
Accountability or Representation? Victorian Bicameralism*

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Since the granting of responsible government to the then colony of Victoria in 1855 and the first meeting of the bicameral Parliament in November 1856, two, sometimes intertwined, controversies have dominated local politics. These were the desired balance between rural and metropolitan representation in the legislature and the power relationships between the Legislative Assembly and the Legislative Council. The first now seems settled with a consensus finally emerging in the early 1980s in favour of equality of enrolment across all divisions and provinces. The second has proved more intractable with the latest attempt at resolution currently before the Parliament. Almost all prior successful and failed attempts to 'reform' the upper house have involved democratising its electoral procedures to bring them into line with the Assembly's or to curb its powers over supply bills and general legislation. The latter remains central to the present reform agenda, but it is just possible that an even more important result may emerge in the form of an upper chamber committed to the advancement of more accountable government.

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 28 March 2003. It was prepared before the raft of reforms recommended by the Constitution Commission Victoria and incorporated in the Constitution (Parliamentary Reform) Bill 2003 were introduced into the Victorian Parliament, and given the day after the bill was passed by the Legislative Council. The bill became law on 8 April 2003.

Now is not the time for lengthy historical digressions, but it is worth recalling that Victoria's Legislative Council shared the function of other nineteenth century Australian upper chambers to act as a restraint on 'radical' democratic initiatives likely to emanate from the more 'liberal' lower houses. The original structure of the Council well matched its function: a very high property qualification to sit and vote, no payment of members, indissolubility, plural voting, high malapportionment favourable to rural interests, terms not coterminous and twice as long as the Assembly's, and so on. The consequence was a powerful chamber representative of wealth and property regularly engaged in often disruptive contests with successive governments.

Certainly since its establishment, the Council has undergone significant reform, especially in regard to its electoral procedures. Yet those reforms have often been resisted and have occurred later than equivalent changes to the Assembly—universal franchise did not arrive until 1950. In fact the Council has never adopted a single electoral initiative in advance of the Assembly.

The Council's capacity to force an unwanted election on the Assembly has been constrained by the negotiated passage of the Constitution (Duration of Parliament) Bill 1984, but the power to amend or reject general legislation, in ways which are final, remains intact. The absence of a Federal section 57-type double dissolution provision denies a government the capacity to override Council obduracy. Since their 1937 insertion, sections 66 and 67 of the Victorian Constitution have provided procedures to resolve deadlocks, but they are so favourable to the Council that no Premier has been foolhardy enough to invoke them. 'Review' in the nineteenth century meant review democracy; 'review' in the twenty-first century means to hold governments accountable. This must go beyond the scrutiny of individual bills to embrace notions of sometimes restraining executive power in the interests of the citizenry and good governance. Despite many adjustments, Victorian bicameralism still retains some vestiges of political architecture from the nineteenth century which is obstructive to the full discharge of the desired review function of an upper house. The sixty-four dollar question, of course, is will the current proposals do the job?

What is proposed?

The Explanatory Memorandum for the Constitution (Parliamentary Reform) Bill 2003 states that the purpose of the bill is to reform the Parliament of Victoria based upon the recommendations made by the Constitution Commission Victoria:

- to provide for a fixed four year parliamentary term, unless the dissolution of the Assembly occurs sooner;
- to re-constitute the Council to consist of 40 members elected from 8 regions with each region returning 5 members;
- to provide for proportional representation with optional preferential voting for members of the Council;
- to provide for the filling of casual vacancies in the Council;
- to provide that the President of the Council has a deliberative, not a casting, vote;
- to recognise the principle of government mandate;
- to remove the ability of the Council to block supply (Annual Appropriation) Bills;
- to establish a dispute resolution process for deadlocked Bills; and
- to provide for the entrenchment of certain legislative provisions.

Before commenting on the likely impact of these proposals, it is necessary to explain how we have arrived at this point.

Given that before the 2002 election the Labor Party has enjoyed a clear majority in the Council for only three months in its one hundred year history, it is hardly surprising that the party has been less than enthusiastic for the Victorian version of bicameralism. Prior to the late 1970s the ALP's policy was one of abolition replaced by one of reform through proportional representation (PR) in 1981. The Cain and Kirner governments (1982–92) made no fewer than six attempts to change the Council's voting system to PR, but all foundered. Following its surprise 'victory' in September 1999 the Bracks Government moved on a promise made to the three Independent MPs and introduced a broad-ranging Constitution (Reform) Bill on 24 November 1999, but encountered difficulties when the Independents expressed reservations about removing the Council's right to block supply and the geographical size of proposed rural Provinces. The bill was formally withdrawn in June 2000 and replaced by a Constitution (Amendment) Bill, which dealt with parliamentary terms and supply and a Constitution (Proportional Representation) Bill which concentrated on electoral and related matters. Both bills were rejected in the Opposition controlled Council in October 2000.

Debate on the two bills was passionate but not of a particularly high standard, especially on the PR bill where both sides overdid it. Its proponents accorded it almost magical powers of political transformation, whereas its opponents saw chicanery around every corner and depicted PR as a road to mayhem and even tyranny. Argument flowed on the erroneous assumption that PR was being proposed for *all* the Parliament. There was scant appreciation of the *incongruence* contention that bicameralism works best when there are some dissimilarities in the functions and composition of the two chambers. Craig Ingram (Independent, Gippsland East) was one of the few who did when he argued that 'the local member really belongs in the Legislative Assembly. The role of the upper house is to act as a house of review.'¹

Other comments were less well considered:

'Reform is a euphemism for the Labor Party's ambition to completely abolish the upper house'

'PR would give small, extremist parties the opportunity to be elected to parliament'

'It is no coincidence that whenever proportional voting takes place unstable and poorly performing government takes place ... do we really want to see some flash-in-the-pan fruitcake get elected?'

'This is a political act to curry favour with the minor parties and the unions'

'To introduce proportional representation is to castrate the vote of each and every Victorian.' [Granted that this remark was made at 1.30am!]

Alas, it must be reported that rude things were said even about the Senate:

¹ *Victorian Parliamentary Debates*, Assembly, 6 September 2000, p. 66.

‘The upper house will become full of intrigue, just like the Senate is ... ’

‘In Canberra we have the loopy brigade that controls the Senate ... ’

Confronted by such opposition the government adopted another tack and established the Constitution Commission Victoria on 19 March 2001 and empowered it to make such recommendations as would ‘enable the Legislative Council to operate effectively as a genuine House of Review.’ The Commission was chaired by retired Supreme Court judge, George Hampel, assisted by former Liberal federal and state parliamentarians, Ian Macphee and Alan Hunt—the latter being a President of the Council in the 1980s. The political credentials of Macphee and Hunt did not mollify the Opposition which immediately rejected the Commission as ‘a blatant political con’ (*Australian* 20 March 2001).

Undeterred, the Commission issued a *Discussion Paper* in August 2001, conducted seminars, regional consultations and invited submissions from the public. A *Consultation Paper* containing a summary of the views received was released in December 2001 and the final report, *A House for our Future*, on 1 July 2002. The recommendations of the Commission were to form the basis of the government’s current legislation, but few predicted that it would be presented to a Parliament which, as a result of the November 2002 election, would have Labor majorities in both chambers (62 of 88 in the Assembly and 25 of 44 in the Council). The government, however, has not taken up all of the Commission’s recommendations. Those omitted were:

- The strengthening of the Council’s committee system;
- The establishment of regional committees comprising local MLCs;
- The phasing out of ministers from the Council;
- The development of a Code of Parliamentary Conduct;
- The human rights of Victoria’s citizens to be recognised as guiding principles in the Constitution.

Appraisal of proposals

1. Fixed terms

The Council and Assembly will in future expire on the Tuesday 25 days before the last Saturday in November each four year electoral cycle. But both houses may be dissolved earlier if the Assembly passes a vote of no confidence in the ‘Premier and other ministers or if the Premier, following a failure to resolve a deadlocked Bill, advises the governor to dissolve the Assembly.’ In the first instance the governor would retain the prerogative to decline a dissolution if he believed an alternative Premier could command confidence, but the second provision effectively creates a double dissolution (and joint sittings) option and has been criticised for undermining the integrity of fixed terms.

2. Council provinces

The Constitutional Commission offered four possible models of Council composition and indicated a preference for seven provinces each electing seven members. In opting for an eight by five model, the bill sets a quite high quota of 16.6 per cent which reduces the proportionality of the system. The following Table seeks (with multiple caveats and qualifications) to translate the 2002 election results into suggested new Council boundaries.

Table 1: Legislative Council—possible composition(s) by proposed eight multi-member regions

	Labor	Liberal	National	Green
Region 1				
Max no. of members	2	2	1	1
Min no. of members	2	2	0	0
Region 2				
Max no. of members	2	2	0	1
Min no. of members	2	2	0	1
Region 3				
Max no. of members	2	2	1	1
Min no. of members	2	2	0	0
Region 4				
Max no. of members	2	2	0	1
Min no. of members	2	2	0	1
Region 5				
Max no. of members	3	2	0	0
Min no. of members	3	2	0	0
Region 6				
Max no. of members	2	2	2	0
Min no. of members	2	1	1	0
Region 7				
Max no. of members	3	2	0	0
Min no. of members	3	2	0	0
Region 8				
Max no. of members	4	1	0	1
Min no. of members	3	1	0	0
Total				
Max no. of members	20	15	4	5
Min no. of members	19	14	1	2

Source: Greg Gardiner and Brian Costar, *Legislative Council Reform*, Victorian Parliamentary Library Research Paper, no. 2, March 2003, p. 4.

3. Proportional representation

Given that the Council's electoral system is neither gerrymandered nor malapportioned and is based on the same principles as those of the lower house, does it need changing? Yes because the present system exhibits some of the negative features of the 'block preferential' method used in the Senate between 1919 and 1946. Council Provinces are large, containing four times the enrolment of lower house seats. District 'magnitude' combined with STV enhances proportionality of outcomes, but when combined with single member alternative voting has the opposite effect because of the capacity of such a majoritarian system to waste votes. For example, at the 1999 Council election the ALP wasted 51 per cent of its primary vote to the Liberal Party's 31 per cent and despite

polling an average 44 per cent of the two-party preferred vote in 1992 and 1996 Labor held only 10 of the 44 Provinces (23 per cent). The boot was on the other foot in 2002 with the Liberal Party wasting 66 per cent of its primary Council vote to Labor's 14 per cent. The type of PR adopted is Senate-like in that it allows for above the line voting—thereby ruling out the Constitutional Commission's interest in Robson Rotation.

Below the line voting is by the optional preferential method.

4. *Casual vacancies*

The count-back method was rejected in favour of a variation of section 15 of the Australian Constitution, whereby the parties nominate replacements; but the replacement of Independent Councillors may prove controversial.

5. *Supply and deadlocks*

While there is general agreement that upper houses need reasonable strong powers, usually to amend general legislation, there is decidedly less consensus over the question of supply. The Victorian bill removes supply but not general legislative power and proposes a 'conference of party managers' solution to deadlocks with the proviso for a lower house dissolution or the holding over of the deadlocked bill until the next Parliament, when, if passed by the Assembly but not the Council within two months, a joint sitting may be convened. Would the power to block supply encourage a government to negotiate or might it corrode desired bipartisanship in the Resolution Committee and/or encourage opposition intransigence. The current electoral environment, rather than constitutional prescription, would probably determine that.

The two twentieth century occasions on which the Council employed the supply power to break governments were in 1947 and 1952. Both were, typically for the time, minority (Labor, and Country Party) administrations and the approximation of their defeats was representative of a particularly turbulent period in Victorian politics. The 1952 and 1955 elections ended (until 1999) minoritarianism and produced forty years of successive one-party governments. Thanks largely to the Democratic Labor Party (DLP), Henry Bolte reigned supreme in the Assembly, but was denied a stable majority in the Council until June 1970, where the Country Party, and for a time an Independent, held the 'balance of power'. While the upper house threatened supply twice (1964 and 1965), rejected 30 bills passed by the lower chamber and amended many others, Ray Wright is correct in his comment that: 'the Government's legislative program was not seriously disrupted by an ostensibly hostile Upper House.'²

In fact what developed over this period was a culture of 'negotiated legislation' qualitatively different from the gladiatorialism of earlier times. One should not be dewy-eyed over this Golden Age of Bicameralism since it was a product of *Realpolitik*. The cold fact was that Bolte did not have an upper house majority and was denied the threat of a double dissolution to secure one: he had to compromise if he wished his bills to pass. The Country Party, while a vigorous electoral opponent of the Liberal and country party (LCP), needed to temper its legislative aggression because of the conservatism of its constituency. Labor was similarly constrained by the debilitations of the Split and the persistence of the DLP. All the players could inflict wounds on each other, but there were

² Raymond Wright, *A People's Counsel; a History of the Parliament of Victoria 1856–1990*. Melbourne, Oxford University Press, 1992, p. 211.

powerful incentives not to kill. Interestingly, this cooperative culture persisted after 1970 and even into the early years of the Cain government. It was only after Labor began to unravel in the late 1980s that the upper house became hyper-aggressive.

The bicameral quietism of the Kennett years (1992–1999) was to be expected, given the large Liberal majorities and the non-consultative, *contra* Hamer and Thompson, demeanour of the Premier. The Council was relatively benign to the minority Bracks Government (1999–2002), save for the establishment of two select committees to probe alleged wrong doings, largely because Labor, controlling neither chamber, chose legislative caution over activism. Following the 2002 state election the ALP has secure and comfortable Assembly and Council majorities.

6. Entrenchment

Hitherto, Victoria has had the most flexible constitution in the Australian federation, amendable by the passage of bills by absolute majorities through both chambers. To this is to be added two forms of entrenchment:

1. referendum
2. a special three-fifths majority of the members of the Assembly and Council respectively

The following ‘core’ matters are entrenched by referendum:

- The requirement for a referendum;
- Regions, number of members and the quorum of the Council and to the President;
- Districts, duration of, quorum of and number of members of, the Assembly and to the Speaker;
- A session of Parliament each year;
- Appropriation Bills and the inability of the Council to block supply;
- Dispute resolution process for deadlocked bills;
- Local government as a distinct and essential tier of government;
- Continuance of the Supreme Court;
- Executive arm of government and the Executive Council;
- The Auditor-General, the Director of Public Prosecutions, the Ombudsman and the Electoral Commissioner as independent officers of the Parliament;
- Electoral Boundaries Commission functions; and
- Freedom of Information functions.

The following ‘procedural’ matters are entrenched by a special three-fifths majority:

- The requirement for a special majority;
- The Crown, including provisions relating to prorogation and dissolution;
- Constitution and powers of the Parliament;
- Eligibility requirements for members and voters; and
- The provision which enables a House to relieve a member from the consequences of alleged defaults (e.g. breach of the office of profit provisions).

The following matters are entrenched by an absolute majority:

- The requirement for an absolute majority;
- The membership of the Court, appointment of judges, reserve judges, judges’ and masters’ salaries, allowance and pensions etc; and

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- The jurisdiction of the Supreme Court (including the requirement for section 85 statements).

Conclusion

In arguing strongly against Dunstan's attempt in 1937 to insert a double dissolution clause in the Victorian Constitution, Clifden Eager argued that: 'the upper house differed from the lower in terms of its constituency, its perspective and its experience ... [it] did not have to be wholly representative.'³ This was an accurate account of the Legislative Council, even if it proceeded from less than democratic assumptions. Yet beginning with the adoption for the Council of universal franchise in 1950, the two chambers have come to resemble each other in almost all key respects: they are elected on the same franchise and on the same constituency boundaries drawn by a single Electoral Boundaries Commission; they both employ compulsory preferential voting; they share the same polling day; they possess, save for initiating money bills, equal legislative power; they operate, for the most part, joint parliamentary committees and all 132 members, except two Assembly Independents, represent the same three political parties in both chambers. By contrast their differences are few: the 88 Assembly members are drawn from single member districts with maximum four year terms, whereas their 44 upper house colleagues are drawn two each in staggered mode from 22 provinces with maximum eight year terms; and both chambers control their own standing orders (the latter may prove critical to any future growth of a more accountability-based culture in the Legislative Council). The current legislation seeks simultaneously to increase congruence by introducing semi-fixed four year terms for both houses and to decrease it by replacing alternative voting in the Council with multi-member based single-transferable-vote PR and removing the Council's power to reject, but not to debate, appropriation bills.

Back to the sixty-four dollar question—will it work? Time will tell, as it did for the Senate from 1949 and the NSW Legislative Council from 1978. Proportional representation alone won't achieve enhanced accountability unless the members of the reformed Council take advantage of its Standing Orders and develop a genuine culture of review.



Question — You mentioned that Jeff Kennett was fighting for the introduction of proportional representation in his party room in 1987–88. And then in 1999, I think even without much consultation with his party, he was arguing the other way. Can you fill us in on the motivating factors for Jeff Kennett on each of those occasions?

Brian Costar — By 1987, leading up to the 1988 election, the government had had four or five goes at introducing PR, and each time they got defeated. Sometimes they got defeated because the proposal was tacked on to other bills, such as removing supply and

³ Wright, *op. cit.*, p.171.

other things. But the Democrats, who were then a power in the land, put out a statement that any party in the Legislative Assembly or Legislative Council which voted against PR would not receive Democrats preferences at the next election. Now, the leadership of the

Liberal Party (including, obviously, Jeff Kennett), estimated that this was a threat worth taking seriously, and their inclination was to support the second reading bill which introduced a five by nine model—that is five constituencies, nine members. Interestingly, they were going to move an amendment to introduce a NSW whole-of-state provision. Rural Liberals, of whom there were quite a number in the party room, opposed this, (a) because they didn't want PR in the upper house, and (b) because they felt they had nothing to fear from Democrat preferences. That was one of the few times that Kennett got rolled in the party room, an hour before the debate came on. He had a speech prepared, supporting the second reading, which he had to abandon and gave instead a very brief speech, to howls of Labor interjection, as you might imagine, because they had got wind of all of this.

The second time around, I think he just misjudged it. But remember, Kennett's proposition was that it was a good thing if the government had majorities in both houses of the Parliament because they could then achieve things. In my talk I only gave a few of the anti-Senate comments that the MPs were bringing out, but Kennett used to make those comments as well: 'The Senate was a bad thing because it stopped government governing.' And that's why he really dug in. But I think he miscalculated, and that he thought that two of the more conservative Independents would go with the government. He got a bit of a shock when they didn't.

Question — I'm seeking some clarification of the electoral system. You said there would be an above-the-line option as in the Senate, and there would be optional preferential, but only for below-the-line. So, are we saying that there will not be the opportunity for voters to express preferences between parties above the line? And, with below the line, is that optional preferential or partial preferential? Presumably voters will have to indicate preferences for the number of members to be elected for that seat? And how on earth was the use of party nomination rather than count-back justified?

Brian Costar — You are right, as I understand it, on the first two questions. You are not going to have cross-over opportunities above the line. But there is a provision—and there was worry about this—to allow for Independents to be grouped and appear above the line, so that they are not as disadvantaged as they might have been if they had to sit below the line. And yes, below the line you have to nominate preferences for up to five candidates.

Regarding party nomination against count-back, it should have been more controversial than it was. I know that the media was all primed up to get involved in this debate, however other events [the war in Iraq] have overtaken it in the news. There hasn't been a reference to it in the press for a month.

The argument put was that, if you were to work on count-back—and assuming that you do get non-party people there—you might get a person other than whoever was first elected. Now I know that you can develop different sorts of count-back methods that can solve that problem. It certainly has been criticised, but not extensively. Interestingly enough, it hasn't been much criticised in the parliament. But the real problem is with Independents. We will have to look in more detail at the electoral act, but it doesn't look

clear to me to how replace an Independent is going to be replaced with another Independent. Independents by their very nature are *independent*, which means they are also independent of other Independents.

There is great debate amongst the Independent members of the parliaments of Australia as to whether they should even come together at meetings. When Susan Davies ran a meeting for independents, a number wouldn't come because they didn't want to be associated with an 'Independent Party'.

I think there is unfinished business in it, and messiness around the edges. To be honest, I think the legislation is trying to do too much. It's taking up all sorts of issues that are not necessarily related to each other. Entrenchment, as you know, has not necessarily got anything to do with proportional representation, or with fixed terms.

To be fair to the Labor Party, it's a hundred years since they've had a go at it. They've finally got control of the upper house, and there may be a bit too much enthusiasm there that might be tempered later when some of this is seen as not working out as intended. To defend the party, and the government, remember that they are potentially giving away the majority that it took them 100 years to get.

The formal leader of the Liberal Party, Denis Napthine, made a public offer to the Labor Party that the Liberals would support abolition. Apparently, that that was not just someone flying a kite, but that the Opposition had put out serious suggestions to the government that they would not be averse to voting for an abolition bill, *rather than* having a constraining accountability house. So that tells you something. I hope that isn't true.

Question — I'm from the Proportional Representation Society. On the point of the count-back provision not being taken up, and the fact that the government has taken some of the material from the Constitution Commission, I think in their haste they have actually got a situation where, if a party crumbles or if there is dispute, if someone resigns or dies from the party, they would have to be replaced by an Independent, because the legislation only sees two categories—'registered political party at the last election and continuing', and 'Independent'. And we've got plenty of examples in Australian parliaments of things happening in the middle, and it is a curiosity that the replacement mechanism in the original legislation was for an Independent for those circumstances.

Brian Costar — Go to the federal area. Once section 15 of the Constitution was changed at the 1977 referendum, we got the Steele Hall and Janine Haines case. And as you know, section 15 still doesn't, by its words, achieve what it sets out to achieve unless (as Queensland at least has done) you pass standing orders which say that the replacement senator has to be the person nominated by the party of the replacement senator. This does not, of course, cope with the Steele Hall type of situation. By the time they came around to replacing the senator, when he moved to the lower house, the party that he was elected to represent, the Liberal Movement, no longer existed. I agree with you—I think that notion of locking into registered political parties and Independents is a problem.

Question — Regarding entrenchment, do you see the possibility of any ‘fear and loathing’ campaign being whipped up by various people unhappy with aspects of the entrenchment provisions—which presumably have to go to the people—and the possibility of those actually being defeated?

Brian Costar — No, the interesting thing is that it’s the standard double entrenchment provision. The entrenchment will be final when the Governor signs it. The requirement for the entrenchment does not have to go to the people. But the requirement to *un*-entrench it does have to go to the people. So it’s entrenchment by legislative action alone.

One of the things that I thought was an unintended consequence, going way back to 1931, was that the then-Queensland Government—facing electoral defeat—came up with the novel idea of extending the life of the existing Parliament. Now this was not well-received. There was an election, the government was defeated, and the Labor Party came back into power. And what did it do in about 1935? It entrenched three-year parliaments in the Constitution. Everyone forgot about that.

Now move to the early 1990s. Premier Goss and others think it is probably a good idea for Queensland to go the way of many other states and have four-year parliaments. Well, we had to have a referendum—and guess what happened to the referendum? It got defeated. As you know, opposition parties find it very difficult to resist the temptation to oppose referendums, even though they support them. That’s what happened, and it got beaten.

Now it seemed to me in 1991, that no-one had imagined in 1931 that there would be a notion that we would like to increase the life of the Parliament. This was one party trying to prevent another party getting up to mischief. But, umpteen years down the track, it’s still sitting there and when someone wants to introduce what might be seen as a bipartisan, uncontroversial change, it founders because of an entrenchment that was introduced for quite different reasons years before. As you can see, I’m no great fan of that sort of entrenchment.

Question — In 1891 in New Zealand they introduced a bill in almost identical terms to this one. The idea was to put some democracy into their Constitution. They had eight electorates, five members, proportional representation and all that stuff. The New Zealanders didn’t proceed with the bill, but 50 years later, still searching for a bit of democracy, they abolished their Council. Are you aware that in 1937 Albert Dunstan in the Victorian Parliament said that: ‘The plain fact of the matter is that in a modern democracy a legislature with two chambers of virtually co-ordinate powers is an open menace to any democratic form of government’? I know you have mentioned shifting out the right of supply. I don’t regard that as being the big issue, the government is there to govern. But what about its other legislation—is that just to be stopped?

Incidentally I don’t agree with your figure of 19 or 20—I say the highest Labor could ever get would be about 18, unless there is a provision in the proportional representation that no preferences shall go to any candidate who does not have five per cent of the primary vote—because the problem is that the major parties put their preferences down to the Pauline Hansons and all those sorts of people, and they bring them up. And often they have got very few votes. Have a look at the disgraceful show in the New South Wales

Legislative Assembly, with its six or seven parties. And in addition, this idea of one parliament tying another parliament up—are you aware of the disgraceful case of the Attorney-General against Trethowan? That was a shocking case. But you are doing the same thing here, and you are doing it in your legislation. I'm not in favour of a lot of the bills.

Brian Costar — Yes, I do remember reading about Albert Dunstan saying that. What he was trying to do was introduce a double dissolution provision, and it failed. It is quite intriguing in Victorian politics that two of the big attempts—one successful, one a failure—to change the upper house were introduced by the Country Party. One was double dissolution, which failed, and the other was universal franchise, which succeeded.

On the issue of where we are in this debate, one of the things I found in researching this was that—and I hope we exempt the current changes, but at least up *until* the current changes—the whole motivation for 'reforming' the upper house has been to reduce its powers—to make it more like the lower house on grounds of democracy, but to extensively to reduce its powers. If you reduce its powers right down, you get to the other side of the Dunstan conundrum, which is—why have it? Now what *hasn't* happened in the debate historically is conceiving of the Chamber as having a different function. And that's interesting, because it was in the brief that the government gave the Constitutional Commission, it's in the report of the Constitutional Commission, but there's not much evidence of it in the Act. And there was very little of it in the debates. The debates were either the Labor Party saying, 'this will finally democratise the Council, and bring it up to date', and the other side saying, 'this is just a Labor con to control the Council and to cut the representation of rural Victoria.' There were no arguments about how we might go forward on this. Now, we can be either optimistic or pessimistic—I'll choose at this late hour to be optimistic.

Question — With many of their powers now blunted, what is the role of upper houses in the states? Do you have any comment on the argument that the Labor Party, through these amendments, has acted against its short-term political interests?

Brian Costar — On the first question—and I'm just talking about Victoria—it's up to Victoria's upper house to determine what role it wants. It has got the standing orders—as former Council President Bruce Chamberlain always pointed out—so the Parliament will decide. It is up to them, as it was up to the Senate—it didn't happen automatically. Regarding your second question—the answer is maybe yes. But remember, Labor got that majority in the upper house by achieving the biggest landslide, not only that *it's* ever achieved, but since I think Bolte in 1967. Could Labor do it again? In other words, could they defend that upper house majority? History says no. Maybe they've made the calculation that they have four years, and after that they would probably lose it again. But isn't it interesting—if it's true—that the Liberal Party put out feelers to support abolition? And apparently it was not just a backbencher making a throw-away remark, there were serious suggestions made.

Question — Regarding abolition, you have the precedent in Queensland. Why doesn't the Labor Party in Victoria follow that achievement in getting rid of the upper house?

Brian Costar — Well, until this legislation passed they could have easily abolished it just by passing legislation through both houses. I don't support that. It may well be my jaundiced background as a former Queenslander, but we don't want to be too black-and-white about this. It's quite clear that unicameral parliaments can and do work, but it's also clear that bicameral ones can work too. It's all a question of the relationship. I think you have to split the functions. When you blur the functions, you can get into all the problems that that brings.