

can be achieved unilaterally by either the parents or the child. In determining whether such an order should be made the court must be satisfied that both parties have had an opportunity to present their case and to answer the case against them. If this is done then it is less likely that an unjust decision will be made.

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## revitalising parliament

Caesar neglected the warnings of the Ides of March.

We should all remember what happened to him.

The Hon Justice Michael Kirby

On 15 March 1988 (the Ides of March) the Hon Justice Michael Kirby CMG, President of the New South Wales Court of Appeal and former Chairman of the Australian Law Reform Commission made an address at a National Goals and Directions dinner at Parliament House in Sydney.

Justice Kirby commenced by listing the benefits of life in Australia. They include: a legal system and independent judges; a stable constitution; parliamentary democracy, and high standards of literacy. He went on, however, to analyse these benefits and found them to be somewhat lacking in quality. The following is an edited text of his address.

*limited access to the courts.* We have the law administered by independent judges in the courts, long established. And yet, because of the frequent failure of reform, some of the laws work an injustice. And, despite enhanced legal aid in recent years, many citizens cannot afford to assert

and enforce their rights. For the very rich and very poor access to the courts is more of a reality than for citizens of middle Australia.

*a constitutional deep freeze.* We have a constitution which is old by the standards of the world. It is stable and speaks with the authority of continuity. And yet, because of the failure of so many referenda, Australia has been described by Professor Sawyer as 'constitutionally speaking, the frozen continent'. For constitutional change we have had to rely upon the uncertain probability of judges adapting the language of the text, sometimes beyond the wildest dreams and expectations of the Founding Fathers of the Commonwealth.

*loss of parliamentary power.* We have parliamentary democracy and free and honest elections such as are enjoyed in only a small minority of the countries of the earth. And yet we see increasingly the loss of power of Parliament. And sometimes we see the disinclination of our elected representatives to look into the future, beyond the ephemeral opinions demonstrated in those polls.

Parliament remains the great centrepiece of our democracy. But its power has rapidly declined in recent years and I see no sign that the tide is turning. Unless reforms are introduced, it is likely that the influence of parliaments in Australia will continue to erode in the century ahead. And that would be a tragedy for democratic values in our country.

The features of the decline of our Parliament are well documented. Power has been lost to the Executive Government. Increasingly in the past ten years even the Executive Government has lost power to the Prime Min-

ister or Premier. The media often encourages this by the personalization and trivialisation of issues, often apparently to provide news in the form of entertainment.

Parliamentary power has also been lost to the bureaucracy. The complexity of modern government has resulted in conferring more and wide discretions on an ever-increasing army of administrators. Lately, there has also been the loss of power to the judiciary. Judges continue to play an expanding role in our country: Royal Commissioners; Commissioners of Special Inquiry; Human Rights Commissioners; Chairpersons of the Grants Commission, Legal Aid Council, Administrative Appeal Tribunals, even the National Crime Authority and Judicial Commission. In a country where there is so much to do and so many other people doing it, it is a sadness that parliamentary backbenchers who have devoted such energy to political life, are not better utilised.

There is a Catch-22 in this. If trivia, loyalty and responding to division bells become the chief virtues of the backbench paragon, people of originality and ideas will look upon the parliamentary life with distaste. The attitude will only be reinforced by the daily reports of personal denigration, the loss of personal and family privacy and the other thankless burdens and calumny we tend to heap on our political representatives.

There are many practical reasons which I recognise for the diversion of power from the elected assembly to the Cabinet, the bureaucracy and the judiciary:

- Parliament tends to be slow-moving whereas the other organs

of government can often react with relative speed;

- Some modern issues are specially complex or technical and more suitable for expert resolution;
- Parties in government, especially after years in Opposition, are all too often determined to play the game as it had been played against them;
- Sometimes, when given opportunities, Parliament fails to deliver the goods.

*law reform.* We have institutions for the reform of the law and the improvement of society. And yet, all too often such bodies are used by governments of all persuasions to postpone and not to assist in decision making. All too often their reports are pigeon holed and action upon them is neglected.

The Law Reform Commissions — Federal and State — have observed a significant instance of the failure of Parliament to respond to opportunities in the area of law reform. For years, the Commissions have been reporting to Parliament on important suggestions for law reform made by judges, official reports, academics, media and citizens. These suggestions have been collected as an appendix to their Annual Reports. Yet no parliamentary mechanism has been established in Federal or State Parliaments to consider them — rejecting those undeserving of support; but stimulating the bureaucracy to action on those considered worthy of attention. Instead, the suggestions, like so many copies of Annual Reports, are discarded. Their fate is the parliamentary garbage collection. We should surely do better than this.

*the role of members of parliament.*

If the Parliament were still a vibrant and active institution, relevant to a responsive democracy, I would have expected an institutional solution. Why ought there not to be permanent parliamentary committees on law reform? Why should the removal of injustice and the reform of the law be shrugged off or left to the bureaucracy? In short, why should members of Parliament, who go to so much trouble to get elected, accept such a passive role? Receiving, scrutinising, investigating and deciding upon proposals for legislative reform, to stimulate the Executive, would be a worthy function for the modern politician. Instead, many backbenchers are content to be a post-box for constituent complaints. And even here they are being replaced by the Ombudsman and new administrative tribunals. The backbencher in the Australian Parliaments is losing the traditional role but has not yet found a modern relevant function.

Well, what can be done to improve our system of government in Parliament? The list is long — but I would certainly include:

- a major review of parliamentary committees, especially to provide more detailed scrutiny of the quantity and quality of legislation;
- establishment of more parliamentary committees to investigate and report on neglected areas of economic, social and legal concerns;
- an increase in the number of sitting days of Australia's Parliaments, which by world standards are very low;
- revision of the end-of-session scurry which results in legislation made at sittings into the early morning hours;

- simplification of parliamentary divisions;
- overhaul of many parliamentary procedures which owe more to tradition than modern rational conduct;
- introduction of televising of parliamentary procedures;
- preparation by Parliament itself of regular news and analysis for presentation to the community through the modern media;
- reform by Parliament of its privileges and improvements of procedures for dealing with citizen complaints of abuse of parliamentary privilege by members;
- provision of better research facilities and more staff to parliamentarians;
- higher pay for fewer politicians — raised in quality and standing but reduced in number by a rationalisation of the levels of government and the size and number of our legislative bodies. By world standards we have more serving politicians per head than any other country. We need more quality than quantity.

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**empanelling juries**

The Director of Public Prosecutions has suspended the use by prosecutors of police information concerning potential jurors (the *Age* 9 March 1988).

The practice in Victoria over many years has been to stand aside jurors who otherwise qualified for jury service on the basis of information provided by police. This information is thought to have contained the potential juror's