



**CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON
LEGISLATION) AMENDMENT BILL
9 September 2009**

Mrs PENFOLD (Flinders) (17:26): The government's ill-advised attempts to grab unlimited power through the abolition of the Legislative Council have been thwarted by their own supporters, in particular, the Public Service Association. That Public Service Association threatened to run a campaign against Labor in order to block the Premier's lust for power. The Public Service Association secretary, Jan McMahon, remarked in a radio interview that:

There have been many instances where the Public Service Association members and the community have really benefited from being able to have an independent review of legislation and nobody should ever walk away from the ability to have their own legislation reviewed and have amendments made that are in the best interests of South Australians.

The Premier has realised that his grab for unlimited power has been recognised as just that—a grab for more power—and he has given up on the abolition of the Legislative Council for the time being. I stress the phrase 'for the time being'.

We can look at one of Labor's strongholds, Queensland, to learn how Labor operates in order to get its own way in the end and to silence opposing voices. In 1917 the Queensland Labor government unsuccessfully petitioned, by means of a referendum, for the abolition of the state's upper house. The referendum was soundly defeated. However, that was not the end of the matter for the power-hungry Laborites. Over the next few years Labor governments advised the Governor to appoint a total of 30 new Labor members of the Legislative Council—

The Hon. M.J. Atkinson: The suicide squad.

Mrs PENFOLD: —until the party had sufficient voting strength to pass its push for abolition of the council. As the Attorney-General said, 'The suicide squad.' Nicolas Aroney and Scott Presser commented: 'The politics of Queensland have ever since been determined by this concentration of power—executive and legislative—in the hands of a small coterie of politicians.' Perhaps this is what the Attorney-General had in mind when he said:

The government cannot call a referendum without the passing of the bills...This means that for reform to occur the Legislative Council must vote to reform itself.

Is it the first step in a long-term Labor aim to abolish the Legislative Council?

There are many different ways to change the operation of the two houses of the South Australian parliament, far more than the narrow approach taken by Labor, and this applies especially to the upper house. It is also interesting that the Attorney-General ignores the Independent and minor party councillors and puts all the ability for change on the Liberal Party. I am pleased that the honourable member for Croydon recognises the integrity, probity and strength of the Liberal Party.

While other states have, at times, been plagued by government corruption, Queensland has arguably experienced more of it. In recent times, Queensland governments have attempted to deal with a lack of government accountability associated with the 'winner takes all' power in a single house through the establishment of a Crime and Misconduct

Commission and parliamentary committees. It is worth noting that we already have parliamentary committees where legislative councillors provide input. Hence, Queensland is only setting up what this state already has.

Queensland's attempts to provide a brake on corruption and corrupt practices with the Crime and Misconduct Commission have been unsuccessful since the members of the commission are appointed by the government and each parliamentary committee has a majority of government members. Abolishing the Legislative Council on the argument that it would save money is flawed reasoning that ignores the reality of the need for these bodies. It also demolishes the argument that funding now spent on the Legislative Council could be directed elsewhere. The process is simply a smokescreen to bamboozle the gullible and to fool the unwary. It would be cheaper and more effective for Queensland to reinstate its upper house. Queensland's President of the National Civic Council, Ron Munn, said:

In part, Tony Fitzgerald QC (commemorating the 20th anniversary of his report on government corruption) said of the Queensland Labor government, 'Ethics are always tested by incumbency. Secrecy was re-established by sham claims that voluminous documents were "cabinet-in-confidence". Access can now be purchased, patronage dispensed, mates and supporters are appointed and retired politicians exploit their political connections to obtain "success fees" for deals between business and government'.

We come to the bill before us. The number of councillors and the operations of the Legislative Council have changed at times over the years. There is always support for change when change is an improvement on current practices. However, the government has given no satisfactory explanation for its push for change. Parliamentary committees, in which councillors play a large role, are a thorn in the side of Labor's quest for domination without responsibility and/or scrutiny. Our Premier is very quick to show his dislike of opposition and/or adverse criticism, usually by a sustained rush of bullying, abuse and harassment by his head kickers. It is a ploy that has often succeeded since it focuses attention on the acting ability of ministers while deflecting attention away from valid issues.

It seems obvious that legislative councillors have blunted Labor's push for unchallenged power, hence Labor's suggested reduction in the number of councillors. This would allow the council to be controlled more easily and for their investigative work in committees to be diluted. It is curious that the Premier does not want proper scrutiny of his ministers and government. Perhaps he is frightened by the actions of legislative councillors in New South Wales who, supported by decisions of the New South Wales Supreme Court, forced the government to produce documents on matters of public concern in situations where the government wanted to protect itself by keeping the documents secret. The first disclosures of disturbing information about the financial entanglements of Sydney's cross-city tunnel were the result of a New South Wales council order.

Labor governments in New South Wales have done some extraordinary deals with private enterprise to push projects through at the expense of taxpayers.

The Hon. M.J. Atkinson: That would be extraordinary.

Mrs PENFOLD: Just because the Attorney-General has probably had better education than I have, coming from a small country school with three classes in one room, he need not be arrogant about it. Labor governments in New South Wales have done some extraordinary deals with private enterprise to push projects through at the expense of taxpayers.

Members interjecting:

The SPEAKER: Order! The member for Light is not in his seat.

Mrs PENFOLD: I have been told of the financing of toll roads, where users are reimbursed by governments for the tolls they pay to the owners of toll roads. The mind boggles at the possibility for preferred treatment for favoured developers or companies when there is no brake on the power that a one-house parliament confers on the ruling government.

South Australia enjoyed a Liberal government when the federal government conducted a referendum into whether or not Australia should become a republic. The Liberal state government set up a committee comprising representatives of the three parties who then had members in either state house—Liberal, Labor and Democrat—to research how South Australia may have been affected if the referendum succeeded.

One of the surprising conclusions from that extensive research was that we are not over-governed. We have a lesser number of politicians per capita compared with other democracies. Another conclusion was that we are likely to end up with more politicians than we have now if the state tier of governments were abolished and Australia moved to only federal and regional governments.

Another furphy that we hear and that Labor likes to trumpet is the incorrect notion that the Legislative Council is particularly obstructionist. In the 23 years from 1975 to 1998, only 1.8 per cent of government bills were rejected outright, and this was usually after exhausting the legislative process, resulting in a deadlocked conference between the houses.

Excluding sessions which were prorogued due to the calling of an election, only 7.1 per cent of government bills did not pass the upper house over that 23 year period which, incidentally, covered both Liberal and Labor governments. Likewise, in the eight years from 1997 to 2008—again covering both Liberal and Labor government—only 2.9 per cent of all bills were negatived or laid aside in the Legislative Council. It is also acknowledged that many of these—possibly a majority—were private members' bills and not, therefore, government legislation.

The Consent to Medical Treatment and Palliative Care Bill is an instance where the scrutiny provided under the bicameral system produced a worthwhile piece of legislation due to the numerous committee stages and subsequent amendments introduced in the Legislative Council. The bill was introduced by a Labor government in 1992 and was eventually passed 2½ years later by a Liberal government. The operation of government should always be subject to not only scrutiny but to a real mechanism that can check its action, as enabled by the existing provisions pertaining to the upper house.

Reducing the effectiveness and authority of the upper house in a bicameral system produces governments which eventually embrace tyranny (because humanity tends towards corruption, as illustrated around the world), thus an effective check on the operation of government is needed. One way this is done successfully is to subject bills to a second chamber, the way in which now happens under the two-house system of the South Australian parliament. Restraint on government occurs as the upper house examines every proposal of the House of Assembly (the lower house) in which government is formed, and vice versa, as governments rarely control both chambers.

The election of half the legislative councillors at each election—which Labor wants to throw out—is a protection against electoral swings. This helps shield the parliament from major swings that may otherwise largely fill both houses with members of one party, or the anomaly, in the upper house, as with the Xenophon factor, which I understand would have given us six more Xenophon anti-pokies members if it had been an election of the whole of the upper house at the time.

When the federal Liberal government under John Howard proposed radical changes to Australia's gun laws, a very strong, vocal and active gun lobby was formed, with candidates standing for election in all available domains. When a candidate stands for election there is always the possibility that that candidate could be elected, no matter how bizarre or way out their policies and intentions. Our nation would be a very different place if a large number of the Shooters Party had been elected, bringing with it the gun mentality of the United States of America. A society controlled by that mentality is radically different from accepted Australian values and ethics.

Consideration of long-term impacts is more likely when members of the Legislative Council serve for a term twice the length of members of the House of Assembly. We only have to look at the way in which governments have dealt with the world financial crisis to see the value of long-term views. The Australian Labor government, despite its plunging the nation into unprecedented levels of billions of dollars worth of debt, after being left billions of dollars by the former Howard Liberal government, can only predict more difficult times for our country and its people. The Prime Minister is anxious to get an election out of the way and hoping to be re-elected before the levels of debt, as a result of his mishandling of the Australian economy, become insurmountable and our economy slides.

Reconsideration of policy is an important aspect of the Legislative Council and is more likely to happen when two sets of members have to consider and pass proposed legislation. This enables scrutiny, public awareness and an increased community response. Two chamber parliaments where all legislation is debated and voted on twice is a safety measure against human frailty, either by deliberate tyranny or unintended errors. We cannot afford to weaken it.

We are one of the few countries that has not seen violent elections involving major corruption. I believe that this is because of the soundness of our bicameral system of government which, while annoying at times to all sides—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Mrs PENFOLD: —is much preferable to what we see happening around the world in countries without a similar system.