

Order in the (Upper) House

I like having an Upper House in our Parliament. In Tasmania we call it the “Legislative Council” (or if you’re a governance geek like me, the “Leg-Co”) and like pretty much every other bicameral democracy laws only become laws if they pass through the two houses of parliament.



Usually the Lower House (in Tasmania this is called the “House of Assembly”) in a parliament is about each member representing a different area. Usually the Upper House in a parliament is about structural representation (of states or other entities). Usually it is the Lower House that is all about the party politics, and it is the majority in the Lower House that forms government.

In Tasmania we’re a bit weird. Our Lower House has the structural representation – five members for each electorate – and the Upper House has the “one rep for one region” framework. But it actually works pretty well – the party politics is by and large confined to the Lower House, and the Upper House is reasonably independent. In Tasmania where people tend to know each other, and where there is quite a restricted spending limit on LegCo candidates, that independence is reasonably well protected.

What it means is that our Legislative Council actually does its job, by and large. It is a good “House of Review.”

A good upper house acts like a shock absorber to the system.

Governments come and governments go and with that can come some quite volatile changes. A good upper house reduces that volatility. Extreme or unworkable laws are either fixed or rejected and the government in the lower house is forced to do its job properly.

I like that. In the last little while in Tasmania our Upper

House has rejected insensitive unconstitutional law such as Same-Sex Marriage, and has attempted to fix the mess that is our government's so-called "Forestry Peace Deal." Sometime in the next few months it will consider an unconscionable and unnecessary abortion law that was recently rushed through the Lower House by some extremist private members and their gutless colleagues – but more about that in a minute.

Some people don't like having an Upper House. They feel like it gets in the way of reform. I can understand that. In certain areas I'm a reformer myself and I can feel the frustration.

But that doesn't mean that an Upper House is a bad idea. It actually keeps the reformer honest. Because Upper Houses tend to move slower, with less volatility, they require reformers to actually get out there, change hearts and minds, and see it through until that change is reflected in the Upper House itself. This is good because reform that rests on nothing but ramming something through a vote in one house is not reform, its just imposition.

It is a necessary instrument. Sometimes its wrong. But you know the adage about the law – "It is better to let nine guilty men free than to convict one innocent man"? Something similar applies here – I would rather have nine good reforms delayed a bit in order to get some sound arguments, than let one harmful destructive reform go through on the whim of one house.

But, back to the current issue. Some time around June the Upper House will consider the Bill that passed the Lower House two days ago. And, assuming that the GetUp party (aka The Greens) doesn't get their candidates up, all members of the LegCo will give it a thorough analysis and review.

What they will not be interested in are extremist slogans from either side (yes, they are on both sides!). What they will be

considering is whether or not it is Bad Law. Yes, they will ask whether the aim of the Bill is good. But they will also consider whether the Bill achieves that aim, and what the side-effects of the Bill are.

The fact is this Reproductive Health (Access to Terminations) Bill is Bad Law. Even if you think that abortion is fundamentally OK (which I don't), it is Bad Law. Even if you wouldn't necessarily be unhappy to see abortions regulated outside of the Criminal Code (my position), it is Bad Law. And of course, if you absolutely disagree with abortion in every circumstance, it is Bad Law. In conclusion, it is Bad Law.

We citizens must interact with the members of the LegCo, respecting them as our Upper House. Slapping them with tirades won't work. Rather, we should be politely explaining why absolutely eliminating any notion of the rights of the child in law is a bad idea. And we should explain that the apparent aim of the Bill (decriminalisation) can be achieved without infringing on the freedom of conscience and civil liberties of medical practitioners and a whole swathe of ordinary people.

You see, when an intransigent and arrogant government fails to do its reforming work properly and sensitively, we have an Upper House to hold them to account.

I like having an Upper House.