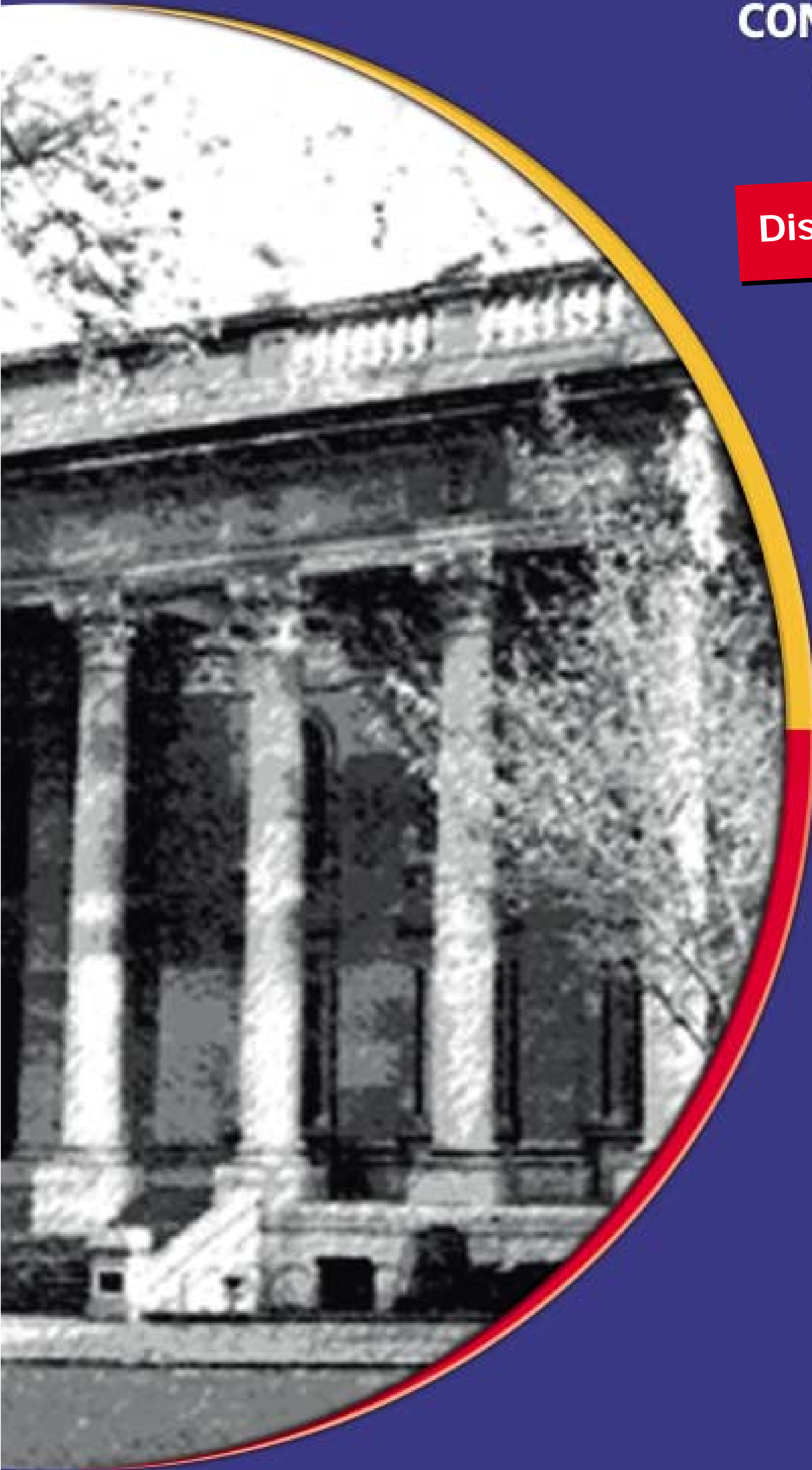

CONSTITUTIONAL CONVENTION

Discussion Paper

Constitutional Convention

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To the people of South Australia

The South Australian Parliament has been responsive and relevant to the community from the very early days of South Australia's history. The Parliament has embraced reform when it has been necessary to improve the life of the South Australian community.

As part of the Compact for Good Government, a Constitutional Convention will be held to consider constitutional and parliamentary reform.

The Constitutional Convention Parliamentary Steering Committee formulated five questions on constitutional and parliamentary issues and they appointed the Panel of Experts to write a Discussion Paper on the issues these questions raise for South Australia.

A series of meetings in country centres and metropolitan Adelaide will be held in February and March this year at which all the issues identified in the Discussion Paper will be discussed and debated.

It is planned that the Constitutional Convention will be held in Adelaide in June 2003.

Why do we need to review our Constitution? Well, the Constitution was drafted in the 1850s. It is based on the structure and powers of the English Parliamentary system. Like any legislation, it is necessary to review the Constitution from time to time to ensure it is still relevant to South Australians living in modern times.

The Constitutional Convention will also raise public awareness and understanding of our Constitution and Parliament. Greater public awareness can only improve the accountability of Parliament and government to the people.

I invite you to join in the debates to follow and help make history happen.

Peter.

Peter Lewis
Chairman and Convenor
Constitutional Convention

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Foreword from the Panel of Experts

This Discussion Paper has been prepared in response to an invitation from the South Australian Constitutional Convention Parliamentary Steering Committee to write a Discussion Paper on the topics to be considered at the Constitutional Convention to be held in June 2003.

The Paper is intended to identify issues and to put forward abridged arguments for and against each of the propositions identified in each of the five questions referred to the Panel by the Parliamentary Steering Committee.

In preparing the Paper, the Panel has been conscious that its task was not to make recommendations, but rather to explore the issues behind the questions, outline some possible changes that have been proposed, offer some brief cases for and against proposed change and make an assessment of the possible consequences of any changes. Accordingly, this Paper does not offer opinions on whether or not particular change should be introduced. It simply summarises and presents some of the arguments relating to proposed changes that have been circulated.

The Paper is divided into six sections. There is a brief introduction that explains the current arrangements of the parliamentary system and political processes that operate in South Australia. This is followed by five sections that deal with each of the five questions referred to the Panel. Necessarily, some of the responses have implications for more than one question but, as far as possible, the answers have been written in a way that each will be 'self-contained' so that readers will be able to concentrate on those questions that interest them most. Specific terms are defined in a list of definitions at the end of the Paper.

The opportunity to review the Constitution seldom occurs and South Australians should welcome and embrace this chance. There is much in our political and parliamentary processes that works well but, equally, there are some aspects that it is appropriate to examine and, if a change for the better can be substantiated, then seek to effect that change.

Above all, we should recognise that there should not be change simply for the sake of change and that, before embarking on the process of change, we need to undertake a detailed consideration of any possible changes and their consequences.

The Panel was first briefed on its task on 4 November 2002. To meet the schedule set by the Parliamentary Steering Committee, the Panel has worked to a tight timetable and this has meant that its coverage of some of the complex matters relevant to constitutional and parliamentary reform is limited. Accordingly, the Paper is confined to a brief introduction to the questions and is intended to stimulate a productive debate about them. With further time, the Panel would have expanded the Paper to cover a wider range of issues relevant to the five questions.

We have appreciated the honour and the responsibility of serving as members of the Panel of Experts, and hope that the Paper will be of assistance to the citizens of South Australia.

Dr Clement Macintyre
Chairperson

The Panel of Experts

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Constitutional Convention 2003

Introduction

Any productive discussion of Constitutional change should proceed from a basic understanding of the present Constitutional arrangements in South Australia. This introduction is aimed at providing the reader with that basic understanding.

Australia has three levels of government: Commonwealth, State and Local. The division of power between the Commonwealth (federal) and the States is a constitutional structure called a federation. This division is established by a written document, the *Constitution of the Commonwealth.*

South Australia has had self-government in most internal matters from 1842 and has had a form of elected self-government since 1851 and responsible government since 1857. When the Australian colonies were federated in 1901, South Australia became a State of the Australian Commonwealth.

Like the Commonwealth, the State of South Australia is a representative democracy with a parliamentary system of government. In a representative democracy, the law-making functions are carried out by representatives chosen by citizens at elections.

One of the main characteristics of a parliamentary system is the concept of responsible government. This means that the Government is accountable (or answerable) to the Parliament for its actions. Parliament ensures the Government is made accountable to the people by monitoring and scrutinising its activities. The Parliament is, in turn, accountable to citizens at periodic general elections.

The Parliament

The South Australian Parliament is composed of the House of Assembly (the 'Lower House') and the Legislative Council (the 'Upper House').

The Parliament has several key roles. These include:

- making or amending laws called 'Acts' or 'statutes' or 'legislation';
- scrutinising and monitoring the actions of government; and
- providing a public forum for discussion by Members of Parliament of matters of public importance.

The Executive Government

The executive is composed of the Governor (who is the representative of the Queen of Australia), the Premier and other ministers and the public service. The Governor is Head of State but the Premier and Ministers have responsibility for administering the laws of South Australia, developing policy and delivering government services. In broad terms, it is the Parliament that makes the laws, whereas, it is the executive that makes the day-to-day decisions.

The Governor

Because South Australia is a Constitutional Monarchy**,** the Governor is appointed by the Queen of Australia, however, this is done on the advice of the Premier. The Governor is the formal head of the executive and is not partisan. It is the Governor who formally appoints and dismisses ministers and who dissolves the House of Assembly before general elections. However, these powers are also exercised only on the advice of the Premier.

The role of Governor is now largely ceremonial. The Governor presides over meetings of the Executive Council (a body separate from the Cabinet, but composed of Ministers) at which formal assent is given to all legislation passed in the South Australian Parliament and certain decisions of the Government are formalised. These include the appointment of judges, bringing laws into operation and appointment of members of government boards.

Ministers and Cabinet

Ministers generally are selected from those Members of the Parliament who belong to the political party, or parties, that control a majority in the House of Assembly. They are appointed as Ministers by the Governor on the advice of the Premier. Ministers are allocated departments (such as Transport or Health) by the Premier.

The Ministers as a body are known as the Cabinet. Cabinet is the pre-eminent executive body of the State and ultimately responsible for the formulation and co-ordination of Government policy.

A Government is responsible to the Parliament and, if it loses a vote of confidence in the House of Assembly, it must either resign or recommend a general election. Individual ministers are similarly responsible to the Parliament and a vote of no confidence in a particular House of Assembly Minister passed by the House of Assembly would normally lead to the resignation of the minister, especially where the Government is a minority Government. A vote of no confidence in either the Government or a Minister passed in the Legislative Council would not automatically have the same effect, as Governments require only the confidence of the House of Assembly.

The Public Service and Statutory Authorities

The public service consists of those people employed by the Government to be responsible for administering various public functions and providing the services of government to citizens. The public service includes police, teachers and those who work for various statutory authorities such as the WorkCover Corporation and the Environment Protection Authority.

The Courts - The Judicial Role

The courts are established by Acts of Parliament.

There are both State and federal courts operating in South Australia. State courts administer the laws of the State Parliament. Federal courts administer the laws created by the Commonwealth, but State courts do exercise federal jurisdiction and federal criminal offences are tried in State courts.

There is a hierarchy of courts within both the State and federal judicial systems and they are independent of government.

The rule of law

The courts have an important function in maintaining the rule of law and thus of ensuring that governments as well as individuals are subject to the law.

Legislation

The South Australian Parliament has a broad power, known as plenary power, to make laws. There are, however, limits on the law-making power of the South Australian Parliament that arise as a consequence of the Commonwealth Constitution and limits within the State *Constitution Act.*

The creation of a federation and the transfer of legislative powers to the Commonwealth mean that there are some areas in which the State cannot legislate. There are other areas where it shares legislative responsibility with the Commonwealth and other areas where it can act alone. The States have a responsibility for such matters as education, law and order, hospitals, planning and environmental protection.

The *Constitution Act (SA)*

The structure of the South Australian system of government is established in large part by a statute, the *Constitution Act (SA)*, first enacted in 1855-56. It deals almost entirely with the function and operation of institutions and the qualification or eligibility of citizens to serve as Members of Parliament.

Much of the Constitution can be amended and repealed like any other Act. However, some of its provisions cannot be amended without special procedures being followed. For example, any Act to abolish the House of Assembly or Legislative Council, or reduce the power of the Legislative Council, would have to be approved by a majority of voters at a referendum. There are other sections of the *Constitution Act* which, though they do not require a referendum, cannot be amended without special steps being taken in the Parliament.

Elections

At an election, citizens elect Members of both Houses to represent them. General elections are the primary mechanism for providing accountability by the South Australian Parliament and the Government. General elections for the House of Assembly and Legislative Council take place in South Australia every four years. On the calling of a general election, the House of Assembly is dissolved. All the seats in the House of Assembly and half the seats in the Legislative Council are then vacated.

Elections for Members of the House of Assembly are for single member electorates and for Members of the Legislative Council for the whole state. The successful candidate in an electorate in the House of Assembly is determined by a voting system called preferential voting. Elections for Members of the Legislative Council are determined by a system called proportional representation, which also includes a requirement for preferential voting.

Boundaries for the House of Assembly electorates are redrawn after every general election by the independent Electoral Districts Boundaries Commission. In redrawing the boundaries, the Commission applies a number of criteria including a ‘fairness test’. This means that a party or group with a majority of the votes across the whole of the State should be able to win a majority of the electorates and thus be able to form government. The fairness test is required by the *Constitution Act*.

In elections for the Legislative Council, candidates must win a certain percentage of the total vote (called a quota) to win a seat.

Voting at general elections in South Australia is compulsory. All adult citizens are eligible to vote.

Political parties

Political parties are not referred to in the Constitution but are recognised in the *Electoral Act,* which sets out the rules relating to elections.

Constitutional Convention 2003

Question 1

Should South Australia have a system of initiative and referendum (Citizen Initiated Referenda) and, if so, in what form and how should it operate?

What is Citizen Initiated Referendum (CIR)?

CIR is a form of direct democracy in which a given minimum number or percentage of voters has the power to require a referendum to be taken on a given issue without the approval of the Parliament. It has two essential characteristics:

- the people have the power, by petition, to compel the holding of a referendum on whether a particular law should be enacted or repealed;
- the Government and Parliament are bound by the result of such a referendum.

Direct legislation by the people was first introduced at the national level in Switzerland in 1874 and has since been adopted in 26 States of the United States of America.

Since the 1970s, it has also been used in Italy. It now also operates in all German States and nationally in Russia. In Canada, it is widely employed at local government level.

What is our current system of government?

South Australia has a parliamentary democracy based broadly on the Westminster system. The essence of the system is that the Parliament makes the laws with the authority of the people. The elected members of the Parliament are constitutionally free to vote as they see fit and not as directed by the voters, but may in practice be subject to party constraint.

The Government and Parliament have the responsibility for initiating legislation. In our representative democracy, the Government is accountable to the Parliament and the Parliament is accountable to the public. The people can indicate their approval or disapproval of government policy and legislation at election time.

CIR does not form part of the Australian system of government. While we can have plebiscites and referenda at both State and Federal level, these are initiated by parliaments, not by voters.

Forms of CIR

There are two principle forms of CIR. These are:

- *voters′ veto or abrogative initiative*

This allows a specified number of voters to petition for a referendum on whether an existing law should be repealed.

- *legislative initiative*

This permits a specified number of voters to compel, in the same way, the holding of a binding poll on whether a proposed law of their choosing should be adopted.

CIR may be direct or indirect.

Direct initiative requires that the proposed measure be placed on the ballot paper for submission to voters without any action or intervention by Parliament. This form exists in 16 US States and was the basis of a proposal in Queensland in 1998.

Indirect initiative provides that once the petition is presented, the Parliament has a specific time in which to enact the measure. If it refuses or fails to do so then the proposal is submitted to the voters for their verdict. This version exists in seven US States.

The outcome of the direct or indirect initiatives described above is *prescriptive* in that the outcome is binding on the Parliament. [1]

[1] A prescriptive referendum requires a parliament to act upon a proposal that is successful at a referendum. A plebiscite or indicative referendum is a vote by the electors to indicate public opinion on an issue.

Another method, the conditionally prescriptive method, has been proposed for dealing with the outcome of a CIR in South Australia. In the event of a CIR vote in favour of change in the law, the Parliament would have a choice between enacting that change or calling a general election, irrespective of the period since the previous general election. This is a conditionally prescriptive CIR.

Arguments for and against CIR

The case for CIR

- CIR does not replace the normal system of government or do away with political parties. Elected representatives continue to make the majority of laws and the day-to-day decisions. CIR exists as a safeguard to be used when governments refuse or fail to give proper weight to the people′s opinions and beliefs.
- It recognises that the people have the sovereign power to decide the laws under which they must live, a power that is rightly theirs but which, it is claimed, has been sidetracked by party machines and pressure groups.
- It forces politicians to take more notice of the values of the people because unpopular legislation put through the Parliament can be overturned by the people′s veto. The right to vote for Members of Parliament every four years may not be enough to ensure democratic law-making, because governments can bring in their most unpopular laws just after an election, knowing that when the next election comes around in four years time, the unwanted law will be an established fact and the voters will have other problems on their minds.
- CIR means that the people would no longer need to turn out of office a Government they are basically happy with just because they object to one of its law-making programs. They can repeal the unwanted law but keep the same Government. Meanwhile, the Government would learn a lesson about public opinion and democracy.
- CIR gives parliamentarians a principled ground for saying ′no′ to pressure groups agitating for extreme measures or for laws catering to narrow special interests. Governments can simply point out to such groups that if they really believe they have popular support, they can launch a CIR petition.
- At present, only the Parliament has the power to bring about a referendum on any issue. While the support of the majority of the population is required for a referendum to succeed, the fact remains that only the Parliament is able to put the issues forward for discussion and consideration by the voters.
- Direct legislation by CIR gives the people an extra incentive to take an interest in public issues and so makes the best use of their talents and experience. When people can do little more than choose between two parties every four years, they may fear their vote will have little effect on parliamentary law-making. This can lead to cynicism and apathy. On the other hand, just as citizens take their duty seriously when serving on a jury, they become more politically aware as citizens when they have the power to make law directly.
- Under CIR, the people feel that they remain basically in charge of their own laws no matter which party is in power. This eliminates the feelings of fear, powerlessness and vulnerability that can lead some people to support extremist political movements.

- Opponents of direct democracy argue that the general public is too ill-informed to make a considered decision on a CIR measure. But the things people feel the most clearly and strongly about are usually things they know just as much about as anyone else. On questions of life and death, the family or the general quality of education, citizens know just as much as Members of Parliament. Even in the case of complex legislation, such as tax law, the basic principle of the legislation is generally understandable.
- Some object that a CIR measure can be passed by only 50% plus 1 of the voters. Governments, however, may be elected by less than 50% of the voters.
- Campaign fund contributions to political parties may sometimes influence government law-making programs, but experience overseas suggests that moneyed interests seldom succeed in persuading voters to vote for a CIR referendum measure. People today are instinctively suspicious of extensive publicity campaigns on political issues and tend to ask where the money to pay for them came from.
- Community cabinets, indicative plebiscites and similar measures may prove to be devices that disguise unwillingness to allow the people a direct say in the laws that govern their lives.
- The cost of CIR could be kept low by holding referenda ballots at the same time as a general election.
- The arguments usually raised against CIR are largely theoretical and deliberately ignore the actual experience with CIR overseas, since first adopted in 1874. Despite scare-mongering by CIR′s opponents, in no State or country where CIR exists has it been used to make laws oppressing minorities, persecuting trade unions, abolishing necessary taxes or introducing barbaric punishments. Switzerland and California, which use CIR more than any other State or country, are among the world′s most prosperous and popular places to live. Their citizens could, if they chose, use CIR to abolish or restrict CIR itself, but they have strongly resisted any attempts to do so. They are the people who would know if the system was not working.
- If the Legislative Council were to be abolished or its powers reduced, CIR would be a valuable check or balance to ensure stable and accountable government.
- Introducing direct democracy would continue South Australia′s proud tradition as an Australian leader in adopting democratic reform. It would renew the people′s awareness of, and commitment to, the constitution of their State.

The case against CIR

- South Australia already has a system of representative democracy. In a representative democracy, it is the business of representatives selected by the people to consider the issues. They also have the time and the means to do so. In modern democracies, Ministers, having the advantage of expert advice and input from public servants, are able to make considered decisions on proposed legislation. Backbenchers on the Government side generally have to approve legislation in the party room and, therefore, have to apply their minds in a deliberate way to the issues involved in the proposed legislation. The Opposition has to formulate a view and there is debate in the Parliament.
- Democracy works effectively and efficiently only if legislation is left in the hands of the representatives elected by the people who, in the end, have to be accountable at an election. It is very easy to endorse something at a plebiscite where one does not subsequently carry the responsibility or the accountability for that decision.

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- Few members of the general public will ever have the opportunity to consider fully the merits of proposed legislation. Many members of the public may have only a superficial understanding of the legislation and the issues involved. The history of referenda proposals to change the Commonwealth Constitution shows that debate has been influenced by irrelevant arguments and scare campaigns. When this has happened, it has acted to confuse the debate and to obscure the merits or demerits of the proposals.
- Parliamentary legislation may not always be regarded as wise and just but our parliamentary representatives are answerable to the people at election time. CIR is contrary to the accountability we require of our law makers. Whereas parliamentarians can be held accountable for the way in which they vote in parliaments, anonymous voters in referenda cannot be held accountable for any adverse effects of their collective decisions. Political parties, even more than individual members of parliaments, can be held accountable for policies they introduce.
- The principal challenge for democracies has always been how to reconcile the exercise of the sovereign will of the people with the need for strong and effective government. From time to time, this involves the enactment of measures that are temporarily unpopular in order to promote the common good in the long term. Popular influence on our representatives is already exercised by the expression of public opinion through contact with local members, petitions, talkback radio and letters to the press, opinion polls and demonstrations. Finally, the ultimate control is exercised through the ballot box when the electors have the opportunity of assessing the overall performance of their elected representatives.
- The referendum is a blunt and unrefined legislative instrument. Once a proposal is put before the voters, there is no capacity for amendment or refinement of the proposed legislation in response to public debate. Voters are then confronted with a particular proposition that may deal with only one aspect of a complex matter, such as divorce law.
- Some evidence suggests there is a positive correlation between the level of funds available to support a proposition and the likelihood that it will get on to the ballot paper.
- There is a danger that narrow majorities may override the legitimate concerns of minority groups in fundamental ways. CIR could possibly see policy adverse to a substantial minority of the population supported by a bare majority of those who vote. Whilst minority views are not always accepted by Parliament, alternative positions are listened to and taken into consideration in the policy-making process.
- Whilst the majority of those who vote may approve a CIR proposition, that proposition may not be a good policy when it is viewed objectively, when all consequences are considered, and when contradictions or inconsistencies with existing laws or other CIR proposals have been identified. When public expenditure is the subject of CIR, essential or necessary public works may be postponed indefinitely because a majority of voters refuse to support increases necessary to fund the works. If South Australia had had CIR, some developments that were later regarded as valuable, might never have been commenced.
- There is a risk that different initiatives can lead to conflicting policy outcomes. For example, one popular initiative may act to reduce State revenue, while a separate proposal may have the effect of incurring substantial additional expenditure.
- There are better ways of testing public opinion, of making governments respond more rapidly and of enhancing the quality of popular participation and decision-making than by CIR. These include expanding the community cabinet processes and enhancing the openness of parliamentary and related committees. It may even be that regular exercises such as the forthcoming Constitutional Convention can also act to make the system more open and accessible.

- The risks inherent in CIR could be greater than the potential benefits. Radical populists thrive by playing the politics of fear, often to advance short-term selfish interests. They are the people who would be most likely to have success in getting a prescribed number of citizens to petition for the holding of a referendum to enforce change. Populists have too often exhibited insufficient regard for minorities, especially for groups that are disadvantaged or inarticulate. There is no ground for expecting that this will not continue to be the case.

Preconditions for CIR

If a CIR of any type was to be introduced into South Australia, some provisions would be needed to ensure maximum benefit. These include:

- the need for the minimum number of voters to trigger a CIR to be sufficiently large to discourage hasty, ill-considered or irresponsible proposals;
- the need for sufficient time to be allowed between the publication of a draft proposal and the actual referendum to ensure that adequate discussion takes place. This may help to eliminate any defects or ambiguities in drafting and ensure that the issues are stated as clearly and fairly as possible.

Practical issues to be considered if CIR was to be adopted

- Which form of CIR should be adopted?
  - voters′ veto or legislative initiative?
  - direct or indirect?
  - prescriptive or indicative, or both?
- How many signatures should be required?
  - will different types of proposals require different percentages?
  - how will the signatures be verified?
  - who will pay the cost of verification?
- Should there be any restriction on advertising campaigns or campaign funds?
- When should the ballot be held?
- Should there be compulsory or voluntary voting on a CIR proposal?
- What majority should be required?
- Once enacted, how might an initiative measure be amended or repealed?
- What issues could be submitted to a CIR?
  - should any specific issues be excluded from a CIR proposal?
  - who will decide whether a CIR proposal may proceed to a referendum (if the prerequisites are satisfied)?

Constitutional Convention 2003

Question 2

What is the optimum number of parliamentarians in each House of Parliament necessary for responsible government and representative democracy in the Westminster system operating in South Australia?

Current number of parliamentarians in South Australia

The number of parliamentarians in each House of Parliament in South Australia is:

- House of Assembly 47 members
- Legislative Council 22 members

Before making an assessment on the optimum number of parliamentarians, it is necessary to consider the following questions:

- what is representative democracy?
- what is responsible government?
- what is the role of the South Australian Parliament?
- what are the functions and duties of a parliamentarian within our system of government?

Representative democracy

The Australian political system is one in which the laws are made and changed by representatives elected by the people. The elected Members of Parliament represent the citizens by exercising their collective judgment.

Responsible government

Responsible government is the term used to describe a political system where the executive government (the Cabinet) is composed of some members of the Parliament and is accountable, or answerable, to the Parliament.

Elected members are expected to represent all their electors, not just those who voted for them. Similarly, governments are expected to govern for the common good.

Governments are ultimately accountable, or answerable, to the people through elections, but in between elections, a function of the Parliament is to hold the Government accountable. This includes ensuring that the Government acts lawfully and is held responsible for the performance of the administrative arm of government, the public service. This is achieved through such things as parliamentary questions, debate on legislation and parliamentary committees. Most of this is open to the scrutiny of the media and the public.

The House of Assembly needs to be of sufficient size to ensure that the core functions of responsible government can be carried out. This includes the capacity:

- to provide a ministry of adequate size to perform the essential functions of the Government;
- to ensure there is an adequate pool of backbenchers on the Government side. Government backbenchers are the members on the governing party's side who are not appointed to ministerial or similar offices. They act to balance the influence of Ministers, provide feedback to the ministry from the voters and help to ensure that Ministers are carrying out their duties satisfactorily;
- to provide an Opposition of sufficient numerical strength to be able to scrutinize Government performance and Government measures, and to provide a pool of capable potential Ministers who are able to take the reins of government when the electoral tide turns.

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Functions and duties of a parliamentarian

The functions and duties of parliamentarians vary depending on the position they hold in the Parliament. A parliamentarian may be:

- a Minister
- a shadow minister
- a backbencher
- Speaker of the House of Assembly
- President of the Legislative Council.

A Member of Parliament′s duties include:

Parliamentary Duties

- attending Parliament, participating in the business of Parliament and voting on issues;
- participating in debates on legislation;
- participating in parliamentary committees.

Electorate Duties

- dealing with constituents′ inquiries, complaints and problems;
- participating in community organisations;
- attending civic, business, cultural and sporting functions.

Party Duties

- attending party meetings both within and outside the electorate;
- maintaining support of local party members.

Ministerial Duties

The workload of a parliamentarian will be greater if the member is a Minister or a shadow minister. A Minister is required to carry out all the above duties in addition to the following:

- being responsible for particular areas of government administration;
- participating in Cabinet meetings, including being responsible for formulation of government policy and studying government papers for discussion at Cabinet meetings;
- attending and speaking at events and conferences on behalf of the Government;
- dealing with the media;
- attending Executive Council meetings;
- dealing with community and interest groups who may wish to raise issues directly with the Minister.

To carry out their duties properly, parliamentarians are required to work long hours both in the Parliament and outside and are subject to intense public scrutiny.

The role of the South Australian Parliament

One of the functions of Parliament is to pass laws. The South Australian Parliament legislates on a diverse and often complex range of issues affecting the lives of the South Australian people.

Some of the areas where the State asserts its influence in our daily lives (sometimes in conjunction with the Commonwealth) are:

- agriculture and fisheries,
- consumer affairs,
- health services,
- human rights,
- education,
- electricity and water,
- environment protection,
- law and order,
- planning,
- public transport,
- taxes, charges and levies,
- traffic laws,
- workplace safety.

Are we over-governed?

A key question is whether the number of members of the South Australian Parliament should be reduced, stay the same, or be increased. Whatever answer is offered in response to this question must take into account the varying levels of government that operate in South Australia and the distribution of authority between these levels of government.

In making an assessment of the optimum number of parliamentarians, some have used comparisons with other Australian States and other countries. However, this does not always offer a fair comparison. For example, the responsibilities assumed by local government in some States means that the total number of elected professional politicians is greater than those who simply serve in the Parliament. Similarly, in some parts of the United Kingdom there can be six levels of elected government (ranging from the European Parliament and the United Kingdom Parliament down to local parish councils). In South Australia, we have three levels of government.

How big are the other Australian Parliaments?

The table below shows the number of Members of Parliament in each of the State parliaments and the approximate population of each State. Figures for the Federal Parliament and for the Australian Capital Territory and the Northern Territory are also shown. The table is confined to the Australian parliaments because of the difficulty of making meaningful comparisons with other nations as outlined above.

State	Current Number of Parliamentarians		Population (approx)	Ratio of Parliamentarians to population (approx)
New South Wales	Leg. Assembly Leg. Council **Total**	93 42 **135**	6,532,000	1:70,000 1:156,000 **1:48,000**
Queensland	Leg. Assembly (No upper house)	89	3,628,000	**1:41,000**
Victoria	Leg. Assembly Leg. Council* **Total**	88 44 **132**	4,829,000	1:55,000 1:110,000 **1:37,000**
South Australia	Leg. Assembly Leg. Council* **Total**	47 22 **69**	1,502,000	1:32,000 1:68,000 **1:22,000**
Western Australia	Leg. Assembly Leg. Council **Total**	57 34 **91**	1,910,000	1:34,000 1:56,000 **1:21,000**
Tasmania	Leg. Assembly Leg. Council **Total**	25 15 **40**	470,000	1:18,000 1:31,000 **1:12,000**
Federal Parliament	House of Reps Leg. Council **Total**	150 76 **226**	19,387,000	1:129,000 1:255,000 **1:86,000**
ACT	Leg. Assembly (No upper house)	17	314,000	**1:18,000**
Northern Territory	Leg. Assembly (No upper house)	25	198,000	**1:8,000**

* Note that the size of the Victorian Legislative Council is currently under review

The case for reducing the number of parliamentarians

- The responsibilities of the State Parliament have changed since Federation. Many of its former most crucial functions, such as defence, customs and immigration, were voluntarily surrendered to the Commonwealth in 1901. Other powers have gradually been taken over as a result of the financial dominance of the Commonwealth Parliament. Some other State responsibilities have been changed as certain functions (for example, the provision of some government services) have been assumed by private corporations. As a result of these changes the responsibilities of the State Parliament have diminished and some believe that, as a consequence, it may be appropriate to reduce the size of its membership.
- Having a smaller Parliament may help to constrain the spheres of operation of the Government. A smaller Parliament with reduced responsibilities might mean that more decisions may be made at federal and local government level.
- There could be a significant financial saving to the State if the number of parliamentarians was reduced. The saving would include salaries, allowances and superannuation.

- A State of 1.5 million people requires fewer than the current number of parliamentarians.
- The introduction of modern communication technology means that members are better able to keep in touch with their constituents than was once possible. This means that a smaller number of members should be able to serve fewer, but larger, electorates.

The case for retaining, or increasing, the number of parliamentarians

- The cost of parliamentarians should not be the dominant factor in deciding the optimum number of parliamentarians. The cost associated with each additional Member of Parliament is a very small proportion of the State budget. The core functions of government should not be impaired by considerations of cost.
- Simply reducing the number of parliamentarians may not lead to a reduction in the cost of running the Parliament. A smaller Parliament may need increased resources to enable the remaining members to complete their work. In a smaller Parliament, the workload of the remaining members would increase. Members would have less time to devote to electorate duties and would be likely to delegate more work to staff.
- Reduction in the number of Members of Parliament is likely to reduce the level of access by citizens to representation on a wide range on issues affecting the lives of citizens.
- In our system of representative democracy, Ministers must be answerable to the people′s representatives in Parliament (as well as directly to the people at election times) for what is done. The Parliament needs an adequate pool of Government backbenchers, and a sufficiently strong Opposition, so that the public has sufficient access to members to air grievances.
- The House of Assembly needs to be of sufficient size to make it likely that in ordinary circumstances an elected Government will have a working majority sufficient to enable it to implement its program. The prosperity and welfare of the State depends to a considerable extent on stable government. The smaller the number of members of the House, the more likely it is that the Government will be dependent on a narrow majority. This might give a disproportionate influence to any member upon whose vote the Government depends for its survival. This does not encourage good government and it may discourage the implementation of necessary reforms that may be controversial.
- The broader the range of talents represented in the Parliament, the more informed the debates will be. Legislation currently handled by the State Parliament is broad in its scope and often very complex. It is unlikely that any one member has the time to consider properly all the legislation before the Parliament. Hence, there is an increasing need for a greater number of parliamentary committees and parliamentarians to apply adequate scrutiny to proposed legislation.
- The House of Assembly needs to be big enough so that even in the event of a landslide election victory, there are enough members of the Opposition for it to be a credible alternative government. Similarly, it must be large enough so that there is adequate choice of Government members when the ministry is selected.

Constitutional Convention 2003

Question 3

What should be the role and function of each of the Houses of Parliament?

The issues

- What is the appropriate specific role and function of the House of Assembly and of the Legislative Council in our parliamentary system of government?
- Are the Houses of Parliament fulfilling their appropriate role and function?

The role and function of Parliament

South Australia has a bicameral system of parliamentary government. That is, it has two Houses of Parliament: the House of Assembly (the 'Lower House') and the Legislative Council (the 'Upper House' or second chamber).

The Parliament is composed of representatives elected by the people at regular elections.

The Parliament is responsible for a number of functions:

- *the formation of the Government and the executive*

  The party or grouping that holds the majority of seats in the House of Assembly forms government.

  The Cabinet is the key policy-making agency of the Government and has primary responsibility for the administration of the State. The Cabinet is composed of Ministers, who are Members of Parliament and are normally drawn from the party that forms government. Ministers may be members of either the House of Assembly or the Legislative Council, though it is now generally accepted that the Premier is from the House of Assembly. The Premier decides on the division of responsibilities between Ministers and allocates portfolios. The Premier also presides over the Cabinet.

  The party with the second largest number of seats forms the Opposition.

- *passing legislation*

  A proposal for a new law (or to amend an existing law) must be agreed to by both Houses of Parliament in identical terms. Subsequently, it is assented to by the Governor, acting on the advice and with the consent of the Ministers assembled in the Executive Council.

  Proposed legislation, in the form of a Bill, goes through a series of debates in the House in which it is introduced. Once a Bill is passed by the House in which it was introduced, it moves to the other House where it will be subject to further debate. A Bill may be amended in either House.

  Once a Bill (incorporating any amendments) has been passed by both Houses, it is presented to the Governor for formal assent. The Bill is referred to as an Act or a statute once it is assented to. It may come into effect as a law at a later, specified date.

- *the scrutiny and monitoring of the Government*

  The Government, the public service and other government institutions are accountable, or answerable, to the Parliament. This occurs through the questioning of Ministers in a daily question time and through other mechanisms such as standing committees and select committees.

- *representation of the people*

  The Parliament represents the electorate and those who live within its boundaries. Members of the House of Assembly are elected to represent specific areas of the State (their electorates) and so all metropolitan, rural and regional South Australia has direct representation in the Parliament. Members of the Legislative Council are elected by the whole State. In this way, it is expected that most people will find a member of the Parliament sympathetic to particular concerns or problems with which they may need assistance.

- *providing a public forum for discussion of issues and grievances*

  The Parliament provides a public forum for discussion by members of matters of public importance. Individuals can request their Members of Parliament to raise issues, grievances and concerns.

Origins and forerunners of the South Australian Parliament

When, on the advice of his Ministers, King William IV proclaimed the British Province of South Australia in February 1836, the new colony was given a Council of Government, possessing legislative as well as executive powers. Comprising the Governor and four other officials who would be resident in South Australia, the Council first met for business at Glenelg on 28 December 1836.

In 1842, this Council was replaced by an Executive Council and a larger Legislative Council, but for the next eight years all the legislature's members continued to be appointed by the Crown. Under the *Australian Constitutions Act* 1850 (UK), the Legislative Council was reconstituted in 1851, with 16 of its 24 members being elected by the adult male residents who owned or occupied some property. This 'blended' Legislative Council produced the *Constitution Act* 1855-56, under which South Australia's first Parliament was inaugurated in 1857. The new legislature had two wholly-elected chambers, the House of Assembly and the Legislative Council. Women gained the vote in 1894.

The *Constitution Act* has been updated from time to time.

Current structure of the South Australian Parliament

House of Assembly

The House of Assembly comprises 47 members each representing a separate electoral district. Following a change introduced in 2001, the House of Assembly is elected for a fixed term of four years.

A full, preferential voting system is used in the House of Assembly (see Question 5 for a discussion of this system). A candidate requires 50% plus 1 of the votes after preferences are distributed to be elected.

The key role of the House of Assembly is the formation of the Government. The party or group which commands the majority of seats in the House of Assembly forms the Government.

The Speaker

The House of Assembly is chaired by the Speaker, who is elected by the members at the first meeting or sitting of the House after an election. The Speaker, the principal office holder in the House of Assembly, has several functions:

- *to chair the meetings of the House of Assembly*

  The Speaker chairs or presides over the meetings of the House and ensures they are conducted in an orderly manner and according to the provisions of the Constitution and the standing orders (or rules) of procedure of the House. The Speaker must enforce the standing orders in a fair and impartial manner. Members are entitled to expect that, even though politically affiliated, the Speaker will be impartial. At the same time, a Speaker is entitled to expect support from all members regardless of their political affiliation. The Speaker does not normally vote on the usual business of the House, but may support or not support the second and third reading of a Bill. The Speaker may also exercise a casting vote when votes are equal.

- *to represent the House of Assembly*

  The Speaker represents the House in its relations with the other parts of the Parliament, the Government and other bodies outside Parliament. It is the Speaker′s duty to protect the rights and privileges of the House.

- *to promote support services for the House*

  The Speaker has responsibility for the administration and operation of the House of Assembly.

Legislative Council

The Legislative Council comprises 22 members. Half the members of the Council retire at each general election providing they have served for a minimum period of approximately five-and-a-half years.

A proportional representation voting system is used for election to the Legislative Council. A candidate must achieve a set quota of votes to be elected. This voting system usually results in a higher number of minor party or independent candidates being elected to the Legislative Council than to the House of Assembly (see Question 5 for a discussion of this system).

The President

The Council is chaired or presided over by a President, who is elected by the members. The President′s role in the Legislative Council is similar to the Speaker′s role in the House of Assembly.

The role of the Legislative Council

Upper houses, or second chambers, are often described as houses of review. In recent years, it has become common for governments to lack a majority in second chambers enhancing the ability of the federal Senate and several of the Australian State parliaments to better perform this critical function.

The factors that contribute to the South Australian Legislative Council′s capacity as a house of review are:

- No government since the early 1970s has been able to secure a majority in the Legislative Council. Governments are therefore less able to dominate the Legislative Council and push legislation through without adequate time for consideration.

- Most Ministers are in the House of Assembly and many Bills start in the House of Assembly. Wherever a Bill is first introduced it must be considered in and pass both Houses. If a government does not control the Legislative Council, the detail of legislation is more carefully scrutinised in the Legislative Council.
- The electoral system used for the Legislative Council allows minor parties and (sometimes) independents to win seats in the Legislative Council. This means that a wider range of views will be brought to bear on proposed legislation.

Powers of the South Australian Parliament

The *Constitution Act* provides that the Parliament has the power to legislate for the "peace, welfare and good government" of the State of South Australia. Subject to issues falling within the Commonwealth's and other jurisdictions, this power is a plenary power. It entitles the Parliament to legislate on all matters, including the alteration of the State Constitution.

The two Houses of Parliament have the same power to initiate legislation on all issues except for money bills. The *Constitution Act* provides that money bills may originate only in the House of Assembly. The Legislative Council cannot amend a money bill but may only return it to the House of Assembly with suggestions for amendment.

Proposals for reform of Parliament

Provision of greater resources to Parliament

It has been suggested that the provision of greater resources to the Parliament may enhance the independence of Parliament.

- Separate financial provision for Parliament.

  At present the money that the Parliament uses to fund all its activities comes after negotiation with the Government during preparation of the budget for the whole of government. It has been suggested by some that the independence of the Parliament would be better secured if the Parliament could vote for a separate budget to fund its own activities before the general State Budget is passed. However, this immediately raises the problem of how that would be done and how, fundamentally, it would be different from the current process, which also requires negotiation with the Government. It is the Government that has the primary responsibility for expenditure of public money, the introduction by a Government Minister of a Bill for the appropriation of money and passing of that Bill through both Houses. Even now, after money is allocated to the Parliament in the State Budget, Parliament and the two Houses do have independence in expenditure of that money.

- Research assistance.

  The provision of adequate support for research services and for the parliamentary library is claimed to be essential if the Parliament is to function effectively. The work of reviewing legislation and of scrutinising the Government means that members need to be well informed on a wide range of subjects.

Proposals for reform of House of Assembly

An independent Speaker

Political independence is considered by many to be desirable in the office of Speaker, the advantage being that the person chairing the debates of the House would not be a partisan figure and would have no clear alignment to a party. However, there would be some difficulty in implementing this. There is an advantage in having a Speaker who is familiar with the procedures and conventions of the Parliament, who has had some experience as a member and who commands the support of the House and at least a majority of its members. In much larger parliaments, the Speaker can withdraw from his or her party and sit as an independent (which is what happens in the British House of Commons). If an independent Speaker is considered desirable in a House the size of the South Australian House of Assembly, withdrawing from a party is less feasible and further consideration needs to be given into how the independence of the Speaker might be achieved.

Proposals for reform of Legislative Council

The Legislative Council has had powers almost identical with those of the House of Assembly since responsible government was established in South Australia in 1857. The Legislative Council has been fully democratically elected since 1973. Queensland is the only State Parliament without an Upper House. All other States have Legislative Councils with, generally, similar powers to those of the Legislative Council in South Australia.

At present the Legislative Council has the power to delay and defeat all proposed legislation, including Bills to raise money or allocate it. It is constrained by the threat of a double dissolution if it were to exercise this power.

A number of possible scenarios relating to the Legislative Council have been raised including abolition, removing its powers to delay or reject supply, enhancing its powers of review, removing Ministers from the Legislative Council and requiring all Councillors to be elected at each general election. The case for and against these propositions follow.

Should the Legislative Council be abolished?

The case for abolition

- The interests of the State are not advanced by a Legislative Council which has the capacity to prevent the implementation of the elected government′s programs.
- Originally, the House of Assembly and the Legislative Council had different claims to legitimacy, but now both are based on democratic principles of representation, although elections for the two Houses are organised in different ways.
- There is no need for a counter-balance to the House of Assembly, control of which determines which party forms government, especially when the House capable of delaying legislation or preventing it completely is elected for eight-year terms and may well be out of sympathy with prevailing public opinion.
- At the federal level, the Senate may still carry out one of its original functions: that of safeguarding the interests of the States with smaller populations from domination by New South Wales and Victoria, and particularly by the metropolitan areas of Sydney and Melbourne. However, the Legislative Council no longer protects the interests of rural/regional South Australia from domination by the Adelaide metropolitan area. After most general elections in recent years, the House of Assembly has contained a larger proportion of parliamentarians who live outside the Adelaide metropolitan area than has the Legislative Council.

- There is little danger of 'parliamentary dictatorship' if South Australia has only one elected House of Parliament. The greater problem at present is that governments can often evade their responsibilities by blaming a hostile majority in the Legislative Council for failures to carry out election promises or for defects in its policies.
- The existence of two Houses, which largely duplicate each other's functions, is cumbersome and costly. Abolishing the Legislative Council may result in a reduction in the number of parliamentarians and consequently a financial saving to the State.
- The need for a separate 'house of review' would be largely obviated if there were a strong system of standing and select committees in the House of Assembly.
- Adequate opportunity for public scrutiny of and comment on proposed legislation could be provided by requiring a minimum period between the second reading of a Bill in the single chamber and its committee stage (perhaps one - three months), although provision for emergency measures would have to be made. The House of Assembly would have to have the power to declare formally that a measure was of an emergency nature and that the Constitutional timetable therefore should not apply. This would have its dangers but the voters would be likely to hold a Government seriously accountable if it abused the emergency power.
- The virtue possessed at present by the Legislative Council of being more perfectly representative of the population of South Australia as a whole would not be lost if consequential changes were made to the method of election to the House of Assembly so all (or some) of its members were elected using a form of proportional representation.
- Queensland, the Northern Territory and the Australian Capital Territory do not seem to have suffered from excessive government power as a result of their having only one House of Parliament.
- Although no Government has held a majority in the Legislative Council since the early 1970s, it may be argued that it is still dominated by the two major parties. Because of this, it is suggested that it does not act as an independent house of review, but merely provides a second forum for party debates.

The case against abolition

- No significant problem with the operation of the Legislative Council has been identified to warrant the radical step of either abolishing it or reducing its powers. Either step would, potentially, dramatically alter the balance of political power in South Australia and more likely be to the detriment of the citizens of the State rather than to their advantage.
- The Legislative Council is a valuable house of review in which there is greater opportunity for critical reflection upon legislation. The fate of the Government is not threatened and a Government is not able to force legislation through by sheer force of numbers.
- Because the Government usually does not control the Legislative Council, citizens' rights are more likely to be protected from abuse by a Government which, if it had control of the Legislative Council or there was no Legislative Council, could push laws through without constraint. The Council provides a brake against government excesses.
- The Legislative Council, using the current electoral system (proportional representation), is more likely to give appropriate representation in Parliament to significant minority groups, thus reflecting the mix of political interest in the wider community more so than the House of Assembly. It is also the case that women have been elected in greater numbers to Houses using a system of proportional representation than to those comprising single member electorates.

- Upper houses are often accused of frustrating the will of the Government, or holding the Government to ransom. In fact, the evidence suggests that since the time that South Australian State Governments have not held a majority in the Legislative Council, most proposed legislation has been passed and the Legislative Council has not frustrated the principal program of the Government.
- The existence of the Legislative Council tends to diminish the opportunity for the Government to dominate the Parliament. With two separate houses, the Parliament has a greater capacity to keep the Government accountable. A Parliament with a single house is more likely to see a concentration of power in the dominant party.
- The committees of review and investigation established in the Legislative Council are more independent because they are less likely to be dominated by Government members.

Should the Legislative Council have the capacity to delay or reject supply?

<u>The case to change from the current position</u>

- Government is formed from the majority of members elected to the House of Assembly. To enable it to govern, the Government must have the money necessary to carry on government. If an Opposition in the Legislative Council can refuse the supply of money, it can prevent the Government from governing and force an election at a time of the Opposition's choosing. This goes far beyond any discernible function of a house of review. The fixed four-year term was introduced to limit a Government's power to call an election at a time of its choosing. There is no justification for an Opposition to have this power.

<u>The case against change</u>

- The balance of powers between the House of Assembly and the Legislative Council has evolved during the past 150 years and has served the State and its citizens well. No substantive argument has been presented to justify a radical change in that balance which, if change were to occur, could only result in a Government becoming more powerful with less power in the Legislative Council to hold it accountable, and that would create greater risks for citizens that a Government could abuse its power.

How can the Legislative Council be enhanced as a house of review?

It is claimed by some that the capacity of the Legislative Council to act as a house of review may be enhanced by the following proposals:

- the location of most (or all) of the policy-based parliamentary committees in the Legislative Council. Parliamentary committees play an invaluable role in the scrutiny and review of legislation and of government activity and, given the balance of the parties in the Legislative Council, this could mean that committees would be more independent of the Government;
- ceasing to appoint Members of the Legislative Council as Ministers. This, it is claimed, would help to reduce the influence of the Government on the proceedings of the Legislative Council and so allow for more considered review of legislation;
- the provision of greater resources to Members of the Legislative Council so that they are more likely to be able to engage in the detailed investigation of all proposed legislation and give more detailed consideration to the possible consequences.

These suggestions may also have some disadvantages:

- removing committees from the House of Assembly ignores the fact that government is formed in the House of Assembly and some committee work involves members of that House. It is critical to ensure that the pressure is kept on the Government in that House. A Government might be less likely to cooperate if the committee system did not include members of the House of Assembly;
- ceasing to appoint Members of the Legislative Council as Ministers:
  - would reduce the pool of talent available to a Government when forming the ministry;
  - ignores the fact that a Government must be able to get its legislation through the Legislative Council. That requires a senior representative of the Government to guide such legislation through the Legislative Council, deal with it in detail and make decisions about issues which arise;
  - may result in a less representative Legislative Council as potential candidates may decide not to stand for the Legislative Council if they are barred from becoming a member of the ministry;
- it is important for Members of the Legislative Council to be able to probe the Government through pressure on its ministerial representatives in the Legislative Council, otherwise it becomes a mere 'toothless tiger' in its capacity for extracting answers from Ministers and challenging the Government's actions or inactions;
- the provision of more resources to Members of the Legislative Council would be an unnecessary expense for the Parliament.

What is the role of Ministers in the Legislative Council?

Most South Australian governments have had at least two or three Ministers drawn from the Legislative Council and there has never been a Government with no Minister based in the Legislative Council. This means that the Government has a formal voice in the Legislative Council and that there are Ministers present to represent the interests of the Government in the second chamber. Ministers in the Legislative Council currently are responsible for the conduct of all proposed government legislation through the Legislative Council (including that initiated by Ministers in the House of Assembly) and have a commitment to doing so. Having Ministers in the Legislative Council also means that other Members of the Legislative Council can address their questions directly to members of the Government and receive answers and play their part in probing government action or inaction.

It has been suggested in the "Peter Lewis Compact for Good Government" that the Legislative Council might function more efficiently if all Ministers were located in the House of Assembly. It has been claimed that this proposal might contribute to the enhancement of the Legislative Council as a house of review (see above). However, if the proposal were to be adopted, several problems arise:

- how to manage the introduction and passage of proposed legislation through the Legislative Council and deal with all issues arising during consideration of legislation;
- Ministers from the House of Assembly might need to make themselves available on a rostered basis to appear before the Legislative Council in order to answer any questions that the Members of the Legislative Council choose to put to the Government (subject to the requirements of standing orders);
- there can be no formal discipline by the Legislative Council of Ministers who do not attend, mislead, who do not, or refuse to, answer questions or who ignore the requests in the Legislative Council.

Should there continue to be double terms in the Legislative Council?

Legislative Council members currently serve double, staggered terms. This means that half the Members of the Legislative Council are elected at each election and that a member of the Legislative Council will face election at each alternate general election for the House of Assembly. When the House of Assembly was elected for three-year terms, Legislative Councillors usually served for six years. However, since the Parliament approved four-year terms, Legislative Councillors are now elected for a nominal eight years. Staggered terms were originally designed to slow the otherwise possibly rapid political change that might come as a result of a sudden short-lived swing in political support experienced at any one election. It did this by making it harder for a single party to win a clear majority in both houses at the same general election.

It has been suggested that a term of eight years is too long between elections for a member of the Legislative Council. If members do not have to face their electors for a period of eight years, it can be argued that their accountability to the voters is diminished and, given the changing character of the population, that they may no longer represent the current views of the voters.

Similarly, some have suggested that staggered terms are no longer appropriate. It has been proposed by some that every member of the Legislative Council should be elected at the same time as all the Members of the House of Assembly. One of the consequences of this would be that under the current proportional representation method of election in the Legislative Council, the election of all members at the same time would mean that the quota required to be elected would be reduced. For example, if all 22 Members of the Legislative Council were to be elected at a single general election (as against the 11 members that currently face the electors), the quota required for election would move from approximately 8.3% of votes to just higher than 4% of the valid vote. Some commentators argue that a quota at this level would enable extremist groups with relatively low levels of support to be elected. Others contend that a healthy democracy should be able to accommodate the views of as many groups as possible. In any event, a lower quota is likely to result in more minority groups gaining election and of the Government program having to be negotiated through even more groups in the Legislative Council than at present.

Constitutional Convention 2003

Question 4

What measures should be adopted to improve the accountability, transparency and functioning of government?

Accountability and transparency

South Australia has a system of responsible government. This is a political system where the executive Government (that is the Cabinet) is drawn from, and accountable to, the Parliament.

Transparency occurs when the decision-making process of government is open and clear to the people.

Institutions to promote accountability and transparency

The Government is ultimately held accountable to the people at election time. In between elections, one of the main functions of the Parliament is to hold the Government accountable and to ensure the transparency of Government decision-making. Some public officials also possess the power to report on and contribute to holding the Government accountable for its actions and to promote transparency.

Parliament

Parliament has several powers available to enforce accountability.

- Question Time

  The capacity of the Parliament to call the Government to account depends largely on its knowledge and understanding of the Government's policies and activities. Question Time plays an important part in this search for information. Members of Parliament have the opportunity to put questions to relevant Ministers about their areas of responsibility and government policy. Question Time is also an important way of testing the Government and individual Ministers on their capacity to do the job, on administration and on politically sensitive issues. There have been several notable successes in Question Time when seeking to challenge Ministers on matters of public importance.

  The purpose of questions is to enable members, and through them the public, to obtain factual information or press for action on matters for which the Minister questioned is responsible to the House or to challenge decisions and policies of the Government. The standing orders, or rules for the conduct of Parliament seek to set the guidelines within which that questioning, probing and challenging may occur.

  The importance of Question Time is highlighted by the fact that at no other time in a normal sitting day is the House so well attended. Question Time is usually an occasion of heightened interest to the news media.

  One of the main advantages of Question Time is that it can be used as a valuable forum for political debate on matters of immediate importance. By this means it can be used as a mechanism to demonstrate the virtues of either the Government's or Opposition's policies.

However, Question Time can be open to abuse. Despite the best efforts of the questioner, Ministers are able to use a variety of means either to avoid the main thrust of the question, or to simply turn the question into a point-scoring attack on the Opposition. Similarly, Government backbenchers can ask questions designed to do nothing more than allow the Minister to talk up the Government or criticise the Opposition. These tactics may add little to the accountability or transparency of government. Standing orders need to be updated and enforced.

- Committees

Given the often complex nature of the questions the Parliament is required to consider, and the need for the Parliament to be aware of the opinions and needs of the wider community, some standing and some temporary committees of members have been established to investigate issues as they arise.

Standing Committees

Standing Committees are created to inquire into a specific matter or area. The appointing House or Houses determines membership of these committees and appointments are made for the life of the Parliament. Committees can be either joint house committees (i.e. they have membership drawn from both the House of Assembly and the Legislative Council in equal numbers) or single house committees (with membership only from either one or the other house). The more diverse nature of the Legislative Council means that its committees are less likely to be dominated by Government members.

- Joint Standing Committees
  - Public Works Committee,
  - Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation,
  - Environment, Resources and Development Committee,
  - Statutory Officers Committee,
  - Social Development Committee,
  - Legislative Review Committee.
- House of Assembly Standing Committee
  - Economic and Finance Committee.
- Legislative Council Standing Committee
  - Statutory Authorities Review Committee.

Select Committees

Select Committees can be established by either House to inquire into a Bill or other specific matter and cease to exist after they have finally reported. If either of the two Houses wishes to inquire into a matter jointly with the other House, a Joint Committee can be established comprising members of both Houses.

On many issues, committees act in a bipartisan manner and can be very productive. In this respect they play an important role in ensuring that the Government is answerable to the Parliament. However, there are clear limitations to the power of committees. For example:

- It is unlikely a member of a committee will support a finding that is too critical of the member's own party.
- Committee reports are merely tabled in the Parliament. There is no obligation on the Government to follow their recommendations or accept their findings.

The Ombudsman

The Office of the Ombudsman was created by the *Ombudsman Act* 1972 (SA). The Ombudsman can investigate administrative acts of all State Government departments, State Government authorities and all local councils.

Anyone may seek the assistance of the Ombudsman. Both individuals and organisations can make a complaint to the Ombudsman. The Ombudsman will then decide whether to conduct an investigation into the complaint. A complaint may only be made by a person or organisation directly affected by the action that is the subject of the complaint.

The Ombudsman is appointed by the Governor on the recommendation of both Houses of Parliament. The appointment is until the age of 65. In other States, the Ombudsman is appointed for five years. In the event of incompetence or misbehaviour, the Ombudsman can be suspended by the Governor in Executive Council. However, the Governor in Executive Council can only remove the Ombudsman from office upon the recommendation of both Houses of Parliament. As the Government does not have a majority in the Legislative Council, the appointment of the Ombudsman must now attract bipartisan support.

The Ombudsman has wide investigative powers (the same as a royal commission). However, the position′s capacity to exercise these powers may be affected by the availability of resources.

The Ombudsman is not responsible to a Minister and reports directly to Parliament. The Ombudsman is required to prepare an annual report on the work of his or her office (including recommendations) and send copies of the report to the Speaker of the House of Assembly, the President of the Legislative Council and to the Minister responsible for the administration of the *Ombudsman Act*. The annual report assists Parliament in identifying areas of Government policy and administration that may be improved upon and holding the Government accountable for such issues.

The Auditor-General

The Office of the Auditor-General was created by the *Public Finance and Audit Act* 1987 (SA). The Auditor-General has the authority to audit the accounts of public sector agencies, identifying matters such as unlawful expenditure, inefficiency and inept administration. The Auditor-General is required to conduct the audits of 206 government agencies and statutory funds.

The Auditor-General may conduct three different types of audit. These are:

- *financial and compliance audits*
  this audit is directed towards the matter of accountability for use of funds and resources provided and administered by agencies;
- *efficiency and economy audits*
  this is also known as a ′value for money (or performance) audit′;
- *examination of publicly funded bodies.*

The Auditor-General is appointed by the Governor in Executive Council. The appointment is until the age of 65. In the event of incompetence or neglect of duty, the Auditor-General can be suspended by the Governor. However, the Governor can only remove the Auditor-General from office on the recommendation of both Houses of Parliament.

The Auditor-General is independent of the Government and cannot be directed by any person as to the manner in which he or she carries out functions of the office under the legislation.

Like the Ombudsman, the Auditor-General′s capacity to exercise powers of critical investigation may be affected by the availability of resources.

The Auditor-General submits an annual report on the audits to both Houses of Parliament.

The Auditor-General may also prepare special reports recommending action be taken in relation to specific problems. These reports are also put to Parliament and often publicised in the media. The reports are not binding on the Parliament but play an important role in ensuring that the Government and government agencies are held accountable for the use and misuse of public funds.

Freedom of Information Legislation

The *Freedom of Information Act* 1991 (SA) allows the public access to the documents of government agencies. Some agencies and information are exempt under this legislation.

Freedom of information legislation can provide accountability and transparency by allowing the public to know more of the facts behind Government decision-making.

Documents affecting inter-governmental or local governmental relations, personal affairs, business affairs and the conduct of research may be exempt from production.

The legislation may also be costly and there may be delays in production of the documents.

Courts

The courts are established by Acts of Parliament.

There are both State and Federal courts operating in South Australia. State courts administer the laws of the State Parliament. Federal courts administer the laws created by the Commonwealth but State courts do exercise federal jurisdiction and federal criminal offences are tried in State courts.

There is a hierarchy of courts within both the State and Federal court system. South Australia has a three-tiered court system composed of the Supreme Court (which was established in 1837), the District Court and the Magistrates Court. The Federal court system includes the Family and Federal Courts. The High Court of Australia is the final court of appeal from all State and Federal court decisions.

The courts and individual judges and magistrates cannot be given a direction by a Government or Minister or anyone else to make or not make a decision in a particular way. This independence in South Australia is protected in legislation which, for example, preserves the tenure of Supreme Court judges during their good behaviour and provides that their salaries cannot be reduced once appointed. Nor can they be removed other than by a resolution passed in both of the Houses of State Parliament.

The courts have an important function in maintaining the rule of law and thus of ensuring that governments as well as individuals are subject to the law.

It is the obligation of the Government to obey the law and to apply it consistently without fear or favour. The obligation to obey or observe the law is enforceable by action in the courts. The courts may decide whether the Government has acted lawfully and the Government and its officials are obliged to comply with consequent orders of the court.

Proposals to improve accountability and transparency

Whilst there are already several institutions that endeavour to ensure the accountability and transparency of the Government, some people maintain that these institutions could be improved upon.

Funding for the Auditor-General and Ombudsman

Whilst the Auditor-General and the Ombudsman provide a high degree of accountability and transparency in our system of government, they ultimately rely on the Government of the day for funding. The offices of the Ombudsman and the Auditor-General may well be highly critical of the Government. The financial operations of these offices are formally the responsibility of a Minister, but the Ombudsman and the Auditor-General are, in fact, responsible for the way in which they spend their budgets.

It has been suggested that the autonomy of these offices may be compromised by the dependence on the Government for funding. Although, any shortfall these officers feel has occurred can be raised by them publicly.

It has also been proposed by some that the funding for these offices be entrenched in the Constitution, or that a separate appropriation be made for these offices. However, the offices will still be funded by public money for which the Government is ultimately accountable.

Resources for parliamentarians

Parliament cannot operate effectively if members do not understand the legislation that they are debating. Parliamentarians must have adequate resources to, among other things, research and understand proposed legislation and public issues. These resources may be in the form of private research staff or increased resources in the parliamentary library.

Functioning of government

Some people are dissatisfied with the current functioning of government.

This critical view may arise from the adversarial nature of the parliamentary process. The Government, Opposition and other Members of Parliament are often seen to be in conflict with each other over issues. The media often portray the conflict in our system of government as destructive, rather than providing the people with an explanation of why the conflict has occurred. However, conflict often involves the testing of ideas and challenging the competence of Government and Ministers, and the capacity of the Opposition to form an alternative government. All of this is a fundamental part of the proper functioning of our system.

Governments can only be kept accountable by thorough examination of their activities by the Opposition and other Members of Parliament. Oppositions must also be able to put forward an alternative policy position to the Government.

Proposals for improving the functioning of government

Codes of conduct and standards in public life

In recent years there appears to have been a decline in the level of public confidence in Members of Parliament and in the political processes that operate in Australia. Whether this is based on concrete evidence of declining standards or on less measurable general impressions, contributed to by the media, is not clear. Nevertheless, for as long as politicians are poorly regarded, it will be difficult to rebuild confidence in the Parliament and related institutions. Any proposals for improving the functioning of government should reflect this fact. A recent inquiry in the United Kingdom identified seven principles of public life. These are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In order to promote these values it might be appropriate to consider:

- accommodating the principles in existing and new formal Codes of Conduct (though this raises questions about the consequences which flow from this, about who administers the codes and to whom are the administrators accountable);

- ensuring that the principles are reflected in all internal and external systems of scrutiny;
- promoting the principles and related standards of conduct in public life through education, guidance and training.

Also raised is the question of whether a code of conduct can change the adversarial nature of our system for the better and change the behaviour of individual members. Parliament is something of a reflection of the diversity of interests and behaviour in our community.

Sunset clauses

A 'sunset clause' is a provision in an Act of Parliament or other legislation that provides that the law will automatically lapse after a particular date or after a specified number of years.

Sunset clauses have already been used in South Australia for some purposes.

It has been claimed by some that building automatic sunset clause mechanisms into the law might cope with some perceived problems of modern lawmaking, such as:

- an increase in recent decades in the sheer volume of new laws made by Parliament;
- special interest groups, which may secure legislation that proves to be not in the public interest. It can be difficult for Parliament to repeal such laws, because, as time goes on, powerful vested interests grow up around such laws that greatly add to the influence of the original special interest group and can block repeal or reform.

It is suggested by proponents that this system would only work for new laws, not for Acts repealing existing laws. But, subject to that, it would mean that new laws intended to endure for a long period would have to reflect a broader consensus of views and values. They would incorporate more widely held views of just conduct rather than the agendas of special interest lobbies.

Sunset clauses may well be appropriate for certain short-term legislative initiatives. On the other hand, there are several arguments against the automatic use of sunset clauses for all Acts. These include:

- the process of reviewing all legislation before it automatically lapses would add considerably to the workload of the Parliament;
- most legislation needs to last for a longer period than that specified by proposed sunset clauses. The task of renewing such legislation would add a further unnecessary workload to the Parliament;
- there is no evidence to suggest that the volume of legislation is a problem or a hindrance to the good government of South Australia;
- automatic repeal of legislation might create crucial periods when previously unlawful behaviour is not covered by legislation.

Limited terms

It has been proposed that limiting the number of terms a parliamentarian may serve could promote accountability and the functioning of government. There may be a perception that career politicians lose touch with their electorates after serving many terms. They may also be perceived to be serving out their time until they can collect their superannuation.

It is argued by some that limiting the number of terms will promote new ideas and new talent in Parliament. A higher turn-over of parliamentarians may result in a more critical examination of the Government. Alternatively, it might also lead to a smaller number of people standing for Parliament as it would be a less attractive career choice. Substantial experience in Parliament is also important for efficient and effective government and the smooth running of the Parliament. Further, it is difficult to see on what basis people could or should be excluded from offering themselves as candidates. It might lead to a position where the most respected politicians were unable to remain in the Parliament.

Number of sitting days and hours

It is argued that increasing the number of parliamentary sitting days and hours may improve the accountability and functioning of government. However, there will be no improvement if Parliament is merely sitting for longer hours perhaps without adequate information or debating motions which do not result in any action or identified public benefit. It would be more productive for Parliament to focus on improving its practices and procedures rather than simply increasing the number of sitting days. For example, Governments could plan their legislative program better in order to get Bills into the Parliament earlier and Oppositions and other members could give more diligent attention to those Bills according to a generally agreed timetable.

Many parliamentary functions are carried on outside normal parliamentary sitting days. One of these is the committee system. This can be an effective check on the Government. It may be more productive for Parliament to devote more resources to improving this system rather than just increasing sitting days.

Constitutional Convention 2003

Question 5

5.1 What should be the role of political parties in the Legislative Council and what should be the method of election to the Legislative Council?

5.2 What should be the electoral system (including the fairness test) and method of election to the House of Assembly?

The answers to these questions are, in many respects, contingent upon the resolution of the issues in Questions 2 and 3. For example, the case for or against any particular electoral system depends, among other things, on the number of Members of Parliament, the composition and purposes of the Houses and whether the Parliament has one or two Houses.

For that reason, the answers to Question 5 canvass the general issues associated with changes to the electoral system and discuss these in the context of some specific proposals and criticisms.

5.1 What should be the role of political parties in the Legislative Council and what should be the method of election to the Legislative Council?

Role of Political Parties

Political parties are an important part of the political process in every parliamentary democracy. Political parties are the principal means by which like-minded people join or associate to achieve common ends. Any group of two or more persons espousing a common platform of beliefs or objectives and seeking election to Parliament could be called a political party.

More formally, for the purposes of elections in South Australia, political parties are defined by the *Electoral Act 1985 (SA)* as:

> "Any organisation of which an object or activity is the promotion of the election to the House of Assembly or the Legislative Council of a candidate or candidates endorsed by it."

Under the *Electoral Act,* a group can register as a political party for electoral purposes provided it is either a parliamentary party (a political party with at least one member being a member of a parliament of the Commonwealth, a State or Territory) or a political party whose membership includes at least 150 electors.

Some people object to the present system, on the ground that both the House of Assembly and the Legislative Council are party-based. For this reason, they propose to create a Legislative Council that is completely or largely distanced from party politics. That is, a non-party based house of review. An example of such a proposal is contained in the Annexure to the "Peter Lewis Compact for Good Government". That document seeks consideration of legislative and constitutional changes and the mechanisms necessary to:

> "Remove all members of political parties from the Legislative Council as of the general election of March 2010 by requiring that no candidate seeking election to the Legislative Council as and from the next election may be a member of any political party registered with either Electoral Commission for the purpose of the provisions of the Electoral Act of either State or Federal Parliament."

It is suggested by some that Legislative Council Members free of all party ties might act as a more impartial and unprejudiced chamber of review than the present Legislative Council, most of whose members are members of political parties. It is sometimes argued that people who do not join political parties are more likely to have concern for the public interest than those who do join them. On the other hand, it is also argued that people join political parties because they have common views and believe that membership provides the best means for achieving goals for the good of the community.

A further concern is that one of the consequences of the removal of parties from the Legislative Council would be that the Government (which is formed by the largest party or coalition of parties in the House of Assembly) would have no formal representation in the Legislative Council. Some would see this as a possible advantage in that it might mean that the Legislative Council could act as a more reflective house of review. Against this is the consideration that a Government with no direct representation and no formal voice in the Legislative Council might face unnecessary delays and some inefficiency in having legislation passed by both Houses.

More generally, there are also serious doubts as to whether people nominated by interest groups and community organisations would be totally independent of an existing or new political party. It would be difficult, even if desirable, to vet all candidates for election to the Legislative Council for undeclared sympathies and possible future views.

Even if it were possible to eliminate all members of parties from the lists of candidates for the Legislative Council on some formal basis, it seems highly likely that an informal party system would re-emerge. It seems inevitable that 'dummy' organisations would be established to ensure that the ends sought by political parties were not frustrated. This is likely to lead to less, not more, open government.

Such a system would also be likely to further discourage citizens from membership of political parties and it is not clear that there would be any benefit in such an outcome.

It would also seem possible that the proposed change might infringe the freedom of political association as implied under the Commonwealth Constitution. Any law seeking to exclude members of political parties from membership of the Legislative Council might consequently be invalid. The Crown Solicitor suggests that this may be the case.

In summary, there seems to be no practical way of excluding political parties from the Legislative Council. It may also be unconstitutional to attempt to do so. It would be better to accept that political parties exist and that they have a powerful role, and to proceed with change from that basis, if any change is seen as desirable. One of the key functions of a parliament is that it should be a forum for competing views. Political parties, together with the independent members, are an important part of ensuring that this function operates well.

The current electoral system for the Legislative Council

A suggested virtue of the Legislative Council is that it is a more 'democratically constituted body' (in the sense that the members more closely reflect the demographic range and political views of the community). That suggested virtue is inextricably linked with the present system of election of members to the Legislative Council: proportional representation in a single statewide electorate.

Proportional representation is a system of voting designed to elect representatives who obtain a specified quota or proportion of votes.

The quota is calculated as a fraction:

(total formal votes / number of seats available + 1) +1

Under the current system, there are 22 Members of the Legislative Council. Each member is elected nominally for a full term of eight years with half the Members (11) elected at the same time as each general election for the House of Assembly. That is, the terms of Members of the Legislative Council are staggered. With 11 Members to be elected to the Legislative Council, the quota is about 8.3% of the total number of formal votes. If the number of members elected were reduced, then the quota, or the share of the votes needed to be elected, would be greater. Equally, if the number of members elected were increased, the quota required would be smaller.

Proportional representation is the system used for election of members to the Commonwealth Senate, the Tasmanian House of Assembly, and several State upper houses and for local government elections in South Australia.

For elections to the Legislative Council, there is one electorate, which incorporates the whole of South Australia. Voting is compulsory and there is full adult franchise.

The Legislative Council′s present electoral and parliamentary structure results from changes that were implemented relatively recently. The present system became law in 1973.

There is no doubt that the proportional representation system has allowed for the representation of sizable minorities who would otherwise have no direct role in law-making or scrutiny of Government. This is because it is more difficult for those groups to win a seat for the House of Assembly. (Paradoxically, single independents may have a greater chance for election to the House of Assembly in electorates where their support is concentrated.) Indeed, neither of the major parties has had a majority in the Legislative Council since 1975 and the balance of power there has been held by minor parties and independents. Different voting systems may equally provide for minority representation.

There is an argument that minor parties are beneficial to the parliamentary system. It is asserted that they increase the impetus for change because they have the capacity to exert pressure on major parties. At the same time, concern has been expressed that minor parties in the Legislative Council are able to frustrate the Government′s program and may exercise an influence disproportionate to their support in the community. But so too can minor parties and independents in a finely-balanced House of Assembly.

Proposed electoral systems for the Legislative Council

Various changes to the electoral system for the Legislative Council have been suggested over many years. Among others, reference has been made to the systems in the other Australian States with upper houses and to the electoral systems that operate in Germany and New Zealand. One suggestion has proposed that the State be divided into electoral districts and that members be elected as local representatives rather than from the whole of the state.

Proposals for change commonly involve a combination of elements. These often include:

- establishing electorates or districts for the Legislative Council with a small number of members elected from each district;
- electing members for shorter terms or for non-staggered terms.

Establishing electorates for the Legislative Council

One advantage cited for introducing a number of smaller electorates for the Legislative Council in South Australia is that such a system could provide for local and regional electorates, producing an arrangement which, it is argued, may better serve local and regional interests.

In response to this argument, it is suggested that the House of Assembly already has members responsible for regional electorates. It should also be recognised that there are existing informal arrangements where the political parties allocate to members of the Legislative Council a part of the State as their special concern.

An example of a proposal that includes both multi-member electorates and the establishment of electoral districts to provide for regional interests in the Legislative Council is that advanced by the Speaker, the Hon. Peter Lewis. The proposal, contingent on reducing the size of the Legislative Council, is for 12 Members of the Legislative Council to be elected in six regional seats. Each seat would have two members, each elected for six years with one retiring at the end of each three-year period. Five members would also be elected from the State as a whole. This would have the effect of increasing the quota for these seats from the present level making it harder for minority parties to obtain a seat. Elections for the Legislative Council would occur simultaneously with those for local councils.

An alternative proposal would link parts of metropolitan Adelaide with a regional area. This system operates in the Northern Territory, for example, where several single-member electorates link parts of Alice Springs with regional areas.

A method previously used for offsetting regional disadvantages was the weighting of electorates in the House of Assembly, so that fewer electors were needed to form an electorate in regional than in metropolitan South Australia. The imbalance of voters in metropolitan seats by comparison with country seats had at one stage in the 1960s reached 3 to 1. Any similar proposal would be inconsistent with the principle of ‘one vote, one value’.

Term of office in the Legislative Council

The term of office of Members of the Legislative Council is longer than that for Members of the House of Assembly. Elections are staggered with half the members elected at each election. Evidence shows that if terms were not staggered and all Members of the Legislative Council vacated their seats at an election, the composition of the Legislative Council might well be different with greater minor party representation. This is because the quota for a candidate to be elected would be lower. Any change to the staggering of terms of office must take that consequence into account.

It is sometimes argued that the length and staggering of terms has created a Legislative Council that is too often out of step with current public opinion and therefore more likely to be in conflict with the House of Assembly. To the contrary, it is argued that there is no evidence that the Legislative Council is in any way unresponsive or unrepresentative.

5.2 What should be the electoral system (including the fairness test) and method of election to the House of Assembly?

The answer to this question depends largely on the answers to earlier questions. In the first section of the discussion that follows, it is assumed that the Legislative Council would continue to operate and to use an electoral system that gave adequate representation to parties and interests other than the two major parties. The electoral system appropriate for a single chamber parliament is considered in the final section.

The current system

The electoral system for the House of Assembly was created by two Acts of Parliament, the *Constitution Act* and the *Electoral Act.*

The system for voting for the House of Assembly is called preferential voting. This is a method of voting that requires the voter to indicate a preference for every candidate. If no candidate achieves more than 50% after the first count of preferences, the preferences of the least successful candidate are distributed to the remaining candidates until one has an absolute majority (50%+1) and is elected. This is the same system that is used for elections to the Commonwealth House of Representatives. It differs from a system of voting used elsewhere known as first-past-the-post, which does not involve voters indicating preferences. The candidate with the most votes is successful even though a majority of voters may not have voted for the candidate. The difference between the systems is that in a preferential system, it is the most preferred candidate that is selected.

Following changes in 2001, elections for the House of Assembly are required to be held every four years but may be held earlier in special circumstances. The House of Assembly has a longer history of full adult franchise than the Legislative Council. In both Houses the right to vote was extended to women in 1894, although, a property qualification for the Legislative Council remained.

In elections for the House of Assembly, South Australia is divided into 47 single member electorates. This was not always the case. Prior to 1936, South Australia used multi-member electorates for the House of Assembly.

In South Australia, boundaries of electorates are determined by a body called the Electoral Districts Boundaries Commission. After each State general election, the Boundaries Commission is required to examine State electorates with a view to redistribution. In deciding whether boundaries need to be amended, the Boundaries Commission is required to take into account a number of factors, which include:

- each resulting electorate having the same number of electors, give or take 10% (this is the so-called "one vote, one value rule");
- the desirability of making the electoral redistribution "reflect communities of interest of an economic, social, regional or other kind";
- the fairness test, which requires that as far as it is practicable the redistribution must be:

> "fair to prospective candidates and groups of candidates so that, if candidates of a particular group attract more than 50% of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent[1]), they will be elected in sufficient numbers to enable a Government to be formed."
>
> [A group of candidates includes candidates endorsed by the same political party and candidates whose political stance is such that they could act together and be expected to form government.]

The fairness test is unique to South Australia.

[1] That is, the two-party preferred vote.

Is the current system appropriate?

It is important to understand the electoral system described above is the result of relatively recent changes. Much of this system arose from amendments to the *Constitution Act* in 1970 and 1976. These changes were stimulated by dissatisfaction with a system where parties with a majority of the two-party preferred vote (and in one case the primary vote) were unable to win enough seats to secure a majority in the House of Assembly and form government.

The changes introduced in the 1970s involved the enlargement of the House of Assembly to its present size, a decrease in the rural weighting of seats, the creation of an independent Electoral Districts Boundaries Commission and the statutory criteria for redistribution (including the principle of 'one vote, one value'). The Commission and the existence of both the House of Assembly and the Legislative Council are now entrenched in the *Constitution Act.* This means that they cannot be abolished unless this action is supported at a referendum.

The fairness test was approved by South Australian voters in a referendum in February 1991. The requirement that electoral re-distributions take place after each general election to prevent population changes between redistributions producing electorates exceeding 10% variation in the number of voters was also introduced in 1991.

It is accepted that more marginal seats are created by application of the fairness test. There are arguments for and against this outcome.

The fairness test has been the subject of criticism because it is said to:

- create uncertainty about boundaries from one election to the next;
- penalise members who build up a personal vote only to find it redistributed to an adjoining electorate;
- be subject to various statistical and technical difficulties in successfully predicting future patterns of voting from past patterns of voting;
- devalue minor party voters because the models used treat these votes as a mere conduit through which votes flow to the two major parties.

Against these criticisms must be weighed the reasonable expectation that a political party or group that gains a majority of the two-party preferred vote at a general election should have a realistic prospect of forming government.

Some have suggested that a simple improvement to the existing electoral scheme would be to introduce optional preferential voting in which a voter could indicate their preferences only for those candidates that they choose to support and not necessarily allocate preferences for all candidates.

The argument against this is that it would lead to a defacto first-past-the-post system resulting in candidates being elected with the most votes of any candidate but still with less than 50% of the total vote.

Electoral system for a single-house parliament

The responses to this question thus far have assumed the continued existence of a Legislative Council.

If the Legislative Council were to be abolished, the present voting system for the House of Assembly would require some further consideration. This is because, under the present system of voting, it is difficult for minor parties to obtain seats in the House of Assembly.

If minorities are thought to be a valuable part of the parliamentary and legislative process, consideration would need to be given to proposals that would provide for minorities in a single-house parliament.

An example of such a proposal is the Hare-Clark system, as used for elections to the Tasmanian House of Assembly, which involves proportional representation, multi-member electorates and rotation of the order of candidates on the ballot paper to negate the so called donkey vote where voters may chose to vote straight down the ballot paper.

Constitutional Convention 2003

Definitions

accountable, accountability
the requirement that Ministers of the Government account for their decisions or are answerable ultimately to Parliament.

Act, Acts
a statute or laws that have been approved by the Parliament.

adult franchise
the legal right of adult citizens to vote in elections.

adversarial
a way of conducting political affairs in which those with opposing views challenge and debate them, sometimes acrimoniously.

amendments
a change (or a proposed change) to a Bill, an Act of Parliament or the Constitution.

appropriation
the allocation of money by the Parliament for a particular purpose.

Auditor-General
a State officer with the responsibility for auditing the accounts of departments and other public sector agencies and reporting to the Parliament.

backbencher
a Member of Parliament who does not have responsibility as a Minister or shadow minister and who sits on the backbenches of the Parliament.

bicameral system of parliament
a parliamentary system in which there are two separate chambers, or Houses, of parliament: the South Australian Parliament has the House of Assembly and the Legislative Council.

bill
a proposed new law that has been presented to the Parliament but not yet passed.

bi-partisan policy
a policy upon which the Government and Opposition are in general agreement.

Cabinet
a committee comprising all the Ministers of the Government.

casting vote
the final, deciding vote, cast by the Speaker of the House of Assembly or the President of the Legislative Council when the numbers for or against a proposal are equal.

citizen initiated referendum (CIR)
provides the mechanism for the electors to participate directly in the political processes by initiating a referendum on whether a particular law should be enacted, amended or repealed.

committee
a group of individuals appointed by a larger body to inquire into particular matters and to report back.

committee stage
the time in parliamentary debates in each House when Bills are discussed clause by clause.

committee system
the use of committees made up of Members of Parliament that assist in, and contribute to, the work of Parliament by examining certain matters in detail.

community Cabinet
When Cabinet (often together with senior public servants) spends time in discussion and consultation with community groups and individuals (often in regional parts of the State).

compulsory voting
the legal requirement that people registered on the electoral roll must vote at relevant elections.

Constitution
normally a formal written document detailing the principles and processes under which a State is governed.

constitutional convention
a gathering of citizens at which the constitution (or parts of it) is examined and proposals for reform considered.

constitutional monarchy
a form of government in which the Head of State, in South Australia's case, the Governor, is appointed by the Queen of Australia on the advice of the Premier and has limited powers (defined by a constitution) and power is exercised by the elected government, which is ultimately accountable to an elected Parliament.

conventions
unwritten rules or established patterns of usage relating to the operation of a constitution, Parliament or to the procedures of government.

democracy
a political system in which government is formed by representatives elected by the citizens.

direct democracy
a process in which a minimum number of voters have the direct power to submit an issue for legislative consideration or to veto existing laws.

donkey vote
a vote in which the order of preference for the candidates is allocated on the basis of their order on the ballot paper rather than on a considered assessment of their merits: for example, numbering a paper 1 – 2 – 3 – 4, up or down the list.

electoral roll
the official list of people entitled to vote.

electorates, electoral districts
geographic areas containing a given number of voters who elect a representative to sit in the Parliament.

enact, enacted, enactment
to make a law, to put an Act or statute into effect.

entrenched, entrenchment
process by which legislation cannot be repealed or amended by a simple Act of Parliament (parts of the South Australian Constitution are entrenched in a way that means they cannot be changed except by referendum).

executive
the section of the Government that administers the laws, puts the decisions of the Parliament into effect and carries on the day to day business of governing.

Executive Council
established by the constitution to give legal form to certain decisions of the Cabinet.

federation
the uniting of the six self-governing colonies to form the Commonwealth of Australia under a federal government on 1 January 1901.

first-past-the-post
a voting system in which a voter votes for only one candidate and the candidate with the most votes is elected regardless of whether that candidate has won a majority of the votes or not.

Governor
the Queen's representative in South Australia: the Governor is the formal Head of State.

Hare-Clark system
an electoral system using multi-member electorates with preferential voting and proportional representation: it is used for elections to the House of Assembly in Tasmania.

House of Assembly
one of the two Houses that make up the Parliament in South Australia: the House of Assembly (sometimes called the 'lower house') has 47 members and it is in this House that Government is formed

house of review
term used by some to describe the Legislative Council as it is thought that there is greater scope to reflect upon and review legislation in the Legislative Council.

indicative plebiscite
a referendum or a vote on a particular matter that shows the opinion of the voters, but does not bind the Government to the result.

jurisdiction
the extent and the boundaries of any legal power over a person or institution.

legislate
to make a law.

legislation
laws (or Acts or statutes).

Legislative Council
one of the two Houses that make up the Parliament in South Australia: the Legislative Council (sometimes called the 'upper house' or 'second chamber') has 22 members.

lower house
term used to describe the House of Assembly.

marginal electorate
an electorate in which the sitting Member of Parliament holds a very small majority of the votes (after the distribution of preferences).

Minister
a member of the Government responsible for one or more government departments (for example Health Services or Local Government) and responsible to Parliament for their actions and the actions of that department.

ministry
the collective term for the Premier and all the Ministers: the Cabinet.

ministerial portfolio
the area or areas of activity that a Minister has responsibility for.

minority government
when a party does not hold more than half of the seats of the House of Assembly (ie less than 24 of the 47 seats), and depends upon the support of a minor party or independent(s), it is said to be a minority government.

money bills
Bills introduced into the Parliament proposing legislation to authorise expenditure by a Government or to impose taxation.

multi-member electorates
an electorate represented by more than one member: in the Legislative Council, the whole of the State of South Australia is one multi-member electorate represented by 22 members

Ombudsman
a public official with the responsibility for investigating complaints by the public against certain acts of the Government or the public service.

(the) Opposition
the largest political party or group of Members of Parliament that oppose the Government: The Opposition is sometimes said to be 'the alternative Government' and is expected to be critical of the Government and to propose alternative policies.

Parliament
all Members of Parliament from both Houses: also the name given to the building and institution in which debates take place and laws are made.

parliamentary democracy
a constitutional system that has a democratically-elected Parliament and a Government accountable to and approved by the citizens through the Parliament.

parliamentary system
system in which political authority lies with the Parliament and Government is made up of elected members of the Parliament.

plebiscite
a poll or a vote on a particular issue in which all citizens are entitled to vote.

plenary powers
full or complete powers.

policy
the publicly stated plans of a political party, group or organisation.

political parties
voluntary organised groups with similar political beliefs and policies that stand for election with the intention of putting their policies into operation.

portfolio
the area of political and administrative responsibility for which a Minister is responsible.

Premier
the chief minister and leader of the governing party.

preferential voting
system of voting in which voters mark the ballot paper to show their order of preference for all candidates and in which the candidates with the least support are sequentially eliminated with subsequent preferences distributed until one candidate has more than 50% of the total valid vote.

primary vote
the first preference shown on a ballot paper in a preferential voting system.

proportional representation
a voting system designed to produce a result such that the final representation of parties (and groups of candidates) in the Parliament is as close as possible to their level of support among all voters: So, a party receiving say 30% of the vote should usually expect to win about 30% of the seats.

public service
those employed by government with responsibility for administering the various public functions and providing the services of government to citizens.

Question Time
when Parliament sits, a set daily time in Parliament when members are able to direct questions without notice to Government Ministers.

quota
the percentage share of votes required by a candidate to be elected in a multi-member electorate under proportional representation.

referendum
a vote in which all the voters are asked to indicate support or opposition to a particular question. It is generally used to alter a constitution.

repeal, repealed
to revoke or do away with an existing law.

representative democracy
government in which elected representatives of the citizens act on behalf of the whole population.

reserve powers
the (rarely used) power of the Governor to make decisions without the advice of the elected Government.

responsible government
a constitutional system in which the Government is answerable and accountable to the Parliament and, through the Parliament, to the voters.

rule of law
fundamental principle that citizens, organisations and the Government itself are all treated as equals before the law and must comply with the law.

second chamber
term occasionally used to describe the Legislative Council.

second reading
the time in parliamentary debates when speeches are made about a Bill.

shadow minister
a member of the Opposition with responsibility for shadowing, or following, the work and handling of an area of responsibility of a Government Minister, to expose the shortcomings of the Government in that area and offer alternative policies.

South Australian Electoral Districts Boundaries Commission

The independent commission that oversees the redistribution of electoral boundaries for the House of Assembly after every general election and which applies a 'fairness test': this means that the party or group with the majority of the votes across the whole of the State should be able to win a majority of the electorates and thus be able to form government.

staggered, staggered terms
the process by which those elected to represent multi-member electorates are elected at different times (half at one election, the second half at the next election) for 'double terms' so that their membership of the Parliament is overlapping.

standing orders
rules made by a House of Parliament that regulate the proceedings, debates and conduct of the members of that House.

statute
an Act of Parliament: laws that have been approved by the Parliament.

statutory authorities
an organisation established by Parliament, with powers and duties defined by an Act.

steering committee
a committee with responsibility for ensuring particular outcomes in relation to a matter that has been referred to it.

tenure
the right to hold office or keep a job as long as certain agreed conditions are met.

third reading
final debate and vote on a bill in the Parliament.

transparency
where the affairs of Government and Parliament are open for all to examine.

tribunals
independent bodies appointed by the Government to adjudicate on claims: examples include the Residential Tenancies Tribunal.

two-party preferred vote
the share of the total vote for each of the two most popular candidates after preferences of those who vote for other candidates have been distributed in a preferential voting system.

upper house
term sometimes used to describe the Legislative Council in South Australia and the Senate in the Federal system.

veto
the refusal to allow something to be done or to become law.

Westminster system
term used to describe systems of government (often loosely) based on the British parliamentary system (located in Westminster). Characteristic features include an elected parliament, government from within the lower house, Ministers and Government being responsible to Parliament and a head of state usually with limited powers.

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