

# Senate Legal and Constitutional Affairs Reference Committee

**Dr Scott Prasser**

**Question Date:** 1 February 2024

**Senator Paul Scarr asked the following question:**

At the public hearing for the COVID-19 Royal Commission inquiry on 1 February 2024, Senator Paul Scarr asked you to consider the emergency laws and specifically the report of the Delegated Legislation Committee regarding the Biosecurity Act 2015.

**The response to the question is as follows:**

The fundamental question is who is superior-the Parliament or Executive Government?

Any democrat would surely argue that supremacy must rest in the Parliament -the body that represents the will of the people from which all principles of government spring.

Executive Government should always be subject to the Parliament, which subject to the relevant Constitution, is that body from which Executive Government is formed.

Executive Government is subject to the Law And The Parliament otherwise it is a dictatorship. The inability of Parliament to scrutinise executive action in the case of Covid or any other issue is a fundamental breach of democratic principles.

In relation to royal commissions giving advice on parliament concerning to oversight of executive government there have been examples where commissions have made recommendations in this area. .

The 1989 Qld Fitzgerald Commission although into police corruption made several findings and recommendations concerning the functioning of Westminster parliamentary democracy in that state and how many of the state's problems could be traced to its weak parliamentary system (See Chapter 3, pp123-4 ff). It commented on the lack of Qld's parliamentary committees. The Commission also recommended the form of the parliamentary committee that should oversight the proposed Criminal Justice Commission (now the Crime & Corruption Commission).

Other state royal commissions into scandals have also made recommendations for improved parliamentary scrutiny of executive government actions as well as proposing new institutions like anti-corruption bodies.

So, the ToR of any RC might include "a review to ensure parliamentary oversight arrangements are maintained and where needed, strengthened during times of crisis"

Or something more general " review of the relevant legislation affecting government decision making and processes in relation to parliamentary accountability"

Trust this helps.

Scott