

Current Legal Issues Seminars 30th October 2025

Comments on the Paper by Nicholas Aroney: “A Second Chamber for the Queensland Parliament: Four Reasons, Four Features and Four Design Principles”

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I will start by declaring my obvious conflict of interest. I am a servant of the Queensland Parliament. I have spent the largest part of my professional life working in and assisting reform of that institution. I am very proud of the constitutional reform and parliamentary reform in which I have been involved:

- creation of an ethics regime; ¹
- constitutional reform around fixed four-year terms² and statutory entrenchment of the portfolio committee system, including estimates processes; ³
- procedural initiatives such as electronic petitioning and accessibility of parliamentary records through the tabled papers database; and,
- perhaps most importantly, reform of the of the parliamentary committee system and the legislative process. ⁴

Much has been achieved by the institution in the last 30 years.

However, I am neither blind nor mute about the institution’s weaknesses.

I am in furious agreement with Nicholas’ assessment that unicameralism in Queensland has had profound implications for how democracy functions in Queensland. Both myself and others, have described it as a “winner takes all” approach.⁵ My criticism, like Nicholas, is not a reflection on any particular Parliament or any particular Government in Queensland, but neither is it very abstract.

*¹Legislative Assembly, Queensland, The Code of Ethical Standards

<https://documents.parliament.qld.gov.au/assembly/procedures/codeofethicalstandards.pdf>

²Constitution of Queensland 2001, Part 2A; Constitution (Fixed Term Parliament) Amendment Bill 2015

<https://documents.parliament.qld.gov.au/tp/2015/5515T1802.pdf>; Constitution (Fixed Term Parliament) Referendum Bill 2015 <https://documents.parliament.qld.gov.au/tp/2015/5515T1120.pdf>

³ Constitution of Queensland 2001, Part 5;

⁴ Parliament of Queensland Act 2001, Chapter 5. Review of the Queensland Parliamentary Committee System December 2010

<https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2010/5310T3777.pdf>

⁵ Neil Laurie, “Life After (or Winner Takes All)” Queensland History Journal Volume 25, No. 3, November 2022, p.260-276; Jonh Wanna and Tracey Arklay ‘The Ayes Have It’ The history of the Queensland Parliament, 1957–1989 ANU Press 2010.

1. Culture and Structure

It has long been my thesis that there is a strong relationship between constitutional structure and political culture.

Some structural differences between the Westminster system in the UK as opposed to other Commonwealth countries include:

- Size – The UK Parliament is very large, currently 650 members. Even in the late eighteenth century there were more than 300 members. This is a very large number of members compared to later colonial parliaments. It is extremely difficult to maintain party discipline in large houses of parliament.⁶
- Discipline – Party Discipline exists in the UK Parliament, but it not as strong or strict as in Canada, Australia and New Zealand.
- Heritage – Parliament developed during a period of more than 1,000 years. I believe the roots of the English Parliament lay in the Saxon Witan. A thousand years of Foreign Wars, Civil Wars, Civil Strife and slowly evolving wider representation gives those in the UK Parliament a much greater appreciation of the history of the institution. (Because self-government came easy to Australians, they are largely apathetic to, and cynical of, politics.)

The Westminster style of government itself contains an inherent paradox. One function of Parliament is to scrutinise government. But governments are formed because they have the support of the lower house of parliament. In small parliaments, with government majorities and strict party discipline, it is difficult to ensure scrutiny by the lower house. In bicameral parliaments this function can be undertaken by an upper house; in unicameral parliaments, scrutiny is problematic.

Furthermore, the size and voting systems can mean that such parliaments are not truly representative. The Queensland Parliament is less representative than many of its peers.⁷ Also, there are serious structural and cultural impediments that prevent the Queensland Parliament from keeping government accountable.⁸ These include a large proportion of members in government being Ministers, Assistant Ministers and Whips, thus diluting the power of the party room/caucus.⁹

I am at odds with the quote from Aristotle referenced by Nicholas. Rulers of good character can still act in error, especially when there is little to restrain them and they

⁶ Neil Laurie, 'Size Matters - The problem of proportionally shrinking Parliaments', Presiding Officers and Clerks' Conference Adelaide July 2008.

⁷ Neil Laurie, 'Responsible Government without an Upper House' in Queensland's Constitution Past Present and Future, Supreme Court of Queensland Library, 2010.

⁸ Neil Laurie, "Life After (or Winner Takes All)" Queensland History Journal Volume 25, No. 3, November 2022, p.260-276.

⁹ See Note 6.

begin to exercise power with a lack of restraint. And it is lack of restraint in Queensland that has led governments of all persuasions into error.

Perspectives from opposition to government change easily. I have often joked that there is an invisible vale in the Legislative Assembly that washes good intentions away as members move from the Opposition benches on the Speaker's left to the Treasury benches on the Speaker's right.

In this respect I am reminded of Aesop's Tale of Two Bags. Every person, according to an ancient legend, is born into the world with two bags suspended from their neck: the bag in front is full of their neighbours' faults, and a large bag behind filled with their own faults. Hence it is that people are quick to see the faults of others and yet are often blind to their own failings.

The failings of governments of all persuasions in Queensland include:

- Governments in Queensland have manipulated the electoral system to benefit the government of the day.¹⁰
- Governments in Queensland have manipulated the voting system to benefit themselves.¹¹
- Parliamentary Reform invariably favours government control (Committees generally) (legislative processes) (estimates processes)¹²
- Financial processes (Estimates) have been truncated¹³
- Process can be set aside and wrongdoing forgiven¹⁴
- Committees have been sacked¹⁵
- The spirit of the Constitution has been breached, if not broken. (Section 26B of the Constitution of Queensland 2001, was inserted in 2016. Despite this section statutorily entrenched provision requiring bills to be sent to committee for a minimum of six weeks, before being considered and passed, it has become

¹⁰ The Electoral Districts Act 1931 (Moore Government) 72 to 62 seats re-weighting quotas; 1949 the ALP Hanlon Government introduced the first explicit Gerrymander in Queensland, 75 electorates in four zones; 1958 the Gerrymander was continued by the Country/Liberal Nicklin – Morris Government with 78 electorates established across three zones; In 1971 the CP/LIB Bjelke-Petersen Government introduced legislation continuing the Gerrymander, with 82 electorates established in four zones; 1985 the NP Bjelke-Petersen Government legislated the continuation of the Gerrymander with 89 electorates established in four zones

¹¹ 1892 preferential voting ('contingent vote'), introduced by conservatives; The Elections Act Amendment Act 1942 reintroduced first-past-the-post voting; The Elections Act Amendment Act 1962 introduced compulsory preferential voting; EARC's optional preferential voting system lasted until late one night in 2016, when an amendment to a bill reintroduce compulsory preferential voting.

¹² See Note 8

¹³ See Note 8

¹⁴ See Note 8 – In 2005 the House was recalled, a minister apologised and a motion was moved to find the minister guilty of contempt but to find his apology and resignation sufficient penalty. This effectively barred further criminal prosecution.

¹⁵ See Note 8 – In late 2013 all members were dismissed from the Parliamentary Criminal Justice Commission.

relatively common practice for government to effectively introduce new bills as amendments to another bill – often irrelevant in subject matter - that has already been through the committee inquiry process¹⁶ The Speaker was unable to rule the practice unlawful. Advice obtained for the Speaker, from Mr Del Villar QC confirmed that, although moving substantial amendments after a bill had already been scrutinised by a committee might be regarded as contrary to the spirit of the Constitution, the practice did not in itself breach section 26B.¹⁷)

- The purpose of the Constitution can be avoided, by characterisation. (For example in 2020, \$60billion in appropriations not being characterised as the State budget, to avoid estimates examination before an election).¹⁸

If we accept that a system is not working as it should be, we need to then develop a solution.

Nicholas has tied himself to the mast of an Upper House. He has founded his argument for a second chamber on our key principles of constitutional design:

- Democratic legitimacy
- Effective governance
- Separation of powers
- Government accountability

2. Democratic Legitimacy

It is fundamental that every parliament should have democratic legitimacy. But it is a loaded term that will mean different things to different people. Nicholas says that the point of a second chamber is not to exacerbate disunity and division, but to help ensure that the laws that are enacted have received scrutiny and input from a fuller range of viewpoints and standpoints represented in the Parliament.

¹⁶For example, during the second reading debate of the Community Services Industry (Portable Long Service) Bill 2019 on 16 June 2020, after the bill had already been considered by the Education, Employment and Small Business Committee, the relevant Minister circulated 51 pages of amendments. The amendments were actually irrelevant to the Bill and dealt with matters such as changing a public holiday date, deferring public service wage increases and minor matters relating to COVID-19. In another example, during consideration of the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 the relevant minister circulated 100 pages containing 229 amendments to this bill before the second reading debate, after it had already been considered and reported on by the Economics and Governance Committee.

¹⁷ Speaker's Ruling, Operation of Parliament, Legislative Assembly Record of Proceedings, 9 September 2020, p. 2245. 2020_09_09_WEEKLY (parliament.qld.gov.au); 35 Letter, dated 3 September 2020, from Mr Gim Del Villar QC to the Clerk of the Parliament, Mr Neil Laurie, regarding an opinion on alleged breaches of the Queensland Constitution. <https://documents.parliament.qld.gov.au/tp/2020/5620T1572.pdf>

¹⁸ Note 8.

I think that the history of the Australian Senate speaks a caution to us all in design failings. That House was designed as a States' House – such a notion quickly fell into dust. Nobody can fairly call the Senate a States' House. It is, in my opinion the worst of outcome in an upper house. I know my view will be unpopular for many but let me explain.

It is a house that is entrenched in the constitution as a states' house in that it provides equal representation for each state regardless of population size. The quota for a Senate seat is calculated by dividing the total number of formal ballot papers by the number of senators to be elected plus one and then adding one to the result (ignoring any remainder). In the 2025 election the quota for NSW was 712,405 and Tasmania 53,113.

This does not have the “vibe” of democratic legitimacy.

Now if the Senate remained true to its design and was a States' House, this sophisticated gerrymander could be defended. But the Senate has not been a States' House for over a century. It has long just been another House divided on party lines, although a house which has included minor parties due to its voting system.

It is a House that has had swinging Senators at the centre of any number of boondoggles and pork-barrel deals.

My personal favourite is the NBN being first rolled out in Tasmania in August 2010, with services launched in Midway Point (pop 2,859), Smithton (pop 3,881) and Scottsdale (pop 2,373). This was courtesy of Senator Brian Harradine, who was a crossbencher during the time the National Broadband Network (NBN) was being discussed and established and whose support was crucial. Meanwhile, some of us in inner Brisbane were still awaiting the NBN during COVID.

I agree with Nicholas that majoritarianism has its limits, but I am yet to be convinced that I want my parliament at the mercy of a cross bench with proportionately little democratic legitimacy.

3. *Enhanced Public Deliberation*

I agree that a fundamental problem with total executive control of the Chamber and the ability to suspend or dispense with rules in a single vote, is that debate is often truncated and efficiency is often traded for effectiveness.¹⁹

We would all hope for a Parliament that adheres to the great principles which lay at the basis of English parliamentary law as advocated by Bourinot²⁰:

- to protect the minority and restrain the improvidence and tyranny of the majority;
- to secure the transaction of public business in a decent and orderly manner;

¹⁹ Neil Laurie, 'Recent observations about the tension between the efficiency and effectiveness of Parliament', Presiding Officers and Clerk's Conference Adelaide, July 2024

²⁰ Parliamentary Practice and Procedure in the Dominion of Canada, 1892

- to enable every member to express his opinions within those limits necessary to preserve decorum and prevent an unnecessary waste of time;
- to give full opportunity for the consideration of every measure; and
- to prevent any legislative action being taken heedlessly and upon sudden impulse.

Alas, as noted above, lack of restraint in Queensland that has led governments of all persuasions casting these principles aside.

However, I would not like to see a second chamber which transforms itself from a place of deliberation and scrutiny of government to a house that sees itself as an alternative government.

Parliament cannot govern. However, history has shown that minority control of houses of parliaments can lead to attempts to govern from parliament. Sometimes legislative negotiation can be disguised as an attempt to govern. In this way a despotic minority can replace a despotic majority.

I have often argued that the absence of the need to explain and negotiate is what is missing from Queensland's constitutional structure and leads to poor political culture. I agree that public deliberation should not be confined to the chambers of parliament. It extends to the media, civil society, and the broader public sphere. But I have long championed the role of parliamentary committees in bridging the gap between the public and parliament – to provide a proper formal venue for stakeholders.

4. Increased Scrutiny of Government

I agree with Nicholas that accountability is the cornerstone of democratic government. In the Westminster tradition, ministers are responsible to Parliament, and through Parliament, to the people. But in Queensland's unicameral system, this principle is compromised. Again, the Westminster paradox. Lack of size, strict party discipline and even lack of a proper media all exasperate the issue.

Indeed, the decline of the media, the often titled "fourth estate" has had considerable impact. It has long been maintained that investigative journalism may uncover examples of institutional corruption, abuse, or mismanagement. But commercial media revenues have been gutted by the rise of the internet and social media. Media cutbacks have seen the decline of resources for investigatory journalism.

State based serious political and investigative journalism has been in decline since the public broadcaster's decision to axe the state-based 7.30 Reports in the mid-1990s. This has been exasperated by the conversion of serious radio programs on the public broadcaster to light "magazine" formats or otherwise rescheduling such programs to dead hours. Commercial news media spends only a fraction of their time reporting state-based political and accountability matters, with far more time spent on the goings on in football or other sport (particularly the private lives of their participants). The time spent

on state-based political and accountability matters by the commercial broadcasters is usually incomplete, sensational and inept.

5. Solutions

As I see it, we are left with two options:

1. Structural redesign of the unicameral parliament or
2. Proper design of a restored Second House.

(i) Structural redesign

Structural redesign of the unicameral parliament could be undertaken by:

(a) Increasing the size of the parliament

I have long argued that the population of Queensland has well outstripped the number of members of the Legislative Assembly and that as this trend has continued, the Legislative Assembly has become less representative and less able to fulfill its functions.²¹

Without an increase in numbers, the larger electorates that remain, will simply get larger. They will become (and already are), unserviceable. As electorates in regional areas become larger, the community of interest diminishes. As regional seats disappear to their South-East cousins, representation in regional and rural areas reduces.

My view in 2008, and it remains my view, is that the Queensland Parliament is each year rapidly declining in its representative nature and is not growing at a rate sufficient to achieve and maintain the "critical mass" of members required to fulfil its functions.

The view I expressed in 2008 was that two questions arise when considering the size of an Assembly:

- Firstly, is the Parliament truly representative?
- Secondly, does the Parliament have the ability to discharge its full array of functions properly

To remain representative of the whole State and to preserve the vision and principles set out in the 1990 EARC system, the number of members of the Legislative Assembly must periodically increase and, although increased by 4 seats in 2017, further increases are overdue.

In addition to being a representative body, the Legislative Assembly must have the ability to discharge its full array of functions properly. Parliaments must have the 'critical mass' sufficient to undertake these roles. In recent years the Legislative Assembly has gone through reform to enable it to better fulfill its functions. In 2011, the new portfolio

²¹ Neil Laurie, 'Size Matters - The problem of proportionally shrinking Parliaments', Presiding Officers and Clerks' Conference Adelaide July 2008.

committee system significantly improved the Assembly's ability to scrutinise and consult with the community and stakeholders about legislation. The legislative function, the scrutiny of the executive and providing a forum for debate and grievance all increased. However, the sacrifice has been that the Assembly and its committees have not properly scrutinised public accounts and public works. The vision that this function would be performed by the portfolio committees has simply not been realised. As a result, public works go without examination by the Assembly and Auditor-General reports do not receive the attention they deserve.

This is not the fault of the portfolio committees, which are largely too busy reviewing legislation or oversight bodies to tackle public accounts or public works. The fault lays in the lack of 'critical mass' – that is, insufficient numbers of members who do not hold another office (such as Assistant Ministers), who can scrutinise public works and public accounts via another committee or two (such as a dedicated Public Accounts Committee).

If we want a properly functioning Legislative Assembly, we need the critical mass of backbenchers necessary to fulfill the functions of a properly constituted parliament.

The ostensible reason given as to why the numbers of members have remained relatively static, whilst population has grown, and in some jurisdictions exploded, is that increasing the number of members is seen as unpopular with the electorate. Reference to the costs of new members often 'sinks' the argument.

But it is an argument of false economy.

The cost of each additional member, when considering salaries, allowances and entitlements, an electorate office, electorate staffing and other on-costs is now about \$1 million dollars a year. But only a relatively small fraction of this is the Member's salary.

The cost of new members pale when compared to other additional resources that have been provided in recent years to try and manage workload. For example:

- The decision in 2001 to provide an additional electorate officer for each electorate office now costs approximately \$13.6 million with on-costs and will increase each year.
- The decision in 2019 to provide an electorate office relief allocation now costs about \$3.2 million and will increase each year.
- The decision to provide crossbench support staff will cost between \$850,000 and \$1.2 million each year, depending on crossbench numbers.
- The decision in 2024 to provide an additional electorate officer for each electorate office costs \$13.6 million with on-costs and will increase each year.

The tendency to assist members, not by increasing the numbers of members and ‘sharing the burden’, but by providing more resources, particularly in terms of human resources is not, in my opinion the best way forward.

The total cost of additional staff resources provided since 2001 (now at least \$35 million per year) has been a costly alternative.

(b) Constitutionally entrench²² a number of significant safeguards based on principles of legalism.

Legalism is an ancient Chinese philosophical belief that human beings are more inclined to do wrong than right because they are motivated entirely by self-interest and require strict laws to control their impulses.

The problem is that when the House is the master of its own proceedings, and that House is controlled by the government, rules are dispensed with by the majority as it sees fit.

Constitutional safeguards²³ could be developed to prevent the House dispensing of rules unless there is a general acceptance of special need. This would require a special majority – 75%-80% of the House. The safeguards could include:

- All bills to be considered through committees and public consultation for a minimum of 12 weeks. Bills cannot be declared urgent without special majority.
- Any amendment to a bill must be within the scope of the original bill.
- Any amendment to a bill must be circulated a week before debate, unless it was recommended by a committee report.
- Bills cannot be omnibus, but for a particular topic.
- That the State budget must be presented by a certain date and estimates occur before a certain date each year – and designed to ensure that in an election year the dates are always before dissolution for a general election.

Whilst I am loath to recommend reforms which intrudes on the ability of the house to govern itself, serious consideration must be given to a mechanism to prevent the majority simply dispensing with Standing and Sessional Order.

²² Including requiring a referendum to remove wherever legally permissible.

(ii) Proper design of a restored Second House.

The second solution is the proper design of a restored Second House. However, the devil is in the detail.

Any design of an upper house must ensure that its design does not result in a Parliament that is dominated by a minority.

If an upper house is the solution, then I would advocate for an upper house that is a house of review only, that can slow the legislative process, ensure proper scrutiny of the executive – but cannot prevent government from governing and cannot wield the power to block legislation and money bills so as to extract deals for minority interests.

It would need to be an elected House, elected on a different electoral system to the Lower House.

In reality, an introduction of an upper house is unlikely to occur as it requires a successful referendum, and I am pessimistic of either government or opposition (of all colours) ever supporting a reintroduction. Governments never want to cede power, and Oppositions always crave to be in government (with the power of their opponents).