legislative Council were subject to a property qualification (Griffith and Srinivisan 2001, 26). The Legislative Council became heavily dominated by conservative members. This led to a very unrepresentative chamber, in which the Labor party could never win more than four out of 20 seats (Griffith and Srinivisan 2001, 28). The unrepresentative Legislative Council was coupled with an electoral system for the House of Assembly that was heavily malapportioned. Metropolitan electorates, that could be expected to return Labor MPs, were three times as large as rural electorates, which most commonly returned LCL MPs (Blewett and Jaensch 1971, 16-20). This malapportionment aided Thomas Playford in remaining Premier of South Australia for over 26 years, until the Labor Party was able to win the 1965 election. This led to a campaign to reform the electoral systems of both the House of Assembly and the Legislative Council, that stretched across the Labor Party into sections of the Liberal Country League. Members of the Labor Party particularly felt the need for reform of

the Legislative Council after it severely impeded the legislative program that they sought to implement after the 1965 election, rejecting eleven Bills, and adding heavily partisan amendments to twelve others (Sumner 2003, 41). Don Dunstan made the initial moves towards reforming the electoral system after he became Premier in 1967. He was unsuccessful in instituting change before the Labor Party lost the 1968 election to the Liberal Country League. The new Premier, Steele Hall, continued the movement towards reform. He was spurred on by the fact that the electoral system had been clearly shown to be in need of change. Though the Labor Party won 52 percent of the primary vote to the LCL's 43.8 percent, it was the LCL that was able to form a government after the 1968 election. Hall managed to reduce the malapportionment of the House of Assembly, which enabled him to lose the 1970 election, but was unable to reform the Legislative Council electoral system (Blewett and Jaensch 1971, 183-187). Dunstan, once he was returned as Premier, set about reforming the electoral system of the Legislative Council, and in 1973 was able to pass legislation through Parliament that introduced full adult suffrage in line with that for the House of Assembly and instituted a form of proportional representation for the Legislative Council (Jaensch 1981, 225-230). This move restored the legitimacy of the Legislative Council by making it a democratically elected and representative body, and the move to a system of proportional representation has also occurred in the Legislative Councils of Western Australia, New South Wales and Victoria, resulting in a similar restoration of legitimacy in these upper houses. Since the move to proportional representation, neither of the major parties has enjoyed a majority in the Legislative Council, as Table 1 shows.

**Table 1. Results of election to the SA Legislative Council 1975-2006**

Party	ALP		Liberal Party		Others	
	Seats won at election	Total MPs (including seats held from previous election)	Seats won at election	Total MPs (including seats held from previous election)	Seats won at election	Total MPs (including seats held from previous election)
1975	6	10	3	10	2 (Liberal Movement)	2
1979	4	10	6	9	1 (Australian Democrat)	3
1982	5	9	5	11	1 (Australian Democrat)	2
1985	5	10	5	10	1 (Australian Democrat)	2
1989	5	10	5	10	1 (Australian Democrat)	2
1993	4	9	6	11	1 (Australian Democrat)	2
1997	4	8	4	10	3 (2 Aust. Dem. + 1 No Pokies Ind.)	4
2002	4	8	5	9	2 (1 Aust. Dem. + 1 Family First)	5
2006	4	8	3	8	4 (2 No Pokies Ind. + 1 Greens + 1 Family First)	6

Reproduced from Macintyre and Williams (Forthcoming).

However, not all upper houses were rendered a legitimate part of their respective parliamentary systems. The Premier of Queensland in 1922 was able to fulfil a plank of the Labor Party platform and abolish the Queensland Legislative Council, leaving Queensland the only State with a unicameral Parliament.<sup>1</sup> Due to the restoration of the legitimacy of the surviving Legislative Councils there is no basis on which to make the claim, as Rann does, that the Legislative Council is “a relic of a time in our

<sup>1</sup> For an account of the abolition, see Murphy D.J. 1980 “Abolition of the Legislative Council.” in eds Murphy D.J., Joyce R.B., and Hughes C.A. *Labor in Power: The Labor Party and Governments in Queensland 1915-57*. St Lucia: University of Queensland Press

democratic history that is long gone.” (AAP Australian National News Wire; 24/11/2005)

Why did Rann announce that a referendum would be held? The most likely reason was to raise a smokescreen to distract attention from and discredit the activities of the Legislative Council. At the time of the announcement, a select committee of the Legislative Council, convened by the non-Labor members of the Council, was investigating the Ashbourne-Clarke affair. The origins of the Ashbourne-Clarke affair lie in the disendorsement in 1999 of a Labor MP, Ralph Clarke, after he faced assault charges. He then began legal proceedings against Michael Atkinson for defamation, due to comments that Atkinson had made on a radio program. The legal proceedings were dropped in November 2002, and after this came the allegation that, through Randall Ashbourne, an adviser to the Premier, Clarke was offered positions on statutory boards in exchange for him stopping proceedings (Parkin 2003, 602). A Government investigation was launched into the matter, and this cleared Atkinson of any wrongdoing. Ashbourne was charged with abuse of public office (Manning 2004, 288). He was later acquitted during a very short trial, but the Opposition and minor parties in the Legislative Council, dissatisfied with the way the trial was conducted, convened a Legislative Council committee to investigate the matter (Manning 2005, 609-10). It was this committee that was meeting at the time that the referendum announcement was made.

The other reason for Rann announcing the referendum is his conceptualization of the relationship between government, the Parliament and the people. The comments of Rann and his ministers show them all to be adherents to a view of the democratic process that is becoming more and more prevalent amongst people in positions of power, the extreme prescriptive view of mandate theory, which views elections as referenda on particular sets of policies and sees members of Parliament as being delegates of the people, rather than as representatives of them. The party that is able to get the most delegates into Parliament forms government and should be able to enact legislation to implement the policies that they presented to the voters in the lead up to the election. They are not however, under the extreme theory, to enact legislation that could be considered to be too different from the theme of their policies, and if they do want to enact such legislation, then they must seek another

mandate at the next general election (Emy 1996, 3). Stanley Bach states that under this view of the mandate there is no scope for compromise in the legislative process (Bach 2003, 279). He further concludes that there may be no place for the deliberative process at all:

Here is the mandate theory in full bloom. What need is there for any deliberative legislative process at all? The election determines a winner, so the winner – the government – has the right and responsibility, and should have the power, to do anything and everything that it said it would do. The government allows the Opposition to criticize its proposals, but the government would be violating its commitment to the public if it allowed itself to be swayed by the merits of the Opposition's arguments. (Bach 2003, 280)

I will not further examine the theory of mandates, as it is a strongly debated field of study and as such has nuances that would take more space than available to adequately examine.

The extreme prescriptive view of mandate theory is promoted by a strong supporter of moves to abolish the Legislative Council, Business SA. Business SA is the major South Australian business lobby group. It has been calling for the abolition or reform of the Legislative Council since before the 2003 Constitutional Convention. After the referendum was announced, the chief executive of Business SA, said:

We will certainly be restating in our policy document, to be released in the election period next year, our position on parliamentary reform, including abolition ... Governments are formed in the Lower House representing the will of the people and they should be allowed to exercise that mandate unfettered. (*Advertiser*, 24 November 2005)

Business SA's suggestions for reform of the Legislative Council, without abolishing it, confirm its view that the Legislative Council should be clearly subordinate to the House of Assembly, and should not stand in the way of the House of Assembly's right to govern. In their manifesto, they state that the Legislative Council should be

reduced to 15 members, the electoral system should be changed to three districts of five members each, still elected through proportional representation, to reduce the chance of a hung parliament and making it easier for government to govern, and removing the veto power of the Legislative Council and replacing it with a power of delay of up to three months (Business SA Manifesto - Governance, 5-6)

The other major supporters of the move to abolish the Legislative Council are many of the writers of the *Advertiser*, the only daily newspaper in South Australia. The writers have been claiming both that the Legislative Council impedes the electoral mandate of the Government, and stands in the way of the rapid passing of legislation to allow economic development in South Australia. It has also been argued that the presence of the Legislative Council can scare away foreign investors, as they are wary of doing business in a political system where legislation proposed by the Government may not be passed, or at least passed in the form in which it was originally introduced to Parliament.<sup>2</sup>

At this stage the opposition to the abolition of the Legislative Council is coming from the Liberal Party, as well as the minor parties and Independent members represented in the Legislative Council. There is support, however, amongst Family First and the Democrats for reducing the term lengths of MLCs from eight to four years (*Advertiser* 26 November 2005). In the Address in Reply debate after the opening of Parliament in 2006 many of these MLCs took the opportunity to express their opposition to the abolition of the Legislative Council, none more so than Rob Lucas, at the time the Leader of the Opposition in the Legislative Council, who detailed the opposition of the Liberal Party to the abolition of the Legislative Council, as well as the proposed reform changes (*Parliamentary Debates – Legislative Council* 3 May 2006 and 4 May 2006).

More recently, Lucas has pointed out the problem with the referendum proposal that I highlighted at the start of this paper, namely that the referendum as it is proposed is unconstitutional. He stated:

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<sup>2</sup> For examples, see *Advertiser*, 24 March 2007, 4 April 2006

It is not possible to have a piece of legislation passing through both houses of Parliament which essentially says, 'Pick a box—tick which particular box it is that you want.' A piece of legislation will have to determine a particular policy or a course of action—such as the Premier's preferred course of the abolition of the Legislative Council—or some different course of action for that piece of legislation to, in essence, provide the legal framework for that to occur and, if it were to pass both houses of Parliament, under the provisions of section 10A of the Constitution Act it can ultimately be put to a vote of the people by way of a referendum. (*Parliamentary Debates – Legislative Council* 3 May 2006)

In this next part of the paper a defence of the Legislative Council will be offered. I will argue that the Legislative Council remains a vital part of the South Australian Parliamentary system through helping to strengthen the democratic operation of the Parliament, and by acting as a check on the power of the executive. I will compare features of the Legislative Council against a set of ideal features of a democratic Parliament. These features are one vote, one value; majority rule, under which minority voices are still heard and opposition to the government can be expressed; responsible and accountable government; legitimacy; checks and balances; and representativeness. I will first detail the electoral system of the Legislative Council, and show how this serves the democratic principles outlined above. The severe weakening of responsible government as the dominance of political parties has increased will be detailed. I will show how the Legislative Council is able to fulfil some of the accountability gaps left by the decline in traditional forms of responsible government, and how the Legislative Council acts as a House of Review. I will then detail the problems that can be experienced by small Parliaments. The South Australian Parliament is already small when compared to the Parliaments of other states. Were its size to be further reduced, it would begin to experience problems that would be to the detriment of good government in South Australia.

The difference between the electoral systems for the House of Assembly and the Legislative Council will be examined first. I contend that the electoral system of the Legislative Council contributes to upholding the principles of a democratic

Parliament outlined above. I will further argue that in some cases the Legislative Council upholds these principles better than does the House of Assembly.

As Meg Russell (2001, 443-444) points out, one of the features of upper houses has been to represent different interests than those represented in lower houses. Initially, these were the interests of wealth and property, as is revealed by the class-based terms, 'upper' and 'lower' as descriptors for the two houses. The representation of different interests has evolved to become the representation of minority interests. In the case of the South Australian Legislative Council the representation is of minor parties. The House of Assembly is composed of 47 single member electorates where the members are elected using preferential voting. This is a majoritarian system that results in an over-representation of the members of the major parties, and conversely an under representation of minor party members. The Legislative Council is elected using proportional representation. Under this system, the number of seats awarded to parties much more accurately reflects the proportion of the total vote received. This results in the Legislative Council being a more accurate reflection of the will of the voters. The current composition of the House of Assembly is: Labor, 28 seats; Liberals; 15 seats; Independents, three seats; and Nationals, one seat. This contrasts with the Legislative Council where the composition is: Labor, eight seats; Liberals, eight seats; Family First, two seats; Independents, two seats; Greens, one seat; and Democrats, one seat. The Legislative Council is the only chamber where members of the Democrats, the Greens and Family First can expect to achieve representation.

There are several principles of a democratic Parliament that the proportional representative electoral system of the Legislative Council allows it to uphold. The first is one vote, one value. This is an ideal that states that the vote of one person should not have any more effect than the vote of another person. That the Legislative Council is elected in a single statewide electorate allows this value to be perfectly upheld by the Legislative Council, as there is no chance for electoral malapportionment between seats, and this was the reason for the creation of the single statewide electorate (Jaensch 1981, 228). The House of Assembly does not as perfectly uphold the principle of one vote, one value. The guideline from the South Australian electoral commission is that there can be a maximum variation of electors between each House of Assembly seat of ten percent. This is considered to be the

fairest distribution of voters that can be achieved without making the drawing of electoral boundaries too complicated, but this variance of ten percent does mean that some people's votes will have more or less comparative weight than others will.

The Legislative Council allows some opportunity for the views of the minority to be heard in the legislative process. There is no dispute that the House of Assembly is the house in which government is decided. It is here where the Premier and Leader of the Opposition sit, as well as the majority of the ministry and shadow ministry. If a motion of confidence in the Government fails in the House of Assembly then the Government must resign. This clearly demonstrates the primacy of the House of Assembly as the house that determines the Government of the day. Yet due to the fact that the South Australian Parliament is bicameral, legislation must be passed not only by the House of Assembly but also by the Legislative Council. As demonstrated earlier, the Government does not currently have a majority in the Legislative Council, and no government has had a majority in the Council since it adopted proportional representation. This lack of a governmental majority means that negotiation with one or more of the minor parties, or with the Opposition, must take place in order to gain a majority and so be able to pass the legislation. Thus, all legislation passed has the support not only of the Government, but also of sufficient members of parties that are not in the Government, allowing the views of some of the opposition and minority party members to be included in the legislative process. The lack of a government majority in the Legislative Council has not however led to ungovernability (Sumner 2003, 41). As Rob Lucas (*Advertiser*, 16 December 2005) has pointed out, in the four years of the Rann Government's first term, out of the more than 200 Bills that came before it, the Legislative Council rejected only three.

As well as allowing for some minority participation in the legislative process the Legislative Council provides a forum in which opposition to the Government can be expressed. To a degree the House of Assembly provides this, but since the Government holds a majority of seats in the House of Assembly, it can successfully move motions to gag debates, and so deprive members of the Opposition from speaking on a Bill. Furthermore, the strength of party discipline in the House of Assembly can stop backbenchers who are members of the party of Government from speaking against a Bill. In the Legislative Council, as has been previously stated, the

Government does not possess the numbers to immediately gag debate. To successfully gag debate they have to seek support from outside their own party. Furthermore, the Legislative Council allows a forum for legislation to be proposed by members of minor parties and the Opposition, as collectively they have the numbers to determine what business the Legislative Council is going to conduct. Recently Paul Holloway, the Leader of the Government in the Legislative Council criticised the amount of time that is spent on Private Member's Bills on the grounds that such Bills were delaying the debate of Government business (*Advertiser* 3 June 2007). This again suggests that Rann and his senior ministers regard Parliament as simply the institution that legitimizes the legislative agenda of the Government, not as a body that has any actual influence in the legislative process.

I will now make some remarks regarding Australian bicameralism, and particularly how it contributes to Parliamentary accountability. Though much of the research performed on bicameralism in Australia naturally focuses on the Commonwealth Parliament, the Senate and the South Australian Legislative Council are quite similar in their relationships with their respective lower houses, and so conclusions regarding bicameralism in South Australia can be drawn from examining this research.

One of the key features that the Australian Parliaments were supposed to have inherited from the British Parliament was the concept of responsible government. Responsible government has two facets, one individual, and the other collective. The individual facet states that ministers are responsible to Parliament for all of the actions taken by the departments that they run. The collective facet states that the executive as a body is responsible to the Parliament (Lipton 1997, 195). Responsibility is seen to work as a chain: "public servants are responsible to the Minister, the Minister is responsible to the Cabinet, the Cabinet is responsible to the Parliament, and the Parliament is responsible to the people." (Jaensch 1986, 107). The concept of responsible government has been under attack for many years, in Australia and in the British Parliament from which it was adopted.

In 1963, Richard Crossman put forward the argument that responsible government did not really exist in Britain anymore, and had not since the middle of the nineteenth century. (Crossman, in Bagehot [1867] 1963). He stated that the period in which

responsible government flourished was in the so called “Golden Age” of Parliament. This “Golden Age” occurred between the Reform Act of 1832 and the Reform Act of 1867, each of which extended the franchise. The period between these two Acts saw Parliament containing a large number of independent members with no strong ties to any party. Consequently their votes were less able to be influenced by party leadership and on several occasions the government of the day lost votes of confidence in the House of Commons and was forced to resign. This was responsible government working as intended. The problem came, ironically, when the franchise was extended the second time. This greatly expanded the number of voters, and led to the age of mass political parties. Electoral success depended upon being a member of a political party, and so the control of those who led the parties was increased. Given that Parliament now contained mainly representatives of political parties, who were reticent to vote against the interests of their party, responsible government was weakened.

It has been argued that we have now moved to what is best described as a system of responsible *party* government. Under this conceptualisation of responsible government, the role of the Parliament is replaced by the governing party, in a party room meeting. (Jaensch 1986, 125-6) The theory states that it is in this forum that the executive must justify the decisions that have been taken to the members of the Parliamentary party to which they belong, and it is here that they can be forced to retreat from an unpopular course of action. This is a less desirable form of responsibility than the original form of responsible government. Firstly it takes place behind the closed doors of a party room meeting, away from the eyes of the public who have a right to know what courses of action the executive were intending to take, before they were deflected away from them (Jaensch 1986, 126). Secondly, it is not hard to imagine it being a not particularly effective way to hold the executive to account. Most, if not all, of the non executive members of the party room (especially in a small Parliament like South Australia’s) would like to themselves be a member of the executive one day, and they know that the goodwill of those in positions of power in the party would have a large say in determining whether they reach that position. Therefore, they must balance those ambitions against disagreeing with and potentially embarrassing ministers in front of the rest of the Parliamentary party. It is much

better for democracy, and more effective, if members of the executive are held to account for their actions in Parliament, in full public view.

This leads to the theory of accountability, which is something of an amorphous concept. For the purposes of this paper, I will define it broadly, as the means by which the executive can be made answerable to the people. This is, after all, the end result of the chain of responsibility under the theory of responsible government. This view is close to the view of that taken by Harry Evans, who states: “Governments should be accountable to Parliament, that is, obliged to give account of their actions to Parliament and through Parliament to the public. Governments are then responsible to the electorate at election time.” (Evans 1999a). Thus, accountability is achieved when the executive has to explain their actions, successful or otherwise, in public, so that the people may render an electoral judgement. How then, does an upper house aid in this. The exemplar of an upper house acting as an accountability institution is the Australian Senate. That there is usually a minor party, or group of minor parties, holding the balance of power, means that, as previously discussed, the government of the day needs to seek consensus on legislation. The involvement of minor parties in the legislative process can result in amendments to legislation being secured that would not have been considered by the party introducing it. A good example of this is the legislation to introduce the GST, where Senator Meg Lees of the Australian Democrats was able to gain an exemption from the GST for food (Stock 2006, 261). The composition of the South Australian Legislative Council means that it can have the same effect. In recent times, the Legislative Council has amended about one quarter of the Bills that went through it (Stone 2005, 37-8).

The most well known accountability mechanism in the Senate is the committee system. This system of committees was recently reorganised, and this may cause their effectiveness to decrease somewhat (Ashe 2006, 50-9). Nevertheless, the Senate retains a comprehensive set of committees to which legislation can be referred, and the activities of these committees can find and correct many flaws in legislation, and can predict consequences of legislation that may have been unforeseen by those who drafted it. In this way, the Senate acts as a House of Review over the actions of the executive. The Senate can also convene Select Committees to inquire into specific events. These Select Committees are very powerful, having the ability to compel

witnesses to testify. These are an important way in which the Senate can investigate the actions of the Government, and exercise an accountability function by finding and exposing information that the Government may have wanted to conceal. The point should be made that the accountability and review functions of the Senate are performed more reliably when there is not a Government majority in the Senate. When there is a Government majority in the Senate, there is the potential for strong party discipline to impede accountability and review.

The South Australian standing committee system consists mainly of joint committees, with membership being drawn from both the House of Assembly and the Legislative Council.<sup>3</sup> Bruce Stone has made the point that joint committees can present a problem, in that they remove an independent committee role for the upper house (Stone 2005, 43). The further difficulty presented where extensive use is made of joint committees, such as in South Australia, is that the demands of constituency work places a time constraint on the operation of the committees, as the House of Assembly members of the committees need to do much more constituency work than the Legislative Council members (Stone 2005, 43).

Stone contends that the size of a Legislative Council is an important factor in determining whether a Legislative Council will develop its procedures to better act as a House of Review (Stone 2005, 48). One of the detrimental effects of a too small Legislative Council is that it relies too heavily on joint committees, removing a sense of independence from the lower house. The South Australian Legislative Council is one of those that is too small to have a truly effective committee system. The size of the Legislative Council is constraining it from developing the sort of comprehensive committee system that would dramatically strengthen its accountability function. From this, it can be concluded that enacting the part of Rann's 'reform' referendum option that relates to reducing the Legislative Council to a membership of 16 would be no help to the cause of governmental accountability. Furthermore, there are other problems beyond the inability to develop a strong committee system that are caused

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<sup>3</sup> The current standing committees are: Aboriginal and Lands Parliamentary Standing Committee; Economic and Finance Committee; Environment, Resources and Development Committee; Legislative Review Committee; Natural Resources Committee; Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation; Public Works Committee; Social Development Committee; Statutory Authorities Review Committee; and Statutory Officers Committee.

when a Parliament is too small. In the next section of the paper I will examine some of the problems that could be experienced in the South Australian Parliament were the Legislative Council abolished, causing a significant reduction in the overall membership of Parliament.

Were the Legislative Council to be abolished, the overall size of the South Australian Parliament would be reduced by about 30%, falling from a total of 69 members, to 47. This would have a detrimental effect on the operation of Parliament. One obvious effect from a reduction in the size of the Parliament would be to reduce the choice of the Premier in the selection of a ministry. As ministers have to be drawn from amongst the members of Parliament, were the size of the Parliament to be reduced, there would be fewer members to choose between when allocating ministerial portfolios. This could lead to members who are unsuited to being given ministerial responsibilities receiving them simply because there is no choice.

A reduction in the size of Parliament would also lead to the lessening in the diversity of views being represented, unless the abolition of the Legislative Council was accompanied by the introduction of proportional representation for House of Assembly elections. Without a system of proportional representation operating, it is unlikely that minor party candidates will ever, except in extraordinary circumstances, secure election to the House of Assembly, and so the abolition of the Legislative Council would mean the likely end of the representation of minor party candidates in the South Australian Parliament. This would leave a section of voters feeling disenfranchised, and this would not do anything to help the disengagement of voters from the political process. Even within the major parties, a reduction in the number of members will result in lower quality party room debates. A smaller number of members will also result in a less pre-Parliamentary experience being represented.

The Tasmanian Parliament recently was reduced in size, and it will be useful to examine this reduction in size and the effects that it has had. In 1998, the size of the two houses of the Tasmanian Parliament was reduced. The House of Assembly was reduced from 39 seats to 25, and the Legislative Council was reduced from 19 seats to 15 (Herr 2005, 2). The rationale for the reduction in the size of Parliament was that it would save money (Herr 2005, 1). This is a rationale that sounds very appealing to

the public, who through the media have been conditioned to think of Parliament as being too expensive, but economic efficiency is a very dubious reason to reform Parliament, and should not be the primary reason for reform, at the expense of representation, quality of legislation and ministerial talent. The experience of the Tasmanian Parliament showed that the monetary savings did not really occur. The reduction in the size of the ministry to seven was shown very quickly to be untenable, with the workload per minister being much too high. This led to the expenditure on ministerial and parliamentary support staff being increased by 25 percent in one year alone (Herr 2005, 3). Reducing the size of a parliament might seem to have direct economic benefits, but there can be hidden costs to the reduction that will only become apparent over time.

Were the Legislative Council to be abolished, the South Australian Parliament would feel all of the above-mentioned effects acutely. If the Legislative Council were abolished, ministers could no longer be drawn from it, and the entire ministry would have to be drawn from the House of Assembly. If this were the case, then under the current numbers of Ministers and Shadow Ministers, the House of Assembly would contain 15 Ministers, and 13 Shadow Ministers, out of a total membership of 47 members. That is, 28 members would be in executive or shadow executive positions, and only 19 would be in non executive positions, without making a distinction for the Speaker and the Whips. Again, under the current numbers, this would lead to the ridiculous situation of the Liberal Party backbench consisting of two members, one of whom would be the Opposition Whip. Reducing the number of backbenchers will have a detrimental effect on the performance of the executive. It is argued that the members of the executive are encouraged to perform their duties diligently and effectively by the presence of a number of backbenchers who themselves wish to move to the frontbench, and who consequently will be examining the actions of the executive, to ensure continual electoral success for the Government (Macintyre 2003, 243-5). It has been argued that the growth of the executive relative to the size of the Parliament is a process that has been occurring steadily in all Australian Parliaments, the effect of which is to reduce the effectiveness of Parliament both as a legislative body and an institution of accountability (Stone 1998, 37-55). The growth of the executive instead encourages the majoritarian view of Parliament that is seen in the mandate theory detailed above. A growth in the size of the executive relative to the

size of the Parliament that would occur were the Legislative Council to be abolished would do nothing other than transform the Parliament into a majoritarian institution that would exist primarily to legitimise the legislative program of the Government of the day. At a time when there is a growing recognition in Queensland of the need to restore an upper house to provide a check on the power of the executive and to prevent the maladministration that has plagued this State in the past,<sup>4</sup> it seems contrary to the interests of democracy and good governance that in South Australia there is a call to abolish the upper house.

Thus, the Legislative Council remains an important part of the South Australian Parliament. Proportional representation enables the Legislative Council to help to uphold the principles of a democratic Parliament. The composition of the Legislative Council also helps it to act as a House of Review, allowing a second look to be taken on legislation, and keeping the executive accountable to the people. The size of the Legislative Council does constrain it from carrying out this role effectively as it otherwise might. Due to the relatively small membership of the Legislative Council, it is unable to staff a permanent committee system solely comprised of MLCs, instead staffing committees jointly with members of the House of Assembly. The Legislative Council is, however, able to convene select committees to inquire into specific issues, such as the Ashbourne-Clarke affair. Maybe an area that should be investigated to see if it is in need of reform is the size of Parliament, but not to decrease it, as Rann has proposed, but rather to see if the effectiveness of Parliament would be increased if the number of members in the House of Assembly and Legislative Council were increased.

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<sup>4</sup> See for example: Aroney and Prasser 2007, Grundy 2003, and for an extensive look at the sorts of maladministration that has occurred in Queensland see Coaldrake 1989

## **Bibliography**

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