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Abolition of the Upper House



THE ABOLITION OF THE UPPER HOUSE IN QUEENSLAND

INTRODUCTION

Unicameral legislatures, or legislatures with only one chamber, are uncommon in democracies. It is usually considered that two chambers are necessary for government, and this is the case for the United Kingdom, Canada (at the Federal level) and the United States (Federally, and for all states except Nebraska.)

However, some countries, usually small ones, are unicameral. Israel, Denmark, Finland, Luxembourg, Sweden, and Greece have only one chamber. All the Canadian Provinces, all the Malaysian States and some of the Indian ones, including Assam, are unicameral. Other single-chambered legislatures in the Commonwealth include New Zealand, Ghana, Cyprus, Sierra Leone, Tanzania, Uganda, Malta, Malawi, Zambia, Gambia, Guyana, Singapore, Botswana, Zimbabwe and (Western) Samoa.

In Australia, the Federal Government has two chambers, as do the governments of all the states, except Queensland. At its separation from New South Wales in 1859, Queensland had two houses of Parliament, the Legislative Assembly and the Legislative Council. But in a move unique in Australian history, the Legislative Council abolished itself.

EARLY DAYS OF THE LEGISLATIVE COUNCIL, 1860-1890

Queensland, separated from New South Wales in 1859, was the only colony to have a Parliament from its inception. When the Parliament of Queensland was first promulgated in 1860, there were two houses of Parliament. The first members of the Upper House, the Legislative Council, were appointed for five years by the Governor of New South Wales, so that Queensland would not be left permanently with nominees from the Governor of another colony. (Subsequent appointments by the Queensland Governor were made for life.)

Queensland's first Governor, Sir George Ferguson Bowen, had trouble finding men (the only gender then eligible) to take the unpaid duties associated with being Legislative Councillors, commenting in a letter that '*Legislative Councils composed of members appointed by the Crown, have, in general, had little real influence over public opinion.*' While a Council of fifteen was originally envisaged, only eleven members could be secured for the opening of the first Parliament in May 1860.

During the election campaign for the first Legislative Assembly early politicians argued against the establishment of an Upper House. One of them saw the Council as '*positively obstructive and an obstacle to public business.*' Because all the '*best men*' of Queensland chose to sit in the lower chamber, the Upper House would '*become a refuge for the politically destitute, a benevolent asylum for the reception of authors of rejected addresses.*'¹

Criticism did not end with the establishment of the Upper House. The *Moreton Bay Courier* of 19 May 1861 called for its abolition: '*... it is a contemptible instrument of bad*

¹ *Guardian* (Ipswich) 28 April 1860.



government and causes much unnecessary expense. Let the Upper House be done away with and the number of members in the Lower House be increased.¹

CONFLICT WITH THE LEGISLATIVE ASSEMBLY, 1860-1915

In its early years, the Upper House acted as a safeguard against the extremes of a broadening franchise,² which ultimately provided votes for all men and, after 1905, women over 21 who could pass the residential qualifications. It was inevitable that there would be clashes between a Lower House elected by the people and the nominee Upper House.

Difficulties between the two houses of Parliament, particularly over the issue of whether the Council had the right to amend money Bills, occurred in the early years of Queensland's political history. In 1885 the question was referred to the Privy Council in London which ruled that the Council did not have the right to amend money Bills.³

From 1890 to 1915 there were various attempts to reform or abolish the Council, but none came to fruition.

LABOR VS THE LEGISLATIVE COUNCIL, 1915-1917

In 1915 the first long term Labor government came to power in Queensland. The stage was set for a confrontation between the two houses of Parliament, as from its inception, the Labor party had been opposed to the Legislative Council and Thomas Ryan, the Labor Premier, advocated its abolition.

The early days of the Ryan government were marred by the frustration of dealing with a hostile Legislative Council. The Council rejected bills to allow the government to take over and operate meatworks for the duration of the war, to provide adult suffrage in local government elections, to establish a new system of conciliation and arbitration and to open up land for small farmers on a perpetual lease system.⁴

Premier Ryan himself introduced a bill into the Legislative Assembly on 12 November 1915 abolishing the office of Member of the Legislative Council and all offices constituted in connection with it. He argued that the Legislative Councils in Queensland and other states were '*relics of feudalism.*' The Bill easily passed through the Legislative Assembly.

Not surprisingly, the Council rejected the abolition Bill, arguing that the destruction of the bicameral system in Queensland '*would fatally prejudice the standing and rights of this State, reducing it below the level of all the others, and dislocating the provisions by which*

² Franchise, which means the right to vote, was broadened in the years between 1860 and 1915. By the Elections Act of 1885 the franchise applied to males who were over 21 and were born in Australia or were British subjects and who met one of several qualifications, the most common of which was residence in an electoral district for six months. The vote was extended to women in 1905.

³ The Privy Council in London is a senior judicial body. For many years it was the highest court of appeal for Australian legal cases, but the process of appeal to the Council was explicitly abolished by the *Australia Act* of 1986. The Australian High Court is now the final court of appeal.

⁴ D J Murphy 'The Abolition of the Legislative Council' in D J Murphy, R B Joyce and Colin A Hughes, eds *Labor in power: the Labor Party and Governments in Queensland 1915-57* : St Lucia, Q: University of Queensland Press, 1980, p. 99.



due representation in the Federal Parliament is secured in Queensland.' A similar Bill was formulated and rejected in the 1916-17 session of Parliament.⁵

Ryan and the Labor party now tried to have the Council abolished by referendum. The campaign was ill-starred from its inception. Cabinet decided to hold the poll on 5 May 1917, the same day as the Federal election, distracting the minds of many voters from the Council abolition question. There were other complications surrounding the legality of the referendum itself, and the referendum question was poorly worded, with electors being urged to vote *against* the Council by voting *for* the Bill to abolish it. The referendum was easily defeated, with 179 105 voting against the abolition of the Council and only 116 196 voting for.⁶ While the campaign had been an unlucky one, the vote shows that most Queenslanders were not ready to take the step of abolishing the Legislative Council.

Despite this failure, there were two further attempts in the next two years to abolish the Council through legislation. The hopes of the Labor-controlled Legislative Assembly were buoyed by the appointment of 13 new Labor Members to the Council in 1918 and an additional three in 1919. However, the Government still lacked the numbers in the Council and the Bills for abolition of the Council were again defeated.

The Governor, Sir Hamilton Goold-Adams refused to make any further Labor appointments to the Council. Goold-Adams retired in early 1920. The Speaker of the Assembly, William Lennon, was appointed as Lieutenant-Governor on Goold-Adams's strong recommendation. On 19 February 1920, Lennon appointed fourteen more Labor Members to the Council, providing the Labor government (now led by Edward Theodore) with a Council majority for the first time.⁷

THE ABOLITION OF THE LEGISLATIVE COUNCIL, 1920-1922

The abolition of the Council was an important issue in the election of 1920. The Theodore Labor government was returned to power with a narrow majority, so Theodore had his mandate for change. His cause was aided in some respects by the fact that both the major opposition parties favoured significant changes in the Legislative Council, with neither favouring its retention as an unelected chamber.

Theodore carefully laid the groundwork for a constitutionally legal abolition. The Queensland Justice Department had looked at the problem of royal assent to a Bill abolishing the Upper House and found that there were no obstacles. He also knew that the British Colonial Office regarded the issue as a local one that did not affect imperial matters.

On 24 October 1921 Theodore introduced the *Constitution Act Amendment Bill* into the Legislative Assembly. The Bill passed the first reading stage with the support of 51 members, with only 14 opposing the Bill. The Bill then moved into the Legislative Council Chamber, where the Hon A J Jones, Secretary for Mines, the only Cabinet Member in the Council, introduced the bill for the abolition for the third time in his political career.

⁵ *Queensland parliamentary debates*, v. 122 (1915), p. 2163: Charles Arrowsmith Bernays, *Queensland politics during sixty (1859-1919) years* Brisbane: Government Printer [1919] pp 224- 228:

⁶ D J Murphy *T J Ryan: a political biography*, St Lucia, Q: University of Queensland Press, 1975, pp 238-247.

⁷ *Daily Standard* 19 February 1920, quoted in D J Murphy 'Edward Granville Theodore: Ideal and Reality', in Denis Murphy, Roger Joyce and Margaret Cribb, eds *The premiers of Queensland* St Lucia, Q: University of Queensland Press, 1990, pp 320-321.



Back in the Legislative Assembly the next day, Premier Theodore outlined his arguments against the need for an upper house of any kind in his second reading speech to the Bill. The arguments were simple and logical. *'With regard to the Labor party's attitude in connection with the Legislative Council – the hon. member for Bulimba wanted to know whether the Legislative Council was not now merely an echo of this Chamber. That is all it is, and that is why I say it is useless. If it is not an echo, it is an evil because it is obstructive. If it is an echo, it is no longer necessary.'* When the Bill went into the committee stage, the second clause which dealt specifically with the abolition of the Council, was passed 51-15. The third reading of the Bill had a similarly easy passage.

Meanwhile, in the Council, the Hon P J Leahy outlined the risks of not having a chamber of review. *'If we abolish this Chamber, and we have only a single Chamber, that other Chamber will be able to do what it thinks fit. It will be able to prolong the life of Parliament indefinitely, raise their salaries to even 2000 pounds, prevent the Auditor-General giving us reports, control the judiciary, and carry out the instructions of the Labor conferences.'* However, other members argued stridently for its abolition. Despite the gravity of the issue, only 40 of the 56 members of the Council bothered attending the beginning of the debate. Two of those did not stay for the conclusion of the second reading, which was carried 28-10.⁸ The Council met for the last time on the afternoon of 27 October 1921, adjourning for the last time at 8.37 pm that evening.

The opponents of Council abolition appealed to the British government for intervention. In early November, a group of non-Labor members from the Council put together a memorial⁹ urging the Queensland Governor Sir Matthew Nathan, to consider certain aspects of the proposed abolition of the Council. They asked the Governor to forward the document itself to the Secretary of State for the Colonies for submission to King George V. According to the memorial *'the present Labor government ... by means of violent applications of the closure in the Legislative Assembly, and by means of a specially created majority in the Legislative Council, have forced through both Houses a Bill to Amend the Constitution of Queensland by Abolishing the Legislative Council.'* Another group of ex-Councillors along with former conservative Premier Sir Robert Philp sent a petition to the King arguing, among other considerations, that *'a majority of one member or any majority for abolition in the Legislative Assembly should not be permitted to overturn a majority decision of 62 909 electors, against abolition, at a specific referendum.'*

The issue at hand was whether the abolition of the Legislative Council in Queensland impinged on anything but the domestic politics of that State. The petitioners argued that the abolition *'intimately affects the Federal relationship with the Commonwealth of Australia and ... is a matter of Imperial concern.'*

The British government was to hear both sides of the question. On 1 December Premier Theodore presented a memorandum to the Governor containing observations on the memorial and petition. Theodore listed the many Bills that had been mutilated or rejected by the Council since Labor had been elected, comparing it with the conservative Denham government that had seen only one Bill rejected between 1911 and 1915. Affirming *'It is*

⁸ For the debate on the *Constitution Act Amendment Bill*, *Queensland parliamentary debates* v 138 (1921), p 1770 et.seq., especially pages 1774, 1799,1804, 1810-1811, 1827, 1857.

⁹ The document was termed a memorial by its authors: according to the *Concise Oxford Dictionary* one definition of 'memorial' is 'statement of facts as basis of a petition.'



not a fact historically that the bicameral system with a nominee chamber has worked satisfactorily in Queensland, he argued that *‘the principles of the Bill do not in any way impinge on Imperial interests.’*

British Secretary of State for the Colonies, future Prime Minister Winston Churchill, felt that he could not advise the King to intervene, saying: *‘I cannot but regard the matter with which the Bill deals as essentially one for determination locally ... I have had no alternative but to advise His Majesty to assent to the Bill.’*¹⁰

Royal assent was given on 3 March 1922 and the Act was proclaimed on 23 March. With the abolition of the Legislative Council the most important single constitutional reform in Queensland history had been accomplished, and, in the words of D J Murphy, *‘the dominance of wealth and property over the Queensland parliament’ was broken.*¹¹

AFTER ABOLITION, 1922-

Labor went out of office in 1929 and was replaced by a conservative government with the restoration of the Council as one of the main planks of its platform. But the problems associated with the Depression soon took priority over this concern.

Labor returned to office in 1932. In 1934 the government of William Forgan Smith amended the *Constitution Act* which provided that the Council could not be reintroduced without the approval of the electors at a referendum. Labor remained in office in Queensland until the split of 1957, by which time the Council was merely a fading memory in the minds of the more senior electors.

There was little support for the return of the Council in ensuing decades. D J Murphy noted in 1980 that since the 1934 *Constitution Act Amendment Act* *‘there have been no serious suggestions to restore the Council’*,¹² but there have been some indications of increasing support for the idea since then. The reintroduction of an Upper House became National Party policy in 1981.¹³ When the Fitzgerald Inquiry of the late 1980s raised the issue of Government accountability, several public figures called for the restoration of the Upper House, saying that its presence would have made the governments of the day more accountable.¹⁴ However, Peter Coaldrake, author of *Working the System*, a study of the networks of power politics in Queensland, did not believe that the reintroduction of an Upper House would be a remedy for the situation. *‘The defunct Queensland Legislative Council could hardly be idealised as a democratic safeguard, upholder of accountability, or defender of the people. Being a house of life appointees, it was responsible to no one; its*

¹⁰ Key documents associated with the abolition of the Council, including the memorial, the petition, Theodore’s memorandum and the correspondence of Sir Matthew Nathan and Winston Churchill were collected in *Queensland Parliamentary Papers*, 1922, I, pp. 21-65.

¹¹ D J Murphy ‘The Abolition of the Legislative Council’ in D J Murphy, R B Joyce and Colin A Hughes, eds *Labor in power: the Labor Party and Governments in Queensland 1915-57* : St Lucia, Q: University of Queensland Press, 1980, p.116.

¹² *Ibid.*

¹³ P Gillespie ‘A case for an upper house’ *Sunday Mail* 23 October 1994

¹⁴ For example, John Bradford, MHR in *Gold Coast Bulletin* 13 October 1989: Denver Beanland MLA in *Sun* 8 February 1989: Terry White MLA in *Sun* 10 March, 20 November 1989. They were later joined by former Senator Michael Macklin in *Sun* 17 October 1991.



*revisory functions were poorly performed and it acted mostly in the self-interest of the groups its members represented.*¹⁵

When the Electoral and Administrative Review Commission (EARC) held a review into the Legislative Assembly electoral system, the commission chair Tom Sherman ruled out any investigations into the reintroduction of an Upper House in Queensland. EARC's functions were confined to the Assembly and did not extend to the investigation of whether an additional parliamentary institution should be created.¹⁶

In 1992 EARC carried out a review of Parliamentary committees. Once more, the restoration of the Legislative Council was outside of its terms of reference, but EARC noted that the absence of the Upper House *'has had a profound effect on the ability of the Queensland Parliament to carry out its functions under the Constitution and conventions which require it to act responsibly and review the activities of the executive arm of government.'* EARC also noted that a parliamentary committee system that had some scrutiny functions over the executive could to some extent substitute for an Upper House.¹⁷ The *Parliamentary Committees Act* was passed in September 1995, establishing six statutory committees of the Legislative Assembly. Under the *Act* other parliamentary committees can (and have been) established.

In 1995 the state Liberal Party passed a unanimous resolution for the Legislative Council's re-establishment.¹⁸ In July that year National Party leader, Rob Borbidge, promised that a referendum on the question would be held if the coalition was elected.¹⁹ Although the coalition came to power seven months later, the referendum did not eventuate, with other political considerations taking preference. It was recognised at the time that no referendum would succeed without bipartisan support. This is unlikely to be forthcoming from at least one side of politics, as the Labor party remains implacably opposed to the reintroduction of the Upper House that their ideological forebears did away with nearly 80 years ago.²⁰

¹⁵ Peter Coaldrake, *Working the system: government in Queensland* St Lucia, Q: University of Queensland Press, 1989, pp 158-9: 'Upper house myth debunked', (letter) *Courier Mail* 11 October 1989.

¹⁶ Madonna King. 'EARC not to investigate Upper House', *Courier Mail* 23 June 1990.

¹⁷ EARC, *Report on a Review of Parliamentary Committees*, Brisbane: Goprint, 1992, para 2.148-150.

¹⁸ R Odgers 'Majority wants upper house back' *Weekend Independent* 3 November 1995.

¹⁹ *Courier Mail* 6, 7 July 1995.

²⁰ See, for example, B O'Sullivan 'Beattie slams idea of an upper house', *Weekend Independent* November 1996.



CHRONOLOGY

1859 – Queensland separates from New South Wales

1860 – The first Queensland Parliament sits, with eleven members of the nominee Legislative Council.

1885 – The Legislative Council attempts to amend money Bills. The Privy Council in London rules that it does not have the right to do so.

1890 – There is mention of a Bill in the Governor's speech to provide for an elected Legislative Council, but the Bill is never introduced.

1893 – A Bill providing for an elected Council makes it to the committee stage but is aborted with the prorogation of Parliament.

1900, 1902, 1908 – Bills aimed at modifying the power of the Council or its method of election are introduced but not passed.

1915 – June – the Labor government of T J Ryan is elected

November – Ryan introduces a Bill to have the Council abolished. It is rejected by the Council, as is one introduced in the 1916-17 session.

1917 – 5 May – a referendum to abolish the Council is held, but is defeated, 179 105 to 116 196.

1918 – Labor adds 13 new members from its party to the Legislative Council. However, the Bill to abolish the Council is defeated.

1919 - Labor adds 3 new members from its party to the Legislative Council. However, the Bill to abolish the Council is defeated.

1920 – 19 February – Lieutenant-Governor William Lennon, lately the Labor Speaker of the Legislative Assembly, appoints 14 more Labor members to the Council, giving it the numbers in the Upper House for the first time.

1921 – 24 October – for the fifth time, the Labor party introduces a Bill to abolish the Legislative Council.

26 October – the Council passes, by 28-10, the second reading of a Bill to abolish itself

27 October – the Council meets for the last time, adjourning at 8.37 pm.

1922 – The Act abolishing the Legislative Council is proclaimed.

1934 – The Constitution Act is further amended, providing that the Legislative Council can not be restored without a referendum.

1981 – the reintroduction of an Upper House becomes National Party policy.



1989 – with the publication of the Fitzgerald Inquiry, several political notables call for the reintroduction of an Upper House.

1990 – the Electoral and Administrative Review Commission rules out investigating the reintroduction of an Upper House in its review of the Legislative Assembly electoral system.



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