

House of Assembly Restoration Bill: Select Committee

Submission by Emeritus Professor P. J. Boyce AO

Public concern about the constraints imposed on the Tasmanian polity by the very small size of its lower house of Parliament have been expressed regularly since the 1998 legislation which stripped membership of the Assembly from 35 to 25, and more particularly in the wake of scandal in ministerial ranks since the 2018 state election. The combination of a small bicameral legislature and a voting system of proportional representation ensures that polls will normally be won by only small margins. In Westminster systems a long-standing norm has been that the appointed ministry should represent approximately one third of the governing party's membership in the legislature. This ratio can be maintained in most large parliaments but never in Tasmania.

The negative consequences of a shrunken House of Assembly are at least four-fold: (1) the limited pool of talent for recruitment of a cabinet, (2) the near absence of a back bench to monitor government performance and undertake committee responsibilities, (3) increased reliance on ministerial aides or "minders", and (4) reduced opportunities to negotiate effectively with Commonwealth and other state governments via the processes of Australian federalism. Although it might be naïve to expect a serving premier to publicly concede that the talent at the tail-end of a back-bench is less than inspiring, it is a matter of fact, not mere opinion, that the choice is limited. Perhaps Government could be spared some embarrassment by an acknowledgment of public perceptions that the quality of governance may have suffered.

The paucity of back-benchers to serve on parliamentary committees is not perhaps as dramatically obvious to the broader community as the difficulty of filling a ministry, but it is certainly a cause for worry for both government and opposition. It is not unknown for a single member to be drafted to eight committees. A small cabinet, with responsibilities ranging over an ever wider number of policy areas, also restricts ministerial contact with departmental staff. A submission by the Community and Public Sector Union to the 2010 review

claimed that ministerial staff sometimes represent their minister in important face to face meetings with public servants.

It is doubtful whether the Tasmanian community fully appreciate the extent of the burden placed on state government by the federal system. They will be conscious of the generous allocation of senators by the 1901 federal constitution but probably slow to acknowledge that this generous representation can only infrequently assist the governance of Tasmania. Preparing for federal-state ministerial Council meetings and the drafting of competitive bids for Commonwealth funds requires a concentration of minds and collective deliberation not readily available in hard-worked ministerial offices shared among several portfolios. Reports of failed opportunities to bid successfully for Commonwealth infrastructure funds may be largely anecdotal, but such claims can gain credence in their repeated telling.

It needs to be stressed that although government has commissioned three inquiries into the size of parliament since 1982, none of them recommended any diminution of membership for the lower house, though one report examined the possibility of merging the Legislative Council with the Assembly. The 2010 review undertaken by the present writer at the invitation of the three party leaders was intended to investigate whether the level of public interest had changed materially since the inquiries of the 1980s and '90s. Public responses, though relatively few in number, were overwhelmingly in favour of restoring the Assembly to a membership of thirty-five. Unfortunately both Liberal and Labor Party leaders lost any enthusiasm for change between their commissioning of the report and its presentation before the end of 2010. The then Opposition leader, Will Hodgman, declined to give an explanation for his apparent change of heart but did state publicly that expanded membership would cost too much. The Premier, Lara Giddings, had not been Labor party leader at the time of the commissioning of the review, but it seems likely that suspicion of the Greens continued to inhibit Labor from championing reform.

Arguments against restoration to thirty-five: members:

If responses to the 2010 survey are any guide, the two most regular arguments against any increase to the size of parliament are (a) that the state is already “over governed” and (b) that an increase would incur an unjustifiable ongoing expense.

The claim of over government should be laid to rest. The critics are obviously referring to “over representation”, not over government, since government is no larger, more intrusive or more manifest in Tasmania than in any other Australian state, and seventeen of Tasmania’s fifty-seven parliamentarians are not involved in the governance of this state at all, they being paid from the Commonwealth purse. Furthermore, in democratic theory the higher the ratio of parliamentarians to electors the more democratic the polity. It would seem that those critics maintaining that we are over-governed have failed to fully appreciate that all states in the Australian federation must accept responsibility for a range of services in accordance with the division of powers enumerated in the constitution, Tasmania no less than New South Wales. Issues of regional disadvantage can be at least partially corrected by the Commonwealth Grants Commission’s regular reviews.

With regard to the issue of costs, the expense of restoring ten members to the Assembly (estimated in 2010 at just over \$3 million annually), improvement of the quality of governance would be well worth the increased outlay. Unfortunately public opinion might not be easily swayed by this argument without the citing of specific examples of failed or weakened governance, and public discussion of specific case studies can quickly plunge ostensibly objective analysis into heated partisan argument.

In the search for ministerial talent beyond the House of Assembly both Labor and Liberal-led governments have resorted to recruitment in the Legislative Council. Labor appointed two treasurers from the Council and Premier Hodgman appointed an attorney general. Regardless of their respective skills, the appointment of senior ministers from the purported house of review represents

a serious compromise of a core Westminster principle, which requires government to be won or lost in the lower house.

A second stated alternative to the exhaustion of ministerial talent is a heavier reliance on non public service ministerial staff or “minders”. The expansion of this source of recruitment is clearly and often negatively registered on the public mind. Most responses to the 2010 survey offered harsh comment on this development, claiming that it severely weakened public accountability. The ranks of non -public service ministerial staff have certainly swelled in most Australian state jurisdictions in recent years. Submissions to the 2010 review were generally critical of the increased reliance of ministers on minders drawn from outside the public service, the prevailing opinion being that they were unaccountable. Premier Lara Giddings rejected this assertion, with a stern reminder that ministers themselves were accountable. Certainly the general public should be able to access the numbers and names of ministerial staff.

Small parliaments elsewhere

Although one can identify several liberal democratic parliamentary systems around the world sustaining very small legislatures, not one of them faces the narrow choices in recruitment of ministers faced by Tasmania. The reason is very simple.

The legislature most comparable with Tasmania’s House of Assembly is that of Newfoundland and Labrador, whose population is just above 500,000. The Newfoundland Assembly hosts forty members, who are elected for four-year terms by the first-past-the post voting system. The absence of proportional representation or preferential voting, couple with a tradition of fluctuating popular support for the major parties, ensures that the majority party usually wins a handsome majority of seats. In the current Newfoundland government the ruling Liberals command twenty-eight of the province’s forty seats, ten of which must be filled by ministers.

In Prince Edward Island, Canada's smallest province, Liberals currently hold sixteen of the legislature's twenty-seven seats, with cabinet confined to ten ministries.

Iceland contains a population smaller than Tasmania's (some 350,000), but because it is a sovereign state its government must leave room for ministries of foreign affairs, defence and trade. Its parliament, the world's oldest, seats sixty-three members, ten of whom will form the ministry. Parliament is elected by proportional representation from six electorates.

American states with small legislatures (Vermont and the two Dakotas for example) do not invite comparison with the Tasmanian legislative predicament because cabinet is not drawn from the state legislature in the United States.

Public opinion

Sections of the Tasmanian public, perhaps a majority, would probably doubt the wisdom of restoring the Assembly to a membership of thirty-five, but public support would almost certainly strengthen rapidly if the three political parties could stand united on the proposal. Without inter-party agreement, the scope for partisan interests to dominate any public discussion would be overpowering. This reviewer dare not venture any discussion of the historical antagonism between the two major parties and the Greens, but he takes the liberty of emphasizing to the Select Committee that inter-party collaboration involving the Greens has enabled minority governments to flourish in several northern European political systems over many decades, including Germany and the three Scandinavian monarchies.

Support for a restoration of pre-1998 Assembly membership hails from several federal members of parliament and from the retiring president of the Tasmanian Legislative Council. The Liberal premier who negotiated the 1998 agreement with Labor in 1998 continues to defend his 1998 initiative. A sizeable section of

the Tasmanian commentariat vigorously endorses the restoration proposal, and the editorial policy of *The Mercury* newspaper is likely to be sympathetic.

Recommendation

This reviewer warmly endorses the proposed bill and hopes that cross-party magnanimity might take precedence over entrenched partisan self-interest, however naïve such wishful thinking. On the other hand, I do not argue for yet another public inquiry, as one prominent Liberal has apparently recommended. The state has commissioned enough inquiries into the size of parliament, and several of the best informed contributors to recent reviews have exhausted their enthusiasm (in having to repeat their presentations to no avail). Any further public inquiry should focus on the machinery and process for implementing change (including the implications for the Legislative Council), not the principle itself. Finally, if the bill progresses, consideration should be given to entrenching the legislation, to prevent it again becoming a plaything of conspiring political parties. Any further alteration of the size of parliament should require support from a two-thirds majority in both chambers of the Tasmanian legislature.

Peter Boyce.

(Adjunct Professor,
Politics and International Relations Program,
University of Tasmania).

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