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MINISTER FOR PARLIAMENTARY AND ELECTORAL REFORM

RESOLUTION OF PARLIAMENTARY DISAGREEMENTS BILL

(Background and Summary)

Parliamentary Library,
Parliament House,
P.O. Box 6400, W.A. 6000.

Presented to Parliament
Spring, 1985

RESOLUTION OF PARLIAMENTARY DISAGREEMENTS

SEPTEMBER 1985

MINISTER FOR PARLIAMENTARY AND ELECTORAL REFORM

Introduction:

In the 1985 Spring session of Parliament the Minister for Parliamentary and Electoral Reform will be presenting a Bill to establish arrangements for the resolution of parliamentary disagreements. These notes have been prepared to provide some background and explanation which is essential for informed debate on a Bill which is an important constitutional reform.

Current Situation

No Laws for the Resolution of Deadlocks:

The term "deadlock" is used to describe a situation where the two Houses of Parliament cannot agree with one another and therefore no law can be passed. Western Australia has no constitutional arrangements for the resolution of parliamentary deadlocks but, with the exception of Tasmania, such provisions exist in all other States and in the Australian Constitution.

Our State Constitution was assented to by Queen Victoria and was modelled in the nineteenth century on the British Westminster system as it existed at that time. While the Westminster system adopted deadlock resolution mechanisms in 1911 and 1949 our State Constitution remains much the same as it was in 1890.

Conferences of Managers

At present in Western Australia some formal arrangements for the discussion of disagreements over amendments to Bills do exist (see page 5). Each House may appoint members to a Conference of Managers which may agree on a solution which may be adopted by both Houses. It is easy to see how any stubbornness could and has made this process a hollow ritual. In any event it only applies in the case of a deadlock over proposed amendments. If one House repeatedly rejects or refuses to consider a Bill there is no way of resolving the conflict between the Houses.

Patterns in Legislative Council Activity

History shows that the frequency of disagreements between the Houses of Parliament rises and falls depending upon which political party is in government. The number of amendments and Conferences of Managers both follow a rise and fall pattern similar to the record of the number of rejected Bills set out below.

NUMBER OF BILLS REJECTED BY THE
W.A. LEGISLATIVE COUNCIL

<u>GOVERNMENT</u>	<u>PARTY</u>	<u>TERM OF OFFICE (YEARS)</u>	<u>NUMBER OF REJECTED BILLS</u>
HAWKE	ALP	6 (1953-1959)	20
BRAND	LIB	12 (1959-1971)	1
TONKIN	ALP	3 (1971-1974)	21
COURT/O'CONNOR	LIB	9 (1974-1983)	NIL
BURKE	ALP	2 (1983-)	8

Data compiled June 1985

The WA Legislative Council is one of the most powerful second chambers of Parliament in the Commonwealth because it can reject any Bill and cannot be dissolved. (see also page 6) It is the combination of this great power with the fact that the Australian Labor Party has never in the entire history of the State ever held a majority in the Legislative Council that together result in the clear bias in the statistics above.

One of the factors that have allowed the Legislative Council to be used as a political tool is malapportionment where selected electorates have much lower enrolments than others. It is possible, with malapportionment for the representatives of the minority to impose their will as the division figures on the defeat of the Parliament Bill in the Legislative Council show.

Defeat of the 1983 Parliament Bill

Ayes = 12 representing 44.6% of electors
Noes = 18 representing 39.1% of electors
(30 out of 34 voted)

A Proper Role for the Legislative Council

Reasons given for having a second House of Parliament include the following functions designed to maintain an overview of the Parliamentary, executive and administrative behaviour of Government.

- * Review legislation brought from the Legislative Assembly.
- * Initiate Bills dealing with subjects of a non-controversial character.
- * Reveal to the public areas of dissatisfaction and represent the views of those who will be affected by proposed laws and actions.

- * Cause a delay in which public opinion has an opportunity to express itself especially where the proposals are seen as hasty, faulty or discriminatory.
- * Scrutinise, review and criticise public appropriation and expenditure.
- * Examine and report on the operation of State instrumentalities.
- * Inquire into and report on specific problems which arise from time to time.
- * Maintain the right to gain access and information necessary for the performance of all these functions.

The WA Legislative Council has not performed many of these functions and it is only now moving to establish a sound committee system.

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Holding powers in excess of the Legislative Assembly and of most other second Houses of Parliament has distracted the Legislative Council from the performance of its proper role. Its extraordinary powers are not necessary for it to play its part and this claim is backed up by experience elsewhere. The House of Lords in Britain has only the delaying power of a suspensory veto. The Australian Senate can be made accountable at an election for its actions and this is the situation which applies in New South Wales, Victoria and South Australia. Queensland does not even have a second House of Parliament.

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Democratic government requires that the initiatives of a Government should not be rejected by a second House of Parliament which is not accountable to voters for its actions.

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Rejection of the Parliament Bill

In November 1983 the Legislative Council rejected the Acts Amendment (Parliament) Bill. This was a proposal for a method of resolving deadlocks which involved the Legislative Council losing power over all money Bills and for deadlocks over other Bills to be resolved by either a double dissolution or a referendum. After a double dissolution the wish of the Legislative Assembly would have prevailed.

Royal Commission

The outright rejection of the Parliament Bill was accompanied by frequent demands for consultation made by the Opposition. In response the Government appointed Professor Eric Edwards as a Royal Commission in July 1984 to inquire into whether the State should have laws for the resolution of parliamentary deadlocks and if so, what these should be.

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The President of the Legislative Council and the Opposition refused to participate in the Royal Commission inquiry. Alternative terms of reference suggested by the Leader of the Opposition were considered by the Royal Commissioner who indicated that if the alternative terms of reference had applied, he would in effect have given the same answers as he did in his report.

In February 1985 the Royal Commission reported that there was a need for means to resolve parliamentary deadlocks and made two recommendations, the effect of which was as follows:

(a) Money Bills:

In relation to Supply Bills, the Legislative Council to have a one month suspensory veto along the lines of Section 5A of the Constitution Act of NSW. (See page 6 explanation.)

Even if there is a delay of one month the ability of a Government to secure appropriation for ordinary annual services (ie. meet normal expenses) ensures that the Legislative Council cannot cause the Legislative Assembly to be dissolved as is possible under the present Constitution.

Since the Legislative Assembly cannot cause the Legislative Council to be dissolved, this recommendation creates balance between the powers of the Houses.

(b) Other Bills:

Deadlocks arising over all Bills other than those dealing with ordinary annual services should be resolved by a method based on the double dissolution and joint sitting mechanism of the Australian Constitution except that only three months should be permitted between the emergence of a deadlock and the calling of the resultant election. (See page 7 explanation.)

This recommendation recognizes the Legislative Council as an equal part of the Parliament. At no stage may a law be passed without the involvement of the Legislative Council (except on ordinary annual services). The Legislative Council and Legislative Assembly must each play their part for a deadlock to emerge and each is involved in the subsequent election and joint sitting.

The ultimate decision making responsibility is placed with the voters. Accountability is created.

Compromise

Professor Edwards received submissions representing the full spectrum of opinion from complete abolition of the Legislative Council through to no change at all despite the fact that the Opposition refused to participate. His proposals represent a compromise position.

Unlike the Government's 1983 Parliament Bill which allowed the Legislative Council to eventually be by-passed, Professor Edwards has recommended that extensive power be retained by the Legislative Council which remains equal to the Legislative Assembly in all matters except the granting of Supply.

The recommendations are an improvement on the present situation.

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Government Response
Referendum

Legislation which closely follows the compromise recommendations of the Royal Commission will be debated in the 1985 Spring session of Parliament.

The Acts Amendment (Resolution of Parliamentary Disagreements) Bill is unusual in that a referendum is involved. If Parliament approves the Bill, it is planned to run the referendum seeking the approval of the electors in conjunction with the 1986 State election.

Summary of the main provisions of the Bill compared with
the existing Constitution (Explanatory material in brackets)

Present
W.A. Constitution

Proposed
Resolution of Parliamentary
Disagreements Bill

Conference of Managers
Discussion of disagreements between the Houses

Under the State Constitution the Legislative Assembly and the Legislative Council have adopted Standing Orders which allow each House to send members to a Conference of Managers. (Standing Orders of the Houses are made possible by the Constitution but they are not a part of it and they are adopted by the two Houses of Parliament independently of one another. In contrast with other States, if a Conference fails to reach agreement the deadlock remains unresolved. A conference does not even take place where one House repeatedly rejects or refuses to consider a Bill.)

No change is proposed to these arrangements.

(A Conference is entered voluntarily by each House and the decision of a Conference is not binding on either House. It is really a formal arrangement to permit the discussion of disagreements in an attempt to find some workable solution.)

(Formal arrangements for the full discussion of disagreements are just as important whether there are or are not Constitutional provisions for the resolution of deadlocks between the Houses. Parliaments elsewhere have both arrangements for discussion as well as deadlock resolution mechanisms.)

Present
W.A. Constitution

Proposal
1985 Resolution of Disagreements Bi

Money Bills

Money Bills include Loan Bills, Bills imposing taxation and Bills for ordinary annual services of the Government.

The Legislative Council may not originate or amend money Bills but it may make requests for the Assembly to make amendments which do not increase any proposed charge or burden on the people.

No change

The Legislative Council may defer, reject or otherwise fail to pass any money Bill.

The Legislative Council retains these powers but with modifications to ensure more accountability.

(If the Legislative Council does not pass Bills appropriating money for the ordinary annual services of the Government, the Government would be forced to resign and this would most probably bring about an election. However only the Legislative Assembly would be affected because the Legislative Council cannot be dissolved. In other words, the Legislative Assembly alone can be forced to face an election by members of the Legislative Council who continue in office protected by the security of fixed six year terms.)

If the Legislative Council has rejected, made requests for unacceptable amendments or after a period of one month, has failed to pass a Bill for ordinary annual services of the Government, the Legislative Assembly may ask the Governor to assent to the Bill without the approval of the Legislative Council. (The Legislative Council loses the power to block supply and thereby indirectly force the Assembly to face an election. This is the situation in Section 5A of the NSW Constitution.)

If the Legislative Council fails to pass a money Bill other than a Bill for ordinary annual services, this problem would be dealt with in the same way as a deadlock which arose over Bills generally - (see the Section on Other Bills)

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Present

Proposed

Other Bills

The Legislative Council may amend, defer, reject or otherwise fail to pass any Bill which is not a money Bill.

These powers are retained by the Legislative Council but with modifications to ensure more accountability.

(If the Legislative Council fails to pass a Bill, even after a Conference of Managers, there is nothing that the Legislative Assembly can do except to try again at a later time or accept the defeat. Western Australia has no constitutional mechanisms for the resolution of parliamentary deadlocks.)

If the Legislative Council rejects, unacceptably amends or fails to pass a Bill proposed by the Legislative Assembly on two occasions at least 3 months apart, the Governor may dissolve both Houses of Parliament.

The decision to dissolve the whole Parliament must be made within three months of the emergence of a deadlock but may not take place within six months before the date of expiry of the term of the Legislative Assembly.

If after the resultant election the Legislative Council again rejects, unacceptably amends or fails to pass the Bill or Bills that caused the deadlock, the Governor may call a joint sitting of both Houses where the dispute would be finally decided one way or the other by all of the members meeting in one place. Both Houses are involved in every stage of the resolution.

(The proposal is modelled on S57 of the Australian Constitution and could apply to all Bills including proposed constitutional change. By insisting on its point of view, either House can bring about a deadlock.)

Present

Proposed

Terms of Parliament

The term of the Legislative Assembly is approximately 3 years but it may be dissolved and an election held earlier.

No Change

At each election half of the Members of the Legislative Council are elected for fixed six year terms and the Legislative Council cannot be dissolved.

Members of the Legislative Council will be elected for six year terms but if a deadlock arose the Legislative Council could be dissolved and an election held earlier.

If there was a double dissolution there would be two separate Legislative Council elections. Half of the members would be elected for terms based on six years and half for terms based on three years. These terms will be reduced or extended so as to expire on a 21 May. This means that subsequent elections will be held early in each third year as at present.

Conclusion:

Regardless of which political party people generally support there is a widespread acceptance of the value of an effective second chamber of Parliament which will act as an even handed House of Review. When that second chamber of Parliament is virtually equal in power with the Government as is proposed in this paper, there are bound to be times when deadlocks occur and then the decision should be handed to the voters.

The Constitution requires that this important reform is passed at a referendum which supports the wish of the Government to ensure that the Bill does have public support.

Our 95 year old Constitution does not compare well with other States or the Australian Constitution on the matter of deadlock resolution provisions. The proposed Resolution of Parliamentary Disagreements Bill will reform our State Constitution to create a Parliament accountable for its actions in accordance with modern constitutional ideas.

For further information please contact the office of the Minister for Parliamentary and Electoral Reform.

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