

Why the Conference Procedure Remains the Preferred Method for Resolving Disputes Between the Two Houses of the South Australian Parliament¹

Rick Crump*

Summary

The South Australian Constitution fails to provide a useful mechanism for settling deadlocks between the two Houses of its bicameral Parliament. With both Houses of the South Australian Parliament having equal power with respect to all Bills (except money Bills), disputes between the two House inevitably arise.

Throughout the history of the South Australian Parliament the Conference of Managers has been the preferred method for reconciling such differences, especially when a parliamentary session is drawing to a close and an important Government Bill is under threat of not being passed.

While the procedures for agreeing to and preparing for Conferences between the two Houses is clearly set out in the standing orders of both Houses, the conduct of the Conference proceedings is governed by past practice and tradition.

An examination of the Conference process clearly demonstrates that the informal procedures allow Managers to speak freely so that the maximum of agreement and the limit of concession are ascertained. The Conference has become the preferred method for resolving disputes as the flexible procedures are responsive to the perceived urgency of the situation as opposed to the statutory alternative.

The success of the Conference process is principally brought about by having Managers from each House who accurately represent the opinion of their respective

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* Rick Crump is a Parliamentary Officer, House of Assembly, Parliament of South Australia.

House and each representative group voting as two distinct blocks. This preserves the relative power of each House in the negotiation process resulting in genuine compromise. The legitimacy of this process is demonstrated by the resounding support each House affords to the actions of its representatives.

Deadlock Provisions

In 1881, the first provision in Australia for the resolution of deadlocks² was inserted in the South Australian Constitution via the Constitution Act Further Amendment Bill. Today, section 41 of the Constitution Act 1934 (SA) essentially reflects the same deadlock provisions as those established in 1881. Under section 41 when any Bill has been passed twice (on the second occasion by an absolute majority) by the House of Assembly in two successive Parliaments and has been rejected by the Legislative Council in consequence of any amendments made by the Council, the Governor may dissolve both Houses and grant a double dissolution or issue writs for the election of two additional members to the Council. Surprisingly, after all these statutory requirements for the settlement of deadlocks have been invoked, there is no further mechanism to resolve the dispute should one still stand. Described as convoluted and a means to ensure the dominance of the Legislative Council, the provisions have never been invoked since their enactment.³

An alternative mechanism to resolve a deadlock between the two Houses has been available since 1985 via section 28A of the Constitution Act 1934 (SA). This allows the Governor to dissolve the House of Assembly and issue a writ for a general election within one month of a Bill certified by the House of Assembly as a Bill of Special Importance being rejected by the Legislative Council. Since its enactment, this provision has not been employed and similar to section 41, there is no further provision for the resolution of any deadlock should one remain after the conclusion of this action.

Relationship Between the Two Houses

Although the House of Assembly of the South Australian Parliament is clearly recognised as the House where Government is formed, the South Australian Constitution does not provide any indication that this alone should assure the passage of any Bill. As a bicameral Parliament, the relative powers of each House except as provided in those sections of the Constitution Act relating to money bills are equal in respect of all Bills.⁴

² Rydon J. 'Upper Houses—The Australian experience' in G.S. Reid (ed.) *The Role of Upper Houses Today, Proceedings of the fourth annual workshop of the Australian Study of Parliament Group*, 1983, p 25

³ Munyard, A. 'Making a Polity: 1836-1857' D. Jaensch (ed.) *Flinders History of South Australia*, Wakefield Press 1986, p 372

⁴ Constitution Act 1934 (SA) s 10

In respect to the origin of money Bills or a money clause, these shall originate only in the House of Assembly.⁵ The power of the Legislative Council with respect to a money clause is that it may return to the House of Assembly ‘any Bill containing a money clause with a suggestion to omit or amend such clause or to insert additional money clauses, or may send to the Assembly a Bill containing suggested money clauses requesting, by message, that effect be given to the suggestion.’⁶

The provisions defining the powers of the two Houses in respect to money matters were inserted into the Constitution Act in 1913, thereby enunciating the principles of the Compact of 1857 which had up to that time been operating as a voluntary agreement designed to avoid disputes over money Bills and are still retained until today.⁷

Given the equality of the relative legislative power of the two Houses of the South Australian Parliament, it is inevitable that deadlocks will arise. As the deadlock provisions within the Constitution have proved unpopular, the Conference procedure has proved to be the practical alternative to resolve disputes while preserving the relative power of the two Houses.

Background

The history of the South Australian Parliament clearly indicates that the formal deadlock provisions as contained within the Constitution have not proven to be a very popular or practical procedure for resolving disputes. Whether it is the convoluted procedures involved, lack of certainty, cost or the potential upheaval it can cause, its lack of use strongly suggests that some other less destabilising procedure is more readily available to assist in the resolution of disputes between the two Houses.

As a bicameral Parliament with both Houses having equal legislative power (except those relating to money bills) the Conference of Managers as contained within the standing orders of both Houses has become the most readily available and preferred method for reconciling differences between the two Houses.

Since its establishment as a bicameral Parliament in 1857, the South Australian Parliament has regularly employed the Conference procedure as a dispute resolution process. While the subject of a Conference of Managers can vary, they are more commonly employed to settle disputes on amendments to Bills. On matters other than amendments to Bills, Conferences have been held to determine the membership of the Wages Boards in 1907 and 1911.

⁵ Constitution Act 1934 (SA) s 61

⁶ Constitution Act 1934 (SA) s 62(2)

⁷ Coombe, G D. *Responsible Government in South Australia*, Government Printer, 1957, p 147

In the early days of the South Australian Parliament the Conference procedure was a very cumbersome and drawn-out process involving both 'Ordinary' and 'Free' Conferences. At Ordinary Conferences, the duty of the Conference Managers was restricted in silence to the simple exchange of written reasons to the Managers of the other House. A Free Conference could not be asked for until two Ordinary (preliminary) Conferences had been held.

Conference procedures were considerably altered in 1903, whereby it changed to substantially represent current day practice. Today the Ordinary Conference sometimes referred to as the 'dumb show', has been replaced by the use of messages. When it is now desired for representatives of both Houses to meet in a Conference context, they immediately proceed to a Free Conference to explain and discuss the position of their respective Houses by word of mouth.

In South Australia since 1903, there have been 362 Conferences on disputed Bills, at an average of approximately 10 Conferences per Parliament. Of the 362 Conferences 85.7% have resulted in the difference between the two Houses being resolved either by way of Conference recommendations being agreed to 83%, or one House no longer insisting on its disagreement with the other House, 2.7%.⁸ This result represents a significant opportunity provided by the Conference procedure to achieve a positive outcome in the form of an agreement on a disputed Bill that would otherwise be defeated.

While the Conference process has been acknowledged as obsolete in the United Kingdom Parliament⁹ within the South Australian context it has established itself as a valuable parliamentary procedure for resolving disputes between the two Houses. A detailed analysis of the practices and procedures surrounding the Conference process will assist in explaining its success and preferential use for resolving disputes within the South Australian context.

⁸ Refer to appendix No 1 South Australian Parliament — Summary of Conferences of Managers for the period commencing 1902. Between 1857 and 1902 numerous conferences were held between the two Houses of the South Australian Parliament involving both ordinary and free conferences. As for other Parliaments in Australia, there have been 24 free conferences held in New South Wales since 1867, with only 3 conferences not resolving the disagreement. In Tasmania, for the period 1947 to 1995, 122 free conferences were held, of which 16 either failed or lapsed. (Parliamentary Research Services, Background Paper on Principles 6 to 11 agreed to by the Legislative Council September 1997, Parliament of Tasmania, 1998, p3). The Commonwealth of Australia has had only two formal conferences, both of which were successful. (Evans, H (ed.) *Odger's, Australian Senate Practice*, 8th edn. Australian Government Publishing Service, Canberra 1997, p 70, 74)

⁹ McKay, W (ed.) *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* 23rd edn, 2004, LexisNexis UK p 715

Request for Conference

Within the South Australian context the request for a Conference is always initiated by the House which originated the Bill and which finds itself in possession of the disputed Bill after each House has once insisted on its requirements. It is therefore incumbent on the House which originated the Bill in question to determine whether it desires to pursue a Conference in a last attempt to try to save the Bill. While it is the will of the House as to whether a Conference will be requested, given the Government control of the Lower House, any Government Bill originating in the Lower House which the Government desires to save will almost certainly be the subject of a request for a Conference.

On only three occasions since 1903 has the request for a Conference been denied and on all three occasions it has been the Legislative Council who has denied the request. On one occasion the request for a Conference was denied on the same day the Parliament was prorogued.¹⁰ Insufficient time was clearly the limiting factor in this instance.

More recently,¹¹ a Conference requested by the House of Assembly on the Local Government (Meetings) Amendment Bill was denied. This Bill addressed the type of majority vote required by Local Councils to allow daytime meetings, consisting of the more emotive parts of a larger Bill which were divided off therefore allowing the more significant parts of the larger Bill to pass in isolation. The Legislative Council argued that the Minister in another place had a prior opportunity to 'adopt an attitude different from the one he took – an opportunity to adopt an attitude of compromise.'¹² Those opposing the Conference in the Upper House saw no real room for a compromise between the two alternatives before the House. It was either an absolute majority or something other than an absolute majority. Alternatively, those members of the Upper House who desired to grant the Conference, admittedly Government Members who were in a minority, argued from a pragmatic position regardless of the respective positions being adopted on the issue in dispute.

It was argued that what was more important was 'preserving the processes that have been obtained in the Constitution since responsible government was introduced into South Australia. One of those processes is that we should endeavour to reach compromise whenever possible between the two Houses.'¹³ Irrespective of whether there is any real chance of compromise, it is not known until the request from the other House is acceded to as to whether compromise can be achieved. If the Conference request by the Government in the Lower House is denied by the Upper

¹⁰ Legislative Council (SA), *Minutes of Proceedings, 21 November 1918*, p 130, *Animal and Bird Protection Bill*

¹¹ Legislative Council (SA), *Minutes of Proceedings, 2 October 1974*, p134

¹² Hansard of South Australia, Legislative Council 2 October 1974, p 1238

¹³ Hansard of South Australia, Legislative Council, 2 October 1974, p 1239.

House, then it is assumed that the Upper House has spoken and cannot see any real chance of compromise.

Based on the conventional view that responsible party government confers a mandate to govern on the majority party in the Lower House, should the Government have a right to call a Conference to which the other House must accede? This has become more relevant in South Australia particularly since the mid-1970s when the adoption of proportional representation in the election of the Upper House has resulted in minority parties having the balance of power since 1975.

The practical reality of this situation is that irrespective of whether or not the Government is given the power to demand a Conference, if a majority of Members of a hostile Upper House have made up their mind and are not prepared to grant a Conference, then it is hardly worthwhile imposing a Conference upon the Upper House. While it is always possible that compromise could be achieved even when a Conference is imposed on the Upper House against its will, ultimately both Houses have equal power to reject a Bill and as such, the power balance between the two Houses, together with the integrity of the review function of the Upper House would still be preserved. As the avenue of last resort to resolve disputes between the two Houses, the status quo appears adequate as demonstrated by the fact that less than 1% of all Conferences requested since 1903 in South Australia have been rejected.¹⁴ When either House is prepared to save a Bill by requesting a Conference, there is generally agreement in establishing it.

Conference Composition and Time

The standing orders of both Houses prescribe that the number of Managers to represent each House at a Conference be the same. While House of Assembly Standing Order No 219 does not specify the number of Managers to be appointed, Legislative Council Standing Order No 252 states 'that unless otherwise ordered the number be not less than five.' Current practice sees five Members from each House being appointed and there are no examples of this number being varied.

The motions requesting and granting the Conference contain the names of the Members who the respective movers propose as Managers. As these motions will be moved by Ministers in either House who are in charge of the Bill, the Minister will be nominated as a Manager in addition to four other Members. The Minister in nominating Managers would usually consult other Members and party representatives in advance. If however, any one Member so requests, the Managers for each House are selected by ballot. This procedure reflects the House practice for the appointment of Members to Select Committees, and while there are no

¹⁴ Appendix No 1 South Australian Parliament — Summary of Conferences of Managers for the period commencing 1902.

examples of the ballot being employed, the nomination process is essentially a way of formalising on the floor of the House the outcome of the informal negotiations that have taken place in private meetings.

While the standing orders require that the number of Managers appointed by each House be equal, in reality, as the Managers of each House constitute two distinct committees each of which acts by a majority, no advantage is necessarily gained by one House being represented by more Managers than the other, particularly in a non-voting situation.

Part of the theory underlying the Conference process is that ‘the delegates from each House accurately represent the opinion of that House, and their action at the Conference will be upheld on report.’¹⁵ While the representation of opinions as to the pending differences could be regarded as the more important consideration, the practical reality is that given the strong party divisions and disciplined party voting of today, the composition of Managers would usually reflect the party divisions in the House. In the South Australian context the political affiliation of Managers sent by the respective Houses has traditionally been three Government and two Opposition Members for the House of Assembly and two Government and three Opposition Members for the Legislative Council.

Since the introduction of proportional representation in South Australia via the Constitution and Electoral Act Amendment Act 1973 (SA), no government has had control of the Upper House in South Australia. The system of proportional representation tends to generate a diversity of political representation in which minor parties hold the balance of power. South Australia is no exception and this has resulted in both Labor and Liberal Governments entering into negotiations with minor parties such as the Australian Democrats, SA First Party and Independent Members who have held the balance of power in the Legislative Council.

Typically now, given that the balance of power in the Upper House resides in these minority parties, the composition of Managers has shifted away from the exclusive domain of the two major political parties. More recently the composition of Managers representing the Legislative Council have included two Government, two Opposition and one Democrat (Listening Devices (Miscellaneous) Amendment Bill 1998-99) or two Liberal, one Labor, one Democrat and one Independent (No Pokies), (Statutes Amendment Motor Accidents Bill 1997-98), in a Parliament where a Liberal minority Government required the support of Independent Members.

This strongly demonstrates the representative nature of the composition of Managers and supports the theory underlying the Conference process. Provided the Managers from each House are representative of the opinions of that House and

¹⁵ Blackmore, E.G., *Manual of the Practices, Procedures and Usage of the Legislative Council of South Australia*, 2nd edn, 1915, Government Printer, p 225

especially where the Government does not command a majority in the Upper House, it is highly probable that the recommendations from the Conference will be upheld on report. Although there have been some Conferences that have failed to reach agreement, there is no instance in over a century of Conferences between the two Houses where agreed Conference recommendations have not been upheld.

Apart from South Australia where the Conference procedure is still regularly employed to resolve disputes between the two Houses, its use in other bicameral Parliaments around Australia has steadily declined to the point where it was last used outside South Australia in 1996.¹⁶ One possible reason why the Conference has fallen into disuse could be the strong party discipline and the rigidity of Ministerial control over the Lower Houses of Parliament. Under these circumstances it is possibly more efficient for Members, especially those who have the balance of power to negotiate directly with Ministers who control what the House does with its legislation. While this may be the most pragmatic way to negotiate an outcome, it has a far greater potential to exclude some Members from the process. This can be contrasted to the Conference forum where all views within a particular House will be considered. For those Members excluded from the informal direct negotiation with Ministers, this can lead to resentment.

Conference Process

When the time as stipulated in the message arises to convene the Conference, the Managers from the two Houses meet. The House which has requested the Conference, being in possession of the disputed Bill, will deliver to the Managers of the other House the Bill together with the resolution adopted by the requesting House.

When the Managers meet, the groups representing the two Houses 'vote' as two respective blocks, each of which acts by a majority. Any agreement between the two representative groups will depend upon a majority amongst the representatives within each group. Where the Houses are controlled by different majorities, any agreement is thus genuine compromise between the groups.¹⁷ As outlined earlier, this is certainly the case in the South Australian context, especially since 1975, where no Government has had control of the Upper House.

¹⁶ The last conference to be held in Tasmania was 1996, Western Australia 1992, New South Wales 1978, Victoria 1938, Commonwealth of Australia 1931. Conferences were refused in Victoria and the Commonwealth of Australia in 1964 and 1950 respectively. In 1996 the formal mechanism for free conferences in the Standing Orders of the Tasmanian House of Assembly was removed. In 1997, the Legislative Council Select Committee on the operations of the Legislative Council recommended that the system be re-established for the proper functioning of the Upper House.

¹⁷ Russell, M. *Resolving Disputes between the Chambers* The Constitution Unit, University College London, 1999, p 8

This can be contrasted to recent amendments to the Victorian Constitution via the Constitution (Parliamentary Reform) Act 2003 (Vic), which saw the establishment of a Dispute Resolution Committee. This was a recommendation of the Victorian Constitution Commission which acknowledged the merits of establishing in the Constitution a joint negotiating committee to facilitate the passage of legislation, something resembling the informal conference procedure that was used between 1860 and 1945 but fell into disuse.

The Dispute Resolution Committee which has yet to be used is appointed for the duration of the Parliament and comprises a total of twelve Members, seven elected from the Legislative Assembly and five from the Legislative Council, in each case 'taking into account the political composition of the House.' The difference between a joint committee and the Conference of Managers is that the Dispute Resolution Committee reaches its decision by a majority vote of all committee Members. Given the strong party discipline that currently pervades contemporary politics, central to the outcome of the joint committee's deliberations will be the political balance of Members on the Committee.

Further to each Committee Member being entitled to one vote, a Member appointed by the Committee as Chair has a casting vote in the event of an equality of votes. The provision for a casting vote by the Chair enables the Committee to provide a report to both Houses as a way of breaking a deadlock. It was argued that it would be 'most unfortunate if the Dispute Resolution Committee could not come up with a suggested resolution for both Houses, so by giving the Chair a casting vote as well as a deliberative vote, it will mean at least that something proactive can go to the House.'¹⁸

The integrity of the joint committee process like the Conference of Managers is ultimately tested by the way each House deals with the resolution presented to it.

In a bicameral Parliament where both Houses have equal power in respect to Bills, the danger of employing a joint committee with an unequal number of Members from either House and unequal voting power amongst Members is that it can create a 'mini chamber' where the interests of each House are not equal and where the party which can establish a majority can produce an outcome biased towards the views of that majority. While ultimately the integrity of either process will be tested by the way each House deals with the resolution presented to it, under the joint committee process it is more likely that the report of the committee will be rejected by the House whose political balance or attitudes are not accurately reflected in the political balance of the joint committee as a whole. The strength of the South Australian Conference process is that the Managers from each House accurately represent the opinions of each House, and their actions at the Conference are therefore likely to be upheld on report.

¹⁸ Mr Lenders, Minister for Finance, Hansard Victorian Parliament, Legislative Council, 2003, p 1205

The appointment of Managers to a Conference is specific to the Bill in dispute and membership only lasts until the Conference has reported. There are isolated examples of Managers being replaced on Conferences but the reason would appear to be Member's availability rather than expertise or preference. The benefit associated with having a temporary Conference membership is that Managers can bring specific expertise to the negotiations, therefore providing a greater understanding and insight into the issues in dispute. This can be contrasted with a specific purpose Dispute Resolution Committee with a permanent membership for the duration of the Parliament. While a permanent membership can assist the negotiation process by developing a strong relationship of trust and cooperation amongst committee Members, given the complexities and variation in legislation that comes before the Parliament, it would be inconceivable to expect those permanent Members of a committee to be best suited to understand the finer details and technicalities of all disputed Bills. A permanent membership would also deny the Minister responsible for the Bill as well as members of a Select Committee who may have examined the Bill access to the negotiation process if they were not Members of the Dispute Resolution Committee.

Purview of Deliberations

The extent of the deliberations of the Conference is determined by the message requesting the Conference which states in general terms the object of the Conference. This would normally refer to the disputed amendments in respect to a Bill. When Managers meet the latest resolution of the House respecting the amendments in question together with the Bill are formally delivered to the Managers of the other House. Thereupon the Managers are entirely free to discuss all subjects where the two Houses are in dispute, but are not to discuss or amend anything where there has been a concurrent vote of both Houses unless this is consequential upon resolving the disagreement in question.

In a dispute between the two Houses concerning an amendment made by the House of Assembly in the Lottery and Gaming Act 1950, the Legislative Council insisted that the amendment was outside the scope of the Bill and as a consequence it could not be considered. The House of Assembly requested the Legislative Council to consider the 'properly' made amendment. The Conference report adopted by both Houses saw the amendment being no longer insisted upon. It was further agreed that the Legislative Council would initiate a Bill to give effect to the amendment made by the House of Assembly. Interestingly, what was reported by the Conference and agreed to by both Houses was that 'the Standing Orders of both Houses shall be amended so as to provide that each House shall consider on the merits any amendment made in a Bill by either House.'¹⁹ This would appear to be outside the objects of the Conference.

¹⁹ *Lottery and Gaming Act 1950, House of Assembly Votes and Proceedings*, p 181

Where a Conference is given a general authority to discuss a Bill as opposed to being restricted to those specific clauses of the Bill in dispute, ‘this system has the advantage that it allows more scope for trading between different groups ... [however] ...[T]he disadvantage is that it can breed resentment amongst other Parliamentarians if issues which they believed were resolved are re-opened and changed.’²⁰ Depending upon the extent of negotiated change to a Bill in addition to the original disagreement, or in respect to the example outlined above where something well outside the scope of the Conference was reported, while providing fertile ground to negotiate a successful outcome, it has the potential to lead to defeat of the Bill if minority interests with the balance of power feel excluded from the compromise emerging from the Conference negotiations.

Decision Process

When Managers from both Houses meet, they are at liberty to confer freely by word of mouth with each other to reconcile their differences. For the House that has requested the Conference, it is the duty of the Managers of that House to attempt to obtain a withdrawal of the point in dispute and failing this, modification of the disputed issue by way of further amendment.

For the House that has granted the Conference, it shall be competent for the majority of Managers of that House to recommend to their House that solution which, in their opinion, is most likely to secure the final agreement of the two Houses. However no amendment shall be proposed or agreed to by them in any words to which both Houses have so far agreed, unless these be immediately affected by the disagreement in question.²¹

While the procedures for agreeing to and preparing for Conferences are covered by the standing orders of each House, the conduct of Conferences are not regulated in detail by standing orders, but are governed by practice and tradition. This can be contrasted to the more formal practices of Joint, Select or Standing Committees whose procedures are regulated to a greater extent by standing orders and/ or statute.²²

The practices that have developed over time to govern the procedures of Conferences have proved very effective in resolving disputes between the Houses. The vast majority of Conferences is requested in the final days of a Parliamentary session in an attempt to save a Bill. That only one Conference has failed to report in

²⁰ n 15, at p 7

²¹ South Australian Parliament, Standing Order, House of Assembly No 226, Legislative Council No 260

²² Parliamentary Committees Act 1991 (SA)

over a century²³ is testament to the flexibility of the Conference procedures to respond to the perceived urgency of the situation.

The consensual environment of the Conference process is enhanced by its proceedings being in private. As such, no quorum by either House is necessary, there is no requirement to document the proceedings or sign the Conference report. With no rules of debate, Managers are free to negotiate a compromise. Interestingly, the majority referred to in the standing orders of each House is not formal in the sense that a vote is taken. A consensual acceptance amongst the Managers of each House to a solution to resolve the disagreement is sufficient.

The lack of any record of proceedings coupled with the closed nature of the Conference is the catalyst to promote agreement as Managers are free to speak openly and unconstrained. This 'provides the means and place by and in which through personal interchange of views, the maximum of agreement and the limit of concession are ascertain in respect of the matters in dispute.'²⁴

Given the closed nature of the Conference proceedings the question arises as to whether the process lacks transparency or fails to provide a suitable level of accountability. Matters in dispute, by their very nature, are controversial and have been the subject of considerable debate in each House. Adoption of the Conference report and consideration of the recommendations as to amendments in the Committee of the whole House is no different to the scrutiny a Bill, clause or amendment would encounter when passing through the legislative process keeping in mind deals reached in corridor discussions are even less transparent and accountable.

A compromise between having no official record and a complete record of the Conference proceedings could rest in delaying or withholding the record of the Conference proceedings for a period of time after the matter has been formally resolved. This may provide a temporary reprieve to individual Managers or Members of a party division who have had a change of mind for what ever reason. However, knowing that the veil of secrecy could ultimately be lifted, revealing to the world what has transpired, would remove any benefit that is derived from the private nature of the Conference therefore removing the very essence of what has been created to assist in resolving the disputed.

As Conference Managers have no mandate or leave to confer except with the Managers of the other House, it is deduced that Conferences are to be held in private. As the standing orders provide no guidance on the staffing requirements of Conferences, these matters are ascertained upon anecdotal advice and deduction. It has been acknowledged that when Managers wish to consult with persons other than Managers 'Officers of the two Houses at the time informed the Managers that

²³ Constitution Amendment Bill 1906

²⁴ n 13 at p 225

this was not part of the Conference proceedings and therefore withdrew until such times as a properly constituted Conference between Managers of the two Houses could proceed.²⁵

Restricting the Conference to an interchange between Managers is a clear attempt to prevent the process from becoming something analogous to a committee examining witnesses and seeking further information. If the Conference process was to proceed down this path it would lose its ability to respond to the urgency of the situation. Furthermore it would require a regulatory framework to safeguard witnesses similar to a Select or Standing Committee. This would eliminate the informal and flexible nature of the Conference process which is the very reason that has prompted its use and ensured its continuing success.

While acknowledging the consensual environment of the Conference process, because of the complex legislation that now comes before Parliament, it is understandable and permissible to allow Parliamentary Counsel to be present to assist Managers in drafting alternative legislative arrangements that would form part of the recommendations contained in the Conference report. As Parliamentary Counsel is permitted to assist Ministers on matters presently under discussion in the House²⁶ this is not inconsistent with the purpose of the Conferences to resolve a dispute and would not detract from the informal character of the Conference proceedings.

Report

At the conclusion of the Conference and before leaving the Conference room, the Managers prepare their report containing such recommendations as have been mutually agreed upon or stating that no agreement has been reached. The House that granted the Conference and is now in possession of the Bill is the first to consider the outcome of the Conference including the report and recommendations regarding amendments in Committee of the whole House. Should there be no agreement, it is for that House to resolve not to further insist on its requirements, or order the Bill to be laid aside.

When the Conference is concluded, the Managers are expected to report to their respective Houses immediately. There is no requirement for the Conference report to be signed and practice indicates that supplementary or minority reports are not to be filed. This is consistent with the objective of the Conference to reconcile the differences between the two Houses upon all the points in dispute, and to present to both Houses recommendations in respect to those matters in dispute or no

²⁵ Davis, J. *Resolution of Conflict Between the Houses*, 27th Conference of Presiding Officers and Clerks, Hobart 1996, p 4

²⁶ South Australian Parliament Standing Orders, House of Assembly No 72, Legislative Council No 324

recommendation at all. There can be only one report presented to the House as the Conference report is the one agreed to by the majority of the Managers which accurately represents the opinion of that House.

The report to each House, which is identical, is presented on the premise of a 'take it or leave it basis.' This is affirmed by the fact that there has been no occurrence in South Australia where a Conference report has not been adopted or the recommendations have been rejected in the Committee of the whole. Further, it is assumed that Conference reports are not amendable, for if this was possible and either House was free to amend the report, it is conceivable that agreement may never be reached.

The Conference process being the last resort to resolve the dispute between Houses is considered the 'final act of the drama and not an opportunity for devising further controversy. From this it follows that an agreement ought to be reached on all points in dispute and not only a few for there is no further means of reconciliation and the mind of each House is made up and known.'²⁷

If the recommendations of the Conference are adopted in the first House, the Bill is looked upon as saved, for the other House may be expected to endorse the actions of their Managers.²⁸

Conclusion

Because of the inadequacies of the statutory deadlock provisions within the Constitution, the Conference process has emerged as the pragmatic alternative to resolve disputes between the two Houses of the South Australian Parliament.

Whereas the use of the Conference has declined in other Australian Parliaments, within the South Australian context it will continue to remain an integral part of the legislative process given the adoption of proportional representation in the Upper House and the increased likelihood of minority parties holding the balance of power.

The private, flexible and informal procedures of the Conference provide an ideal consensual forum where true negotiation and compromise can be employed by representative groups of both Houses to effect agreement where the exchange of messages has failed.

While in a Conference context the equality of Members representing each House is unimportant, in the Joint Committee context it is important both in terms of the relative power of the Houses and the political balance of the Joint Committee.

²⁷ n 13 at p 225

²⁸ n 13 at p 224

The defining feature of the Conference is that the two groups are representative of the opinions of their respective Houses and the Managers 'vote' as two distinct blocks. This preserves the relative power of each House in the negotiation process resulting in genuine compromise. The legitimacy of this process is demonstrated by the resounding support each House affords to the actions of its representatives.

Other features that add to the success of the Conference and distinguish it as the preferred method for resolving disputes between Houses include its temporary membership and private and informal procedures. All these features enhance the negotiation process and provide sufficient flexibility to allow the Conference to be responsive to the perceived urgency of the situation. ▲

Appendix No 1.

South Australian Parliament Summary of Conference of Managers for the period commencing 1902							
Parliament Years	# of Confer.	Conference Report Status				Bill Laid Aside	
		Recommend reported. Report agreed to.	No agreement reported. Agreement no longer insisted on.	No Report	No agreement reported. Disagreement still insisted on.	House of Assembly	Leg Council
50» [2002 -	5	4			1		1
49 [1997-2001]	6	5			1	1	
48 [1997-1994]	35	30	1		4	1	3
47 [1993-1990]	15	11			4		4
46 [1989-1986]	13	11	1		1		1
45 [1985-1982]	10	10					
44 [1982-1979]	11	7			4	1	3
43 [1979-1977]	30	22	2		6		6
42 [1979-1975]	18	12			6		6
41 [1975-1973]	15°	14			1		1
40 [1972-1970]	22	16	2		4		4
39 [1970-1968]	6	3	3				
38 [1967-1965]	23	17	1		5	1	4
37 [1964-1962]	2	2					
36 [1961-1959]							
35 [1958-1956]							
34 [1955-1953]	1	1					
33 [1952-1950]	4	4					
32 [1949-1947]	1	1					
31 [1946-1944]	4	4					
30 [1943-1941]	5	5					
29 [1940-1938]	9	9					
28 [1937-1933]	12	11			1		1
27 [1932-1930]	14	13			1		1
26 [1929-1927]	10	10					
25 [1926-1924]	16	15			1		1
24 [1923-1921]	9	9					
23 [1920-1918]	11°	11					
22 [1917-1915]	10	10					
21 [1914-1912]	3	2			1		1
20 [1911-1910]	9	7			2		2
19 [1909-1906]	22*	18		1	3^		3
18 [1906-1905]	6	3			3	1	2
17 [1904-1902]	5	5					
Total	362	302	10	1	49	5	44
%age	100	83	2.7	0.3	14		

» As at the end of the 3rd session of the 50th Parliament.

* One conference failed to report before the prorogation of the Parliament.

^ Second conference declined.

° Two conferences and one conference were refused during the 41st and 23rd Parliaments' respectively.

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