

**Seminar on the Twentieth Anniversary of the Establishment of the House of  
Representatives Committee System**

**Main Committee Room**

**Parliament House**

**Canberra**

**Friday 15 February 2008**



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**20<sup>th</sup> Anniversary of the Establishment of the House of Representatives  
Committee System**

**Friday 15 February 2008**

**Main Committee Room  
Parliament House  
Canberra**

- 8.45 am Registration and light refreshments**
- 9.00 am Welcome & Introduction**  
Mr Harry Jenkins MP
- 9.10 am Session One: Overview: significant achievements and challenges**  
Chair: Professor John Langmore  
Panel: Professor John Halligan  
Professor the Hon. Stephen Martin  
The Hon. Kevin Andrews MP  
General discussion
- 10.45 am Morning tea**
- 11.00 am Session Two: Community participation/member education**  
Chair: Mr Rod Sawford  
Panel: Mrs Kay Hull MP  
Professor Ian Marsh  
Ms Siobhan Leyne  
General discussion
- 12.15 pm Lunch**
- 1.40 pm Session Three: Future directions and developments**  
Chair: The Hon. David Hawker MP  
Panel: Professor Geoffrey Lindell  
The Hon. Kevin Rozzoli  
Dr Philip Larkin  
General discussion
- 3.15 pm Closing remarks**  
Mr Ian Harris AO
- 3.30 pm Close**



## **Notes on participants**





**Mr Harry Jenkins MP**  
**BSc (ANU)**

**Speaker of the House of Representatives From 2008**  
**Second Deputy Speaker 2004-2007**  
**Federal member for Scullin (Vic) 1986- present**  
**Australian Labor Party**

Harry Jenkins was elected to the House of Representatives for Scullin, Victoria, at a by-election in 1986, vice the Hon. Dr HA Jenkins (resigned). He has served as Deputy Chair of Committees (1990-1993) and Deputy Speaker from 1993 to 1996. He has been the Second Deputy Speaker since April 1996.

Mr Jenkins has been a member of numerous House committees in his more than twenty years in federal parliament. He served on the Environment, Recreation and the Arts committee from 1987 and then its successor, the Environment and Heritage committee to 2007. He chaired the Publications committee (1987-1990); the Community Affairs committee (1990-1993) and the Selection committee (1993-1996). He has been a member of the following House committees - Finance and Public Administration; Aboriginal Affairs; Industry, Science and Technology; Family and Community Affairs; Science and Innovation and Members' Interests. In addition, Mr Jenkins was also a member of the Joint Statutory committee on Public Works, the Joint Standing committee on National Capital and External Territories and the Joint Select committee on the Retailing Sector.

**Professor John Langmore**  
**BComm, DipSocStud (Melb), MEd (Monash), DipDevEcon (Cantab).**

**Federal member for Fraser (ACT) 1984-1996**  
**Australian Labor Party**

John Langmore is a Professorial Fellow in Political Science at the University of Melbourne. He was Director of the UN Division for Social Policy and Development in New York for five years from 1997 and then Representative of the International Labour Organization to the United Nations for two. One of his principal responsibilities while in the UN Secretariat was organisation of the special session of the General Assembly on social development held in Geneva in June 2000. When appointed, he was the most senior Australian working in the UN Secretariat.

Between 1984 and 1996 he was MP for Fraser. In 1987 he chaired a caucus committee which successfully recommended the establishment of the first comprehensive House of Representatives committee system. He later chaired a couple of House committees and several other inquiries. For example, while chairing the House Standing Committee on the Environment, Recreation and the Arts, major reports on employment and the environment, Australia's World Heritage areas, maintaining Australia's biodiversity, and an assessment of the implementation of greenhouse gas emission reduction measures were completed. As a member of the Joint Foreign Affairs and Trade Committee he chaired several inquiries, on

trade, international financial institutions, Third World debt, and Australia's balance of payments.

His most recent book is *To Firmer Ground: Restoring Hope in Australia* which was published in October 2007 and which Robert Solomon reviewed in *Federal Gallery* and described as 'as good a prescription as you will find for what the new government on 25<sup>th</sup> November should do to make Australia a better country'.

**Professor John Halligan**  
**PhD (Wellington)**

John Halligan is Research Professor of Government and Public Administration, Faculty of Business and Government, University of Canberra, Australia.

His research interests are comparative public management and governance, specifically government institutions, parliament, corporate governance, political-bureaucratic relationships and performance management. He specialises in Anglophone countries, particularly Australia and New Zealand, and for comparative purposes, Canada and the United Kingdom.

Recent books with colleagues are *Managing Performance: International Comparisons*, Routledge, London, 2007; *Parliament in the 21<sup>st</sup> Century*, Melbourne University Press, 2007. He is currently completing a book on Centrelink (for ANU Press), and studies of Corporate Governance in the Public Sector and Performance Management are being drafted.

**Professor the Hon. Stephen Martin**  
**BA, Dip Ed, MA, MTCP, PhD**

**Speaker of the House of Representatives 1993-1996**  
**Federal member for Macarthur (NSW) 1984-93 and Cunningham (NSW) 1993-2002**  
**Australian Labor Party**

Professor Stephen Martin is currently Pro Vice Chancellor International at Victoria University in Melbourne. From April he will assume the role of Deputy Vice Chancellor (Strategy and Planning) at Curtin University in Perth.

With a long and distinguished background in the Australian Parliament, Professor Martin represented the Macarthur and Cunningham electorates in New South Wales for eighteen years. In Government, he served as Speaker of the House of Representatives, Parliamentary Secretary for Foreign Affairs and Trade, and Chairman of the House Standing Committee on Finance and Public Administration. As a member of the Shadow Cabinet, he held portfolios in Defence, Trade and Tourism.

Prior to assuming his present role in January 2005, Professor Martin was the Chief Executive Officer of the University of Wollongong in Dubai. Between September 2002 and December 2003, he was a Professorial Fellow and Director of Corporate and Executive Education, Graduate School of Business and Professional Development at the University of Wollongong, Australia.

His interests are international education, politics, corporate governance, financial services, defence and trade policy, and sport.

**The Hon. Kevin Andrews MP**  
**BA, LLB (Melb), LLM (Monash).**

**Federal member for Menzies (Vic) 1991-current**  
**Liberal Party of Australia**

Kevin Andrews was elected to the House of Representatives in 1991 as the Member for Menzies. He served on a number of Parliamentary Committees and chaired the Legal and Constitutional Affairs Committee from 1996 until 2001.

He subsequently served as Minister for Ageing (2001 - 03), Minister for Employment and Workplace Relations (2003-2007) and Minister for Immigration and Citizenship (2007).

**Mr Rod Sawford**  
**DipT – MACE (Primary) (Western Teachers College)**

**Federal member for Port Adelaide (SA) 1988-2007**  
**Australian Labor Party**

Rod Sawford was elected to the House of Representatives in 1988 and after successive election wins he retired prior to the general elections in 2007. He served as Government Whip during 1994 through to the 1996 election and then as Opposition Whip from 1996 to November 2001.

During his almost twenty years in federal parliament he served on numerous House committees including the House Standing Committees on Employment, Education and Training; Employment, Education and Workplace Relations; Education and Training; Education and Vocational Training and Aboriginal Affairs. Mr Sawford had been a member of the substantive Education House Committee for 18 years (1989 to 2007). He also served on the Joint Statutory Public Accounts Committee and the Privileges, Selection and Members Interests Committees.

Prior to entering the Federal Parliament Mr Sawford was a casual labourer on the wharves of Port Adelaide, teacher consultant and school principal in the South Australian Education Department.

**Mrs Kay Hull MP**  
**Federal member for Riverina (NSW) 1998-current**  
**National Party of Australia Chief Whip**

Kay Hull is very passionate about representing the Riverina electorate and her main focuses have been on regional economic development, small business, health and aged care and disability issues.

Kay was elected in 1998 and was the first NSW Nationals woman to be elected into Federal Parliament.

A successful Wagga Wagga business owner-operator since 1978, Kay is also a former Councillor and Deputy Mayor of the City of Wagga Wagga and board member of Tourism NSW.

Kay is a wife, mother and grandmother and is very devoted to caring for her family. The total funding the Riverina has received since she was elected has exceeded \$5 billion and continues to increase.

Kay has been honoured as a Paul Harris fellow and is a recipient of the Rod Murdoch Award for Outstanding Contribution to the Development of Tourism in NSW.

During Kay's time in Parliament she has handed down major reports into substance abuse titled "Road to Recovery" and the historic child custody titled "Every Picture Tells A Story" that has seen significant changes in the Family Law Act and the Child Support Act.

Kay has been actively involved in many committees of Parliament. She was chosen to represent The Nationals at the International Parliamentary Union. Kay was elected to represent the Asia Pacific Region on the IPU Women's Co-ordinating Committee. She is actively involved in humanitarian issues centred around International Child Trafficking.

Kay will seek re-election to the committee at Capetown South Africa in April 2008.

**Professor Ian Marsh**  
**BA (Newcastle); MPA (Harvard); AM, PhD, Harvard**

Ian Marsh holds the Australian and New Zealand School of Government (ANZSOG) Chair of Public Management at the University of Sydney. Professor Marsh, a former Senior Fellow of the Research School of Social Sciences, ANU, took up his chair at Sydney in early 2005.

A graduate of the Kennedy School of Government, and the Graduate School of Arts and Sciences, Harvard University, Professor Marsh was formerly an Associate Professor of the Australian Graduate School of Management, Research Director of the Liberal Party of Australia, and Associate of McKinsey & Co, and Private Secretary to the Minister for Defence.

Professor Marsh has been a prolific contributor to public discussion about the role of government through his many books, articles and contributions published over the past 20 years. He is author of several books, including *Beyond the Two Party System: Political Representation, Economic Competitiveness and Australian Politics*, Cambridge University Press, 1995. *Into the Future: The Neglect of the Long Term in Australian Politics* (with David Yencken), Melbourne: Black Inc. 2005. Also three edited collections: *Australian Political Parties in Transition?* Sydney, Federation Press, 2006, *Democracy Governance and Regionalism in East and Southeast Asia*, London, Routledge, 2006 and, with Jean Blondel, Takashi Inoguchi and Richard Sinnott, *Globalisation and the People* London, Routledge, 2006 (forthcoming).

**Ms Siobhan Leyne**

I have been an inquiry secretary in the Committee Office of the Department of the House of Representatives since February 2006. Prior to this (after a very short, but informative, detour via the Tax Office) I spent five years as a committee secretary for the ACT Legislative Assembly. Because of the proximity to the community it serves, committees of the ACT Legislative Assembly are under close scrutiny and this is why I have a particular interest in strategies to effectively engage the community with the parliament through the committee system and how the committee system can be used to promote democratic processes.

I am also studying towards a masters degree in anthropology with a focus on the notions of belonging and nationalism and how this impacts on individual participation in systems of governance and democratic processes.

**Mr David Hawker MP**  
**BEC (Melb)**

**Speaker of the House of Representatives 2004-2008**  
**Federal member for Wannon (Vic) 1983-current**  
**Liberal Party of Australia**

David Hawker has been a member of Federal Parliament for 25 years in May this year, having been elected to the seat of Wannon in Western Victoria in May, 1983.

During the 41st Parliament Mr Hawker was Speaker of the House of Representatives, concluding his term on the eve of the 42nd parliament on 11 February 2008.

Prior to his election as Speaker, Mr Hawker was Chairman of the House of Representatives Standing Committee on Economics, Finance and Public Administration which is regarded as one of the Parliament's key all-Party Committees. The Committee undertook a major inquiry into cost shifting on to local government producing the report Rates and Taxes: A Fair Share for Responsible Local Government. This Committee also established the regular hearings with the Chairman of the Reserve Bank and produced a report on regional banking, Regional banking services: Money too far away, among many other reports.

In addition Mr Hawker was formerly a member of the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. In his earlier role as Chairman Mr Hawker introduced the Parliamentary Armed Forces Scheme.

**Professor Geoffrey Lindell**  
**LLB LLM (Adel)**

Geoffrey Lindell, is an Adjunct Professor of Law at the Adelaide and Australian National Universities and a Professorial Fellow at the Melbourne University. Before his retirement as a full time academic in 2002, he held senior academic positions at the Australian National University and later the Melbourne University. He has taught and published, widely in the

field of Australian constitutional law. He has assisted in some major reviews of the Australian Constitution, as well as having provided (and continues to provide) legal and constitutional advice to governments and parliaments. He also appeared as counsel in two major High Court constitutional cases. He was, until 2002, the inaugural Secretary of the Australian Association of Constitutional Law, a body he helped to form and was a co-opted member of the Council of that Association during 2005.

Geoffrey Lindell has taught and published widely in the field of Australian constitutional law. He has assisted in major reviews of the Australian Constitution and provided constitutional advice to governments and parliaments. He is currently an Adjunct Law Professor at the Adelaide and Australian National Universities and a Professorial Fellow at Melbourne University. He has appeared as counsel in two major High Court constitutional cases. He was the inaugural Secretary of the Australian Association of Constitutional Law, a body he helped to form.

Editorial Panel Member, *Constitutional Law and Policy Review*, Prospect Media Ltd, NSW  
Member of the Board of Advisors, *Public Law Review*, Law Book Company, North Ryde, NSW

**The Hon. Kevin Rozzoli**  
**Dip.Law, D.Litt (Honoris Causa)**

**Speaker of the NSW Legislative Assembly (1998-1995)**  
**Former member for Hawkesbury (NSW Legislative Assembly) 1973-2003**

Kevin Rozzoli was a Member of the Legislative Assembly of New South Wales from 1973 to 2003. Elected Speaker in 1988 he held the position until 1995. He regards this as the high point of his parliamentary career. He has been an Australian Region representative on the Commonwealth Parliamentary Association Executive.

He was admitted to the NSW Bar in 1985 and in 1990 was awarded an Honorary Doctorate of Letters, University of Western Sydney in 1990 for his contribution to the University and to Western Sydney. In 2006 he published his first book 'Gavel to Gavel – an insider's view of parliament'. Last year he facilitated the Induction Program for newly elected MPs in Papua New Guinea. He has written articles and papers on many aspects of the Parliament.

He is currently an Honorary Research Associate with the University of Sydney and an Honorary Research Fellow at Monash University, He is also a Board member of the NSW Law and Justice Association and the Public Interest Advocacy Centre in NSW.

**Dr Philip Larkin**  
BA(Hons) (Herts), MA(Nottm), DPhil(Sussex)

Dr Phil Larkin is in the Political Science Program, Research School of Social Sciences, Australian National University (ANU) and a member of the Parliamentary Studies Centre. He has worked at the Australian National University since October 2005, prior to which he was an advisor to the Trade and Industry Select Committee of the British Parliament. He has

recently been a Visiting Fellow at the University of Sussex, UK. This included a secondment to the Senate Committee Office.

Since arriving at ANU his research has primarily focussed on comparative parliaments (particularly committee systems) and parties, and on Australian democracy. He is a co-author of a democratic Audit of Australia, *Australia: The State of Democracy* (forthcoming 2008, Federation Press). He has also written on industrial and competition policy.

**Mr Ian Harris AO**

**BA (Hons); Dip Ed; MA (Newcastle)**

**Clerk of the House of Representatives 1997-current**

Ian Harris was appointed Clerk of the House of Representatives on 27 July 1997, having served as Deputy Clerk from 1991. He joined the parliamentary staff in 1972 after postgraduate study (in Australian constitutional history) and short stints as a university tutor, schoolteacher and journalist/radio broadcaster. The appeal of a parliamentary career derived from the opportunity it opened to serve all elements of the political spectrum.

In April 2003, he was elected as President of the International Association of Secretaries-General of (national) Parliaments, having previously served as Vice-President and Executive Committee member since 2000. Member of Society of Clerks-at-the-Table (UK) since 1981.

Ian served in teams reviewing UNDP parliamentary enhancement programs in Timor Leste in 2005, Cambodia in 2006. He has been requested to perform a similar function in Laos in 2006-07.





## **Presenter papers**



## **Introduction to Session One: Overview**

**Professor John Langmore**

I would like to wholeheartedly thank Ian Harris, Glenn Worthington and the staff of the Department of the House of Representatives for organising this timely seminar. Holding the seminar at the start of a parliamentary session when a new Government has just taken office is a particularly appropriate moment at which to celebrate past achievements and more importantly to review performance and to discuss improvements.

The House of Representatives committee system was radically restructured towards the end of 1987. Until that reform was introduced, a few areas of the Commonwealth's responsibilities were considered in detail by committees of the House but no committee was able to study such centrally important areas as economic, education, employment, immigration, industry, science, social security or trade policies. There were gaping holes in the work of the House.

That mattered profoundly because in Australia political power is overwhelmingly held by the executive. Once the party elected to government has chosen its leader and the ministry is selected, the House has little power. Government members keep the government in office, but debate in the chamber rarely directly influences legislation or policy. For example, unlike in many other parliaments, the House can make not a dollar of difference to the budget.<sup>1</sup>

Therefore any backbencher concerned about making an impact has to find indirect ways of increasing influence. Ministers normally do listen to their backbench colleagues. Full party meetings and committee meetings discuss policy and sometimes influence its contents. Informal discussions in ministers' offices, in corridors, over meals and late at night can be important. But little of this provides much opportunity for creativity or rigour. Power remains centred in the ministry.

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<sup>1</sup> This issue is discussed in some detail in Ian Marsh and David Yencken, *Into the Future: The Neglect of the Long Term in Australian Politics*, The Australian Collaboration and Black Inc, Melbourne, 2004.

A strong, comprehensive committee system is one means of modestly changing the balance. Committees have the potential to scrutinise policy and legislation, to study particular issues thoroughly, to explore creative proposals carefully and, to strengthen the access of the public to parliament. Committees improve the quality of parliamentary representation. Ministers sometimes say, too, that committees give members more to do, so diverting attention from plotting against the power-holders!

Why, then, wasn't a comprehensive committee system established until 1987?

Parliamentarians, scholars and commentators had often proposed such a reform. A comprehensive committee structure was set up in the Senate in 1970, and many MPs wanted a parallel system in the House, but the Liberal Government rejected any expansion. The Labor Government elected in 1972 also rejected the idea. The Fraser Government established a House Expenditure Committee but would move no further.

The reasons for this opposition from governments on both sides was that ministers were concerned about the risks of closer scrutiny of their policies; they were wary of giving the Opposition free kicks, of creating additional opportunities for criticism. They were frightened of loss of control from an increase in backbench activity either through scrutiny or initiative. The public service was also opposed for the same reason: they didn't want an increase in the opportunity for MPs to review their work or to propose policies which they might not support.

Why, therefore was the reform made in 1987? First, the Hawke Government promised in the Governor General's speech after the election that 'The Parliamentary Committee system of the National Parliament will be strengthened to give members a more effective role and participation in the great affairs of this nation'. I don't know how that sentence came to be written into the speech but have the impression that Prime Minister Hawke, some of his staff and certainly some ministers favoured democratic reform. The intention of strengthening the committee system had been announced when Labor first won government in 1983 but nothing had happened because the Leader of the House (Mick Young) and some other ministers had been opposed. More than just announcement of intention was clearly required.

Second, the proposal was timely. Labor had won a third consecutive election for the first time. Two days after the election a major ministerial and departmental re-organisation was announced involving sweeping structural changes to both the executive and the bureaucracy. So change was in the air. The Clerk of the House had circulated a discussion paper earlier in

the year on the *Development of a Committee System*, a paper which became an important source of ideas. The anomaly of an inadequate House committee system was becoming an embarrassment.

Third, after discussion with some colleagues and finding they were supportive, I moved at the first meeting of Caucus after the election for establishment of a committee to prepare detailed proposals. A representative committee of seven members was elected and we began consultations. The strong and cross factional membership of the committee ensured that all points of view were taken into account and united support from all parts of the backbench and from several influential ministers for the final recommendations. Though there was considerable debate about details there were no strongly divisive issues. Expansion in the number and responsibilities of committees appealed to members because there would be more opportunities for influence. The fact that the pay of chairs and members would increase may not have been completely irrelevant either. All chairs and a majority of members were to be elected by government members.

And fourth, the recommendations were accepted by the ministry because some ministers were strongly in favour in principle, and most others did not want to antagonise the backbench. A couple of potential opponents were silent because of leadership ambitions. A condition was that funding for staffing would not be increased.

Cabinet made a few minor modifications to the committee structure and one change of importance: parliamentary standing committees would be required to obtain ministerial approval for the terms of reference of any proposed inquiry. The Opposition was consulted about the proposed structure but no significant changes were made following those discussions. Revised standing orders were quickly passed and the new system introduced. For the first time in Australian history the House of Representatives had the capacity to consider in detail any issue relating to the powers of the Commonwealth.

Others will evaluate how well the system has worked. Clearly the structure of the committee system has evolved during the last twenty years. I want to conclude by briefly commending six of the ways in which the effectiveness of the system could be improved.

First, committees desperately need increased staffing and capacity to employ experts. Neither Labor nor Coalition Governments have so far been generous with funding. One test of the strength of government commitment to democracy is whether they provide adequate funds to parliament. An effective model would be through the establishment of a Parliamentary Commission (like that in the UK) consisting of the Presiding Officers, three Members, three Senators and the Clerks of both the House and the Senate. The Commission would have responsibility for staffing and all services in Parliament House and electorates.<sup>2</sup>

Second, remove the requirement that committees obtain ministerial approval for new inquiries. In the Australian political system where there is such a severe imbalance between the powers of the executive and the legislature a minimal move to correcting the imbalance is that committee members determine the issues they will study. The idea of citizen-initiated parliamentary committee inquiries has also been suggested.<sup>3</sup>

Third, make legislation and estimates committees joint committees with the power to question both public servants and ministers from either House, to take submissions from the public and commission independent research.

Fourth, wherever possible introduce a process of pre-legislative consultation and development by committees which included opportunities for inputs from experts, interest groups and concerned community organisations, as do the Dutch.

Fifth, establish a democratic modernisation committee to study and propose ways of increasing the engagement of the public in political processes and of improving parliamentary procedures and practices.

And sixth, legislate for a requirement that ministers must respond to parliamentary committee reports within three months, to overcome not only ministerial inattention but also public service obstruction.

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<sup>2</sup> Carmen Lawrence, 'The Democratic Project', November 2005

<sup>3</sup> Ibid, p13

These and other reforms could contribute to making the parliamentary committee system an even more effective way of balancing the power of the executive and of increasing public engagement in Australian governance.





**Introduction to Session Two**  
**Community participation-Member education**

**Rod Sawford**

Good morning everyone. I am delighted to be able, albeit in a very brief way, to participate in this seminar celebrating the 20<sup>th</sup> anniversary of the House of Representatives Committee System. And celebrate is the right word. Overall the Committee System has been an outstanding success. It has and is a coming together of a trinity; parliamentarians, public servants and the community.

In introducing this session I have time only to concentrate on two issues.

ONE – The effect of committee work on Policy Development.

TWO – Members expectations of Committee Secretarial support and Community input in relation to both electorate and committee work.

The first is a practical recollection of what's past. The second a more theoretical view of what's possible in the future.

The Committee example I will use is Education and Training. Today terms like early intervention, literacy and numeracy, technical education, boys education and so on are central to the education debate. That was not the case when I arrived in Canberra. In preparing for my maiden speech in 1988 I wanted to include a section on early intervention. I searched the parliamentary Hansard for what others had said. I found but one brief mention in October 1975 some thirteen years earlier. Essentially the term was never used.

Quite soon into my term I got myself onto the Labor Caucus Education Committee and within a year I was on the House of Representatives Education, Training and Employment Committee. Interestingly the Chair of that Committee was John Brumby, the current Premier of Victoria. As a former primary school principal and architect of a resources campaign for primary schools it was no surprise that one of the first initiatives I tried to develop was an

enquiry into literacy, numeracy, early intervention and the resources deficit in both public and private primary schools.

After a couple of Labor Caucus Education meetings I moved a motion incorporating these matters. I was greeted with silence and then more silence. The Chair declared these matters were State not Federal. Nonsense I replied. The Commonwealth spends billions of dollars on schools. Surely it ought to know if its expenditure is wisely spent or not.

Silence again. Lowering of heads. Incomprehensible mumblings. Well I recognised what was happening. I was getting the treatment. Will someone second the motion and allow a debate to take place. Silence. The motion lapsed. Welcome to politics.

However, at the end of that year in 1988 I was fortuitously seated in the members dining room with four other colleagues, Mary Crawford and Elaine Darling from Queensland, Carolyn Jakobsen from Western Australia and Roger Price from New South Wales. To my surprise I learned all four had similar experiences in Education Committees in both the then current and past Education Committees. We resolved to do something about it. We did. After the 1990 Federal election Mary Crawford became chair of the House of Representatives Parliamentary Committee on Education and I became chair of the Labor Caucus Committee.

We resolved to bring on the early intervention, literacy and numeracy and resources deficit in primary schools enquiry. I wrote a white paper that also introduced vocational and technical education and it was subsequently presented to the Caucus Committee, and favourably received, with one exception, the Minister. He instructed me to collect all copies of the paper and shred them. I should have refused but I complied. A Junior Minister then assisted and the Literacy and Numeracy only Report was commenced. That it still gets front page treatment in the national media says something of its value.

However as a new government makes it agenda on an education revolution that can only be achieved if an audit is undertaken on educational expenditure. For exactly the same reasons why Labor in Government rejected a resources allocation enquiry so too did the Howard Government. It should be refused no longer.

The obvious conclusion is that educational expenditure in this country is driven not by sound educational philosophy nor rationale but by historical tradition and privilege. And that is exactly right. Until an appropriate resources allocation expenditure audit is conducted in this nation ALL and I repeat ALL educational initiatives no matter how meritorious will be diminished. There's a challenge for you all!

But back to the "Literacy Challenge" Report. The language and ideas constructed by parliamentarians and the secretariat in that report are now conventional wisdom. Ministers and shadow ministers repeatedly claim ownership of words, phrases, sentences, paragraphs, arguments and data that was constructed by parliamentarians on both sides of the parliament and by members of the secretariat of the House of Representatives Education Committee.

That report, like many others, stands as a testament to the very best qualities and attributes of the public service, parliamentarians from all sides of politics and the community. Reports like the Literacy Challenge sustain relations in a very positive way between public servants, parliamentarians and the community and that collaboration should never be underestimated.

However not all committees are successful at all times. Successful and productive human relationships are a TRINITY and that trinity is the same for parliamentarians, parliamentary staff and community organisations. All groups need people strong in ideas, process and outcome in order to succeed. In most circumstances people fall naturally into each category. However they can of course fulfil different roles in different circumstances.

Essentially "Ideas" people will have a background in philosophy, logic, have strong personal beliefs and will possess analytical skills. Unfortunately few ideas people get pre-selected by major political parties. Few are in the public service either. Twenty years ago 100,000 Australian students studied pure mathematics and logic. Today the figure is less than 15,000. No wonder analysis is found wanting and there is an over-reliance on synthesis in political commentary.

Too few people in the Parliament have been exposed to philosophy or analysis. There are reasons why this is so. Many genuine thinkers are unpredictable, difficult to control and in an age of spin, celebrity and manipulative democracy they are not sought out.

People skilled in process are a significant group in the Parliamentary staff and thank goodness for that. However people skilled in outcomes are the predominant majority in parliamentary life. And most are very good at it.

But it is worth stating very strongly that if the idea is wrong, so will the process and so will the outcome. If the process is wrong so will the outcome even if the idea is right. Success is coherence of all three.

People strong in ideas can be enthusiastic, passionate, exciting, rude, a bit mad, and lacking in social skills and sometimes only 10% of what they say is relevant. But that 10% can be right on the money. That is why “Process People” are so valuable.

They can recognise a good idea. They can separate the wheat from the chaff. They can translate a raw idea, often in a misunderstood form, into a state the rest of us can understand.

If ideas and process people go missing committees may find themselves in endless hours of meetings, with negotiations going nowhere, facilitation of non-identified givens, interpretation of worthless material, contradictory mission statements and performance criteria all sinking under the weight of pointless anecdotal self-indulgences and slick presentations. The substance, contribution and influence of committees like these are absolutely zero; a nadir, zilch.

And yes I was on one of those committees too; blessedly briefly. However when ideas, processes and outcomes are shared, debated and collaborated upon the relationships of all on the committee are enhanced. Personally and professionally, being on a House Committee can be one of the great learning experiences of your life. Very few people get the opportunity to hear and experience first hand the views of so many Australians on matters that are of concern to them too.

One word of caution. If your House Committee travels one Committee is enough. Good Luck! I hope someone in this Parliament has the foresight to convince the current government to initiate an audit of educational expenditure and justify with evidence the glaring differentials to various sectors of education based on no educational rationale whatsoever.

## **Can Parliamentary Committees Contribute to ‘Social Learning’?**

**Ian Marsh**

This paper assesses the potential of Parliamentary Committees to contribute to ‘social learning’. Social learning involves the contribution of political processes to the understanding of policy issues amongst relevant participants, including legislators, public servants, ministers, interest groups the media and the broader community. This paper focuses particularly on interest groups and social movements. It reports the findings of a survey of organisations that were invited to give evidence before Senate Committees in the parliamentary year 2000/01. The survey sought to establish the impacts of participation on the groups and their assessments of this mode of enquiry. Twenty-five inquiries were covered and together they took both oral and written evidence from 316 groups. Enquiries and groups are listed at Appendix 1. The inquiries fell into three broad categories: strategic or emerging issues (8 inquiries), scrutiny and oversight (6 inquiries) and legislative hearings (11 inquiries). A questionnaire was circulated by mail and responses were received from 142 groups or 45% of the total. The questionnaire is at Appendix 2. An identical questionnaire was used some years ago to groups participating in House of Commons Select Committee inquiries – so these present results can be contrasted with (albeit much earlier) British findings (reported in Marsh, 1986, p.151-181).

Three threshold issues concern the idea of social learning, present systemic capacities to promote this activity and the role of groups in the policy making system. These issues are explored in the first section of this paper. The second section discusses Committee outreach to interest groups. The third section discusses Committee impact on interest groups. The fourth section contrasts these present findings with those found in a parallel survey in the UK. A concluding section explores the capacities of Senate committees to contribute to social learning and interest aggregation.

### Social Learning, Interest Aggregation and Parliamentary Committees.

This section sketches the case for considering the potential of Parliamentary committees to mediate social learning, particularly in the strategic phases of the policy cycle and particularly in relation to interest groups. The connexion between institutions and social learning has attracted increasing scholarly interest in recent years. This is for both theoretical and empirical reasons. The theoretical reasons include the renewal of institutional theory and with it, recognition that ideas mediate both continuity and change, albeit by different means. The empirical considerations derive from the decline of norms of authority associated with traditional hierarchies, office or expertise. Consent, which requires persuasion, is increasingly the ground for collective action. The following paragraphs summarise an argument developed at greater length elsewhere (Marsh 1995, 2005, 2007; Marsh and Yencken, 2005).

Social learning involves the impact of institutional processes on the way issues are understood by key protagonists. Its normative genesis is in the democratic ideals of consent and deliberation. Its empirical genesis lies in studies of processes that progressively seek to accomplish these outcomes. Initial attitudes held by many protagonists are assumed to be based mostly on relatively unreflective or narrowly based considerations. Exposure to a wider array of perspectives can induce the development of views and indicate ways in which apparently differing approaches can be accommodated. Further, all the parties to such a process can 'learn'. Elites, like legislators, ministers and bureaucrats have the opportunity to listen to a wide cross section of community views. Community organisations have an opportunity to hear the perspectives of ministers and departments as well as of other organisations that might hold different views.

Of course, in a process of political exchange agreement is only one means, and by no means the most important means, by which participants become reconciled to a proposed course of action. Accommodation can be based on a variety of grounds apart from agreement: for example, issue transformation, log-rolling, compensation, conditional acceptance subject to review of consequences within some specified period, acceptance of the procedure as fair even if particular parties disagree with the substantive outcome, and acceptance because there

is a chance to reverse the outcome another day. These are all the normal devices of democratic politics.

Parliamentary committee enquiries can represent a particularly valuable vehicle for advancing these processes. Committees draw on the prestige and power of parliament. Committees have the power to require evidence from departments and, if sufficiently funded, they can commission independent research and assessment. Parliament is the primary setting for 'government by discussion'. Committees allow members to investigate issues on their merits, free of immediate partisan preoccupations. This is particularly the case with issues that are relatively distanced from current partisan controversy.

The potential of committees to contribute in these ways deserves more attention. This is because of wider changes in the political system. As social class has declined as a predictor of political attitudes, attention has shifted to the 'learning' and 'teaching' potentials of other political institutions. This is emphasised in the current turn to institutional theory (e.g. North, 1992; March and Olsen, 2005; Campbell, 2004). Each variant - sociological, rational choice and historical - attributes causal significance to ideas (e.g. Blyth, 2002; Denzau and North, 1994). But these approaches can differ in three significant respects: first, in their treatment of preferences; second, in their categorisation of the ideas that have causal power; and third, in their assumptions about the calculus of choice that guides protagonists.

For example, sociological analysis includes the formation of citizen preferences amongst the outcomes that are to be explained and focuses on the causal power of ascriptive ideas (i.e. those concerning identity, roles etc). By contrast, rational choice theory takes preferences as given and focuses on the instrumental ideas that mediate exchange (March and Olsen, 1995; Goldstein and Keohane, 1993). For its part, historical institutionalism also makes preferences endogenous but emphasises the contingencies of path dependence and institutional structure in framing citizen choices. In this perspective, and as a result of historical experience, different patterns of ideas will have causal power in different institutional settings. Its explanations draw on sociological and rational choice conceptions as well as on more general narratives (e.g. Schon and Rein, 1994; Steinmo et al, 199 ; Campbell and Pedersen, 2001).

Meantime, Zaller (1992) offers a fourth perspective on how, in a political system, new ideas and values contest an established conventional wisdom and come to transfigure public opinion. His study of the formation of public opinion explores the processes through which the views of competing elites (sectional interests) come to frame and shape the formation of public opinion more generally (for a bottom-up approach see also McAdam, McCarthy and Zald, 1998; for a general empirical account, Yankelovitch, 1992).

How effectively does the present two party, adversarial structure facilitate social learning? First, at least in the case of the Australian political system and over recent years, systemic capabilities have weakened in several three areas, namely strategic policy capabilities, interest aggregation and broader public education. I have developed this point extensively elsewhere (e.g. Marsh, 2005b). As a consequence, the present policy development structure has very limited capacity to mediate social learning. Two developments have caused this outcome: first, changing roles of major political parties; and second, the differentiation of community attitudes.

The literatures on political parties and electoral trends speak to the key structural changes. The former is concerned with the changing roles of major parties. It is salutary to recall V O Keys (1964) enumeration of the contributions of the major political parties to general systemic capacities through their electoral and organisational roles:

‘Parties in the electorate:

Simplifying choices for voters

Educating citizens

Generating symbols of identification and loyalty

Mobilising people to participate

Parties as organisations

Recruiting political leadership and seeking government office.

Training political elites



Articulating political interests

Aggregating political interests' (cited Dalton and Wattenberg, 2000, p.5)

The recent literature on political parties traces their evolution from mass to catch-all, 'electoral-professional' and most recently to cartel patterns (Mair, 1997). Unlike mass parties, cartel party organisations have no or very limited roles in two key policy-making areas: agenda setting (strategic policy development – what V O Keys included in articulating political interests) and interest aggregation. Unless functionally equivalent capabilities have developed elsewhere in the political system, this change in the role of the party organisations will have diminished overall systemic capacities. It is clear that the major party organisations have largely jettisoned their former roles in strategic policy development and interest aggregation. Further, there is no evidence of the development of functionally equivalent capabilities elsewhere in the system (e.g. Keating, 2003; Keating Wanna and Weller, 2000).

Meantime, the recent literature on voting draws attention to the increasing role of cognitive factors in citizen choice. Various studies trace the decline of expressive attachments amongst citizens and the increase of voter distrust of mainstream parties. Party labels or 'brands' are a much less powerful cue of voter decisions. Voter choices are increasingly influenced by cognitive considerations. These changes in electorates are reflected in the titles of recent studies: *Critical Citizens* (Norris, 1999), *Parties without Partisans* (Dalton and Wattenberg, 2000), *Disaffected Democracies* (Pharr, Pharr, and Dalton 2000), and *Democratic Challenges, Democratic Choices* (Dalton, 2004). In Australia's case the number of citizens with weak or no party identification has increased from 25% in 1967 to nearly 60% in 2001. Inglehart's (1990) identification of post-materialism provides only a partial explanation for these trends. The turn away from the major parties is much more widely based.

The systemic implications of these changes in major party organisational roles and in the decision-calculus of citizens seem to have been insufficiently recognised. In the absence of functionally equivalent capabilities elsewhere in the formal political system, overall systemic capacities will have diminished. This brings us to the third step in the argument. A decline in systemic capacities would not be a problem if, as the neo-liberal program foreshadowed, the

role of the state had itself significantly contracted and citizen expectations of what the state ought to or can do had significantly declined.

Despite various changes over the past decade or so, the proposition that the role of the state has diminished either in substance or in the expectations of citizens cannot be sustained. Public expectations concerning the role of the state remain high (surveyed in Wilson et al 2005). Meantime, at a substantive level, the need for capacities to identify strategic issues, aggregate interest groups and seed the development of public opinion more broadly has, if anything increased (Keating, 2004). The foreshadowed agenda arising from the Productive Commission Review of National Competition Policy (2005) emphasises this. The areas cited for action include health, education, the environment, housing, nursing home funding, disability services etc. These all involve complex stakeholder networks, cut across federal-state relations and are likely to be a focus for political controversy.

These prospective developments focus attention on the state's capacities to set an agenda, mobilise stakeholders and, more generally, to perform a mobilisation, engagement and opinion-forming role in particular policy systems. The state also needs to lead broader community understanding and commitment on major international and domestic issues (e.g. Wesley, 2002). Diminished strategic and interest aggregating capabilities are hardly consistent with the effective performance of these tasks.

In addition, the expansion of the domestic social agenda in recent years (to include, for example, the environment, women's issues, indigenous issues etc) creates more complex interdependencies and spillovers between policy domains. Coordination capacities should have developed to match these more challenging requirements (e.g. Keating and Davis, 2000). Mega-departments represent an administrative response. But capacities to articulate and aggregate interests have barely developed. Outreach capabilities remain basically unchanged. Recent scholarly literature has introduced the image of a network state to capture the segmented and differentiated character of the contemporary polity (Rhodes, 1997). In this mutation, power is more diffused than in the former hierarchical model. Power asymmetries between protagonists can vary depending on the issue, the context, the relevant resource(s)

etc. The term governance has gained currency as a reflection of the more complex linkages between state, supra-state and non-state actors in processes of policy design and implementation (Edwards, 2002). But at its core, the network image reflects the erosion of overall steering and linkage capacities.

In assessing the contemporary context for policy making, the incidence and standing of interest groups and social movements is critical. These intermediary organisations have proliferated (Marsh, 2003; Whitely, 2007). Interest groups and social movements have become an increasingly significant focus for citizen attachments and, despite the efforts of some political leaders, their advocacy and policy-making roles remain substantial. Public choice theory offered a generally malign interpretation of their influence and this has been one basis for political campaigns to weaken the role of groups, particularly the trade unions and particularly in the Anglo-American world (e.g. Olson, 1982). However, if governments have been more effective as change agents than was predicted by the ‘capture’ notions of public choice theory, groups too have proved durable actors in policy processes and essential participants in them. The number of protagonists on any issue has multiplied. W J McKenzie’s assessment of their significance, now four decades old, remains as a classic statement of their systemic role:

I have suggested that any explanation of the democratic process which ignores the role of organised interests is grossly misleading. I would add that it is hopelessly inadequate and sterile in that it leaves out of the account the principal channels through which the mass of the citizenry brings influence to bear on the decision-makers whom they have elected. In practice, in every democratic society, the voters undertake to do far more than select their elected representatives; they also insist on their right to advise, cajole and warn them regarding the policies they should adopt. This they do, for the most part, through the pressure group system.(cited Richardson, 1999).

These varied considerations together suggest the timelines of investigating how capacities for strategic policy development and interest aggregation and for strengthening the broader public conversation about strategic issues might be refurbished. What forums might be appropriate? I have reviewed the array of potential candidates elsewhere (1995, p. 232-233). Summits represent one possibility. They may be effective as the capstone of a more extended process.

However in themselves, such events are too short to allow for the necessary development of views. Meantime, public inquiries are generally too distanced from decision processes to stimulate the development of public or interest group opinion. Other mechanisms such as task forces and interdepartmental committees are also too distanced from interest groups and from ultimate decision-making authority. The media are currently the most prominent conduit in many of these processes. But the media are too limited in their capacities and too aligned to commercial imperatives to be the predominate vehicles for public and interest group social learning (e.g. Katz, 1998). The media are important disseminators and gatekeepers of the public conversation but they cannot sustain attention to issues over protracted periods or stimulate active processes of social learning. Meantime, commercial imperatives often orient them to colour and controversy rather than to facts that are pertinent but sober and dull.

Committees of the parliament on the other hand are ideally positioned to fill gaps in these processes. They are the only bodies with (potentially) equivalent formal standing and legitimacy to that of ministers. They can attract media attention, call ministers and bureaucrats to account and generally mobilise the resources of the state in ways available to few other actors. They have direct access to the legislature and can, within a more plural or consensual regime structure, deploy the prestige and authority of parliament against the executive.

What would constitute evidence of the capacity of committees to contribute to overall systemic capabilities for strategic policy development, interest aggregation and broader opinion formation? An empirical study, based in the present adversarial structure of politics, is necessarily limited in scope. Evidence of committee potential could nevertheless be derived from their activities on two planes. One concerns the effectiveness of committees as actors in broader policy processes. Here evidence of their capacities to identify appropriate topics for inquiry, conduct effective inquiries, reach well-developed findings, explore the scope for at least partial cross-party agreement and engage the media would all be relevant. In particular, to demonstrate strategic capacity, there should be evidence of a focus on emerging issues, of capacities to assess and synthesise diverse evidence and of capacities to reach at least partially cross-party findings. This present paper does not attempt to gather this evidence. Rather, it focuses on the potential of committees to contribute to the aggregation of interest groups.

In particular, it probes the capacity of committees to identify and engage groups, to stimulate their internal enquiry and policy development processes, to stimulate linkages between groups and between groups and other actors in the political system (including coalition building and information exchange). It also explores the standing of Senate committees in the eyes of groups.

#### Senate Committee Outreach to Interest Groups.

For the purposes of analysis, the twenty-five inquiries were divided into three categories covering strategic issues, programme and agency oversight and assessment of legislation. Strategic inquiries covered issues at the frontier of public debate. Eight inquiries were of this kind. These included such matters as Australia's response to Greenhouse and Kyoto, appointments to the ABC Board, the radiation hazard posed by mobile phones and the administration of higher education. 193 interest groups gave oral or written evidence to these inquiries. This represented 53% of the total. Replies were received from 87 groups (response rate 45%). The scrutiny and oversight category involved six inquiries. These covered such issues as the enforcement of the superannuation guarantee charge, fees on electronic and telephone banking and the fate of the IT strategy in the Australian Public Service. Sixty-eight groups gave oral and written evidence to these inquiries (response rate 19%). Replies were received from 22 groups (response rate 33%). Finally, legislative hearings reviewed the provisions of bills. This involved eleven inquiries covering issues such as financial services reform, interactive gambling and regional forests agreements. 114 groups gave evidence to these inquiries. This represented 31% of the total of groups. Replies were received from 33 groups (a response rate of 29%). This means coverage extends reasonably across all types of inquiries and the response rate approximates this distribution.

The degree of engagement of groups has been influenced by parliamentarian's assessment of their role. Anecdotal evidence suggests most Senators do not see outreach to groups as an important dimension of inquiries. This latter consideration has influenced the way committees engage groups. Most committees prepared a circulation list for notification of individual inquiries. Unlike their House of Commons counterparts, they have not cultivated on-going

relationships with the groups who are stakeholders in the area of the each committee's remit. The pattern of inquiries is insufficiently consistent in relation to departments or subjects, to warrant the maintenance of routine lists. The approach of the Australian committees is much more ad hoc and much more subject to day-to-day political exigencies.

Outreach to groups is formally by advertisement in major metropolitan dailies. However, responses to the survey show this was a relatively less important source of engagement. On the contrary 40% of respondents (79 groups) responded to a direct contact from committee staff. Press advertisements were the second principal source of participants. 43 respondents (22%) learnt of the inquiry by this means. Two other categories were each the source of 9% of participants. These were 'general reports or gossip' (18 respondents) and industry/interest group newsletter or website (16 respondents). This finding suggests the very considerable importance of committee awareness of the relevant policy network or interest group community. It also draws attention to the capacity of committees to mobilise interests. This is potentially an important responsibility of committee staff.

The range of groups engaged covered a wide cross section (Appendix 1). It included well-resourced business umbrella organisations such as the Business Council of Australia, Australian Bankers Association, or the Australian Mining Industry Council and relatively smaller and more specialised sectional bodies such as the Lone Fathers Association. Groups representing environmental, welfare, trade union, women, indigenous, professional, scholarly, shareholder and a variety of other interests and concerns were all represented. Evidence was also taken from think tanks and from university research bodies. Most groups gave evidence to only one inquiry. However, some of the national organisations such as the Australian Council of Social Services, the Australian Conservation Foundation or the Businesses Council figured in several.

Finally, five groups indicated they had lobbied for establishment of the inquiry on which they subsequently gave evidence. These inquiries constitute a particularly interesting group since they highlight not only the agenda setting role of groups but also the 'gatekeeper' potential of committees. It would be particularly instructive to isolate both the effects of the experience on

their social learning and on their views concerning the ‘standing’ of committees. This present study lacked the resources to pursue this inquiry.

In general, committees have demonstrated a capacity to reach widely and deeply into interest group and stakeholder networks and, at least in some cases, to register and respond to interest group pressure.

### Committee Impact on Interest Groups.

The survey of interest groups sought to establish their experience and attitudes in four areas: first, preparation for the inquiry; second, their experience of the inquiry itself; third, their reaction to the Senate Committee report; and finally, their overall evaluation of the process.

The survey first sought to establish whether preparing for the enquiry led the interest groups to engage in some special, non-routine action. Such activity is the starting point of social learning. 116 groups or 82% of respondents gathered information especially for the inquiry. Respondents were invited to indicate whether this concerned member attitudes and/or the issue itself. These involve quite separate assessments: in the case of attitudes to the issue itself, an analytic and deliberative process is required to develop opinions and arguments; in the case of member attitudes, an outreach process or evaluation to determine viewpoints is the necessary mechanism. In fact, a significant proportion of respondents (57 groups or 40% of respondents) said their special information gathering involved both dimensions. 36 groups or 25% of the respondents said their information gathering only related to the issue itself and 23 groups (16%) said it only related to member views (Fig. 1).

The questionnaire then sought to establish what interest groups did in preparing for the inquiry (Fig 2). 69% of respondents (91 groups) undertook fresh research. The questionnaire asked the groups to indicate which of 6 research approaches they adopted. Further, groups were asked to indicate whether they regarded the research approach as having played an important, very important or minor role in framing their organisation’s position. The results

reported sum 'very important' and 'important' responses. Two approaches do not indicate any significant extra research effort: these involved recycling existing material and drawing on general knowledge of the issue. The other four choices involved more intensive analytic and deliberative activity. These covered: drawing on 'expert' members; establishing a task force; soliciting member views; and discussing the issue with other organisations. This last is a particularly significant activity since other organisations typically represent different perspectives and concerns. Interaction and linkage can seed an expansion of perspective as alternative or additional values, viewpoints and evidence come into sight. By such means, approaches can develop and awareness of potential solutions can expand. The grounds for accommodation can amplify from the binary agree:disagree to include. log-rolling, compensation, issue transformation, issue expansion, procedural acceptance, tactical acceptance etc.

Research for the majority of groups involved both relatively passive and relatively more active approaches. At a passive pole, groups could undertake such activities as draw on existing or general knowledge; at the other more active pole they could take such steps as establish a task force, initiate discussions with other organisations or solicit member views. 91 interest groups (69%) of respondents took one or more of these actions. The single most commonly followed activity involved drawing on general knowledge of the issue. 119 or 84% of the groups in the overall sample said they used this approach. Further, 86 groups or 67% said they used existing material. These results are to be expected since parliamentary committee inquiries will typically only occur after protracted periods of advocacy and lobbying by groups and/or by the executive. In relation to more 'active' approaches, 108 groups (76%) drew on members with expert knowledge, 50 groups (35%) established an internal task force, and 66 groups (46%) solicited member views. These approaches all contribute to social learning since they involve focusing member attention on particular issues. Finally, 64 groups (45%) engaged in discussions of one kind or another with other organisations. For the reasons noted in the preceding paragraph, these linkages can be a particularly important source of social learning.

Another aspect of this process concerns the dissemination of new information to protagonists as a result of their participation in the inquiry. The questionnaire invited respondents to



indicate whether this had produced new information about the issue itself and/or about the attitudes of other groups. In relation to the latter, three choices were offered: the issue itself, attitudes of the executive and attitudes of departments. In relation to other groups, respondents were invited to indicate whether this concerned the attitudes and approaches of friendly and hostile groups and whether they formed new links with other groups. 117 interest groups (82%) experienced positive learning of some kind or another and/or formed new links to other groups (Fig. 3). Of the interest groups who obtained very significant or significant new information, 53 groups (37%) said this concerned the issue itself. 28 groups (20%) said the new information they obtained concerned government policy. 50 groups (35%) said it concerned departmental attitudes and judgements. Finally, three choices related to awareness of other groups. 71 groups responded they obtained new information about friendly groups, 61 groups said they obtained new information about hostile groups and 56 groups (40%) said they formed new links with other groups. This is another strong indicator of the potential contribution of Committees to social learning. It points to their capacity to intervene in networks and/or contribute to the formation of networks.

The survey then sought to establish how interest groups communicated the experience to their members thus contributing to the diffusion of social learning (Fig. 4). The narrowest dissemination involved a report to a committee meeting. More widespread dissemination would result from articles in the interest group's newsletter and/or reports to general meetings. In total, 110 groups or 77% reported the results to their members. Of these, 32% of groups undertook all three activities; 40% two activities and 28% all three. In relation to individual items, 84 groups (60%) reported to a committee meeting, 74 groups (52%) reported the results in interest groups newsletters and 78 groups (85%) reported to special meetings of members. Committees could themselves stimulate these processes by preparing special articles and offering them to interest groups for publication. No committees currently undertake such activity.

86% of groups took some action as a result of the committee report (Fig. 5). This reflects the iterative process that characterises social learning, particularly where strategic issues are concerned. The questionnaire offered five choices: contact committee members or staff, contact an MP, contact a minister, contact department. An open choice was also offered. 30%

of groups undertook four of these activities, 24% groups three, 26% groups two, and 20% of groups one only. In relation to individual items, 60 groups (42%) contacted committee members or staff, 51 (36%) contacted an MP, 47 (33%) contacted a minister and 41(29%) contacted departments.

The questionnaire then sought to gauge the impact of the inquiry on interest group attitudes (Fig. 7). It sought to establish whether the process had any impact on group views in relation to this or a related issue. It also sought to define the nature of this impact: with respondents asked to indicate whether their views had hardened, softened or been clarified. This is in a context in which the present Senate Committees have almost no formal standing in the policy process. Their ability to affect issues either formally or informally is very low. This would not of course be the case in a more plural or consensual policy making structure. But in the present context it is not surprising that the greatest impact is reported to be a ‘clarification’ of interest groups views (76 groups, 53%). Only 5 groups (3.5%) reported their attitudes had ‘softened’ whereas 56 groups (39%) reported their attitudes had hardened. 37 groups (26%) reported a development in their views on some related issue as a result of the experience. Finally, 37 groups (26%) said the experience had no impact on their views on this issue and 20 groups (14%) said it had no impact on any related issue.

Next, the survey sought to establish what attributes of Senate committees were especially valued by respondents by comparison with other modes of inquiry into public policy issues of which they had experience (Fig. 8). As already noted, committees have very little actual power in the current policy making structure but they have potentially very considerable latent powers. Further, the financial and staff resources available to committees are very limited, even by comparison with their House of Commons (UK), Canadian or New Zealand counterparts, much less those of the United States. Nevertheless, the views of respondents point to the potential of committees. The two most valued attributes were the open and public forum presented by committees (116 respondents or 77%) and the procedural fairness of inquiries (100 respondents or 70%). 74 (52%) groups welcomed the opportunity to learn provided by committee hearings and 78 groups (55%) indicated they believed members of parliament were the right people to make a judgement about the particular issue. Meantime, of the groups responding positively to this question, 52 groups (37%) agreed with all four

options, 38 groups (27%) with three, 36 groups with two (27%) and 14 groups ticked one box only (10%). These outcomes are particularly encouraging from the perspective of the potential of committees to play a more prominent role in strategic policy making processes.

Written comments covered a wide range of issues. Some affirmed the general points in the question (e.g. ‘Allows detailed exploration of complex issues; allows evidence from people directly involved in issues with specific experience and expertise. Some criticised the attendance and civility of Senators (‘Intimidation of witnesses a bad feature.’; ‘Only half the committee turned up; they clearly did not want to hear our views and had an outcome in mind long before hearings closed.’ w responses). Some noted the lack of follow-up. Some noted the politicisation of committees (‘Committees ahs become disturbingly predictable, with majority and minority reports now almost standard on any controversial issue. This reduces the policy making value of the process.’)

Finally, the questionnaire asked respondents to indicate if they would welcome an extension of Senate committee powers and role (Fig. 9). Groups were not given an indication what more extended powers might entail – and anecdotal evidence suggests it is hard for protagonists to imagine another structure of power. On the other hand, committees have themselves attracted more publicity in recent years (e.g. Estimates hearings, GST inquiries, Tampa inquiry). So interest groups have presumably become more aware of their activities. Indeed, as noted earlier, Senate Committees played a much enlarged role in an earlier mutation in Australia's political system and they currently play much stronger roles in a number of other political systems (New Zealand, the UK etc). 94 respondents (76%) indicated they would welcome more powers for the Senate committees. A further 57 respondents (40%) said the present powers were about right. 26 respondents judged the process to be waste of time.

Positive comments included:

- ‘Very, very strongly support the bipartisan parliamentary role. The Senate is fulfilling its role.’

- ‘Would like to see the recommendations of committees more binding on governments. Too often, reports are released and their recommendations ignored’
- ‘It was rewarding to see ‘the University’ in the media spotlight and openly discussed. The process provided an opportunity to shape public debate and ‘perhaps’ influence the agenda, if not the outcome, as there are so few opportunities to take part in the political process.’
- ‘Parliamentary committees often provide a safety valve for community debate/views.’
- ‘Something is needed to make departments toe the line.’

Others offered negative comments about process:

- ‘I found that the committee panel I addressed showed little respect for witnesses, their presentations or the time and effort on preparing them’
- ‘Presenting was pretty intimidating for many at the session I attended...less stupid questions from some committee members would help.’
- ‘I would not support greater influence for committees unless they have adequate time, resources and motivation.’

### Comparison with UK Findings.

As mentioned earlier, a similar survey was undertaken in the UK in 1984. This covered all groups giving oral and written evidence to the Select Committees of the House of Commons over the preceding parliamentary year. Despite the time lapse, the broad circumstances surrounding the role of interest groups and of parliament in the two polities are sufficiently similar to permit comparison of the findings. Only the positive responses are included. Table 1 reports the number of groups responding positively to each question. It is immediately clear there is a very close parallel between the views of interest groups in the two systems both about the character of their experience in participating in parliamentary inquiries and about their views of the merits of this mode of advancing public policy issues.

### Committees, Social Learning and Interest Aggregation.

In assessing the capacity of committees to contribute to interest aggregation, some qualifications are first in order. First, the Committees reviewed here have not sought to focus

their efforts on interest groups. Outreach, whilst extensive on certain inquiries, has mostly been ad hoc and unsystematic. All the committees have established procedures to notify at least some interest groups about their inquiries. But no committees have deliberately sought to cultivate interest groups. The committees have not seen impact on interest groups as a significant aspect of their activities, much less a primary aspect. Similarly, some committee chairs have met informally with groups, particularly on major inquiries. But chairs have not seen interest groups as an important target for their efforts. Further, interest groups themselves seem very uncertain about the role of committees. They welcome the access that the Committees provide. They generally hold the Parliament and its Committees in very high regard. But they realise committees are largely impotent in a predominantly adversarial system. Though they see Committees as a way of registering views in the political system, the precise role of Committees remains ambiguous.

Despite their relative impotence in the current scheme of things, the results of this survey point to the potential of committees to contribute significantly to interest aggregation. This process has normative, substantive and procedural dimensions (e.g. March and Olson, 1995). Interest groups need to believe the system is fair in an abstract sense, that relevant evidence on the issue under review has been adduced and fairly weighed and they need to build their awareness not only of what other members of the relevant policy network or community think but also of what they are likely to do. This is a serial and iterative process pursued through a variety of forums. But parliamentary committees are uniquely placed to make ‘catalytic’ contributions, particularly in relation to strategic issues and to interest aggregation and perhaps by these means, also to seeding the broader development of public opinion. Indeed, there is strong evidence of the ability of committees to contribute to the first two of these outcomes.

Recognition of the abstract fairness of this process is reflected in the characteristics most valued by participating groups. 77% of participating groups specially valued the ‘visibility’ or ‘transparency’ of committee processes and 70% their ‘fairness’. 60% specially valued at least three of the four suggested positive qualities of parliamentary inquiry processes. The attractiveness of committees to groups is further suggested by the number who favour

enlargement of their role, despite the recognition that it is a forlorn hope under the adversarial political and policy making system.

If social learning is to be a primary means of interest aggregation, the potential of committees to contribute to the development of interest groups attitudes also needs to be weighed. This process too is an iterative and serial one and the contribution of committees is clearly at an elemental stage. Despite the formal impotence of committees, 82% experienced positive learning and/or formed new linkages with other groups. 53% reported important or every important development of attitudes. Only 3.5% said their attitudes had been 'softened' as a result of participation in the inquiry. This result is hardly surprising, if for no other reason than the protracted character of the process of opinion formation and the need to provide bases other than agreement for accommodation amongst protagonists (e.g. re-expression of a sectional interest in terms of the public interest; more expansive definition of the issue; log-rolling; compensation; tactical acceptance; procedural fairness etc).

Meantime, 53% of groups said participation 'clarified' their attitudes to the issue and 40% said the process stimulated the formation of new links with other groups. 45% 'consulted' other groups in preparing their submissions. A further 80% said the inquiry process introduced them to new information – significantly, as might be expected, 45% said this involved departmental attitudes or executive positions; but 70% also said this information concerned the approach of other groups. 69% of the groups indicated the inquiry process initiated an exercise in fresh research. Finally, as already noted, 94 (66%) took some action as a result of the Committee report. These are exactly the stimuli that, reinforced by further interactions, might contribute to interest aggregation. These results point to the potential of committees to be catalysts in opinion formation within particular policy communities.

The 'vertical' reach of committees is also suggested in the number of interest groups reporting their activities to their members. 77% reported their evidence and 81% reported the committee's findings to their members. This suggests attention to committees amongst interest groups. It suggests that committees are capable of stimulating interest groups internally and in their relations with each other. What invites further testing is the capacity of

these structures to be conduit for the shaping of behaviour. The capacity to disseminate factual information both ways and to influence attitudes is clear. What needs to be further explored is their capacity to influence judgements about links between interest groups aspirations and definitions of the public interest and to alter government or interest group behaviour in ways that serve this outcome. The survey results suggest possibilities but further deliberate effort by committees and further effort aimed deliberately at interest groups is required for a forthright judgment about committee potential.

Recalling the causal ideas identified by sociological and rational choice institutional schools, it would also be instructive to learn what kind of social learning was stimulated by the inquiry process, in particular if this varied between the strategic and the other bands of inquiries (legislation and scrutiny). For example, following sociological perspectives, did it stimulate the relevant groups to consider the connection of the issue being explored to the group's identity and/or role? Did the social learning stimulate attention to, or even affect, the particular group's assessment of its preferences? Or, following rational choice approaches, did it rather introduce new instrumental considerations and perhaps broaden the potential repertoire of exchange strategies? The literature suggests considerations of identity and roles stimulate deeper cognitive engagement and are a stronger foundation for the development of solidaristic approaches (March and Olsen, 1995). One hypothesis might be that in the strategic phase of issue development questions of identity are more likely to come to the fore and preferences are thus more likely to be open to adaptation. By contrast, in later more 'operational' phases of the policy development cycle, instrumental ideas and possibilities of exchange play a more prominent role. These differences might arise because a core task of the strategic phase in the policy cycle is to deepen understanding of who has stakes in the issue, the nature of these stakes, the overlaps and intersections between stakeholders and the implications for their preferences (e.g. how the relevant issue might implicate citizens in their roles as Australians, business people, women, trade unionists, environmentalists etc.). Meantime, later 'operational' phases in the policy development cycle might be expected to involve closer attention to the instrumental factors that would make possible a wider or narrower repertoire of exchange strategies. Unfortunately, evidence gathered for this present survey did not gather this information.

Overall, there is virtually no conception amongst policy makers, ministers or parliamentarians of the potential of Committees as a medium for interest aggregation or strategic policy development. The notion that interest groups might represent a primary focus for committee work is not recognised. Further, the notion that the overall system has major gaps in its capacities to aggregate interests or manage strategic issues is not widely recognised.<sup>4</sup> Nor are deficiencies in capabilities for more general public education about issues acknowledged, not least by political elites. Structures are well developed. Committee roles have developed in recent years, including contributions to budget deliberations in 1993 (Young, 1999) and, more recently, notable inquiries on the GST and Tampa episodes (Marr and Wilkinson, 2003). But committee resources are very limited, even by comparison with those available in comparable parliaments. The committee structure could as easily remain an ambiguous adjunct of the two party system as provide the infrastructure for introducing a strategic phase to the policy development cycle and creating new capacity for aggregating interest groups.

Earlier discussion pointed to the need to seed the development of public opinion more generally as a third important gap in present policy making capacities. Zaller (1992) has developed a powerful model of this process which focuses on the interchange between elite (sectional) opinion and more general public opinion. Committees of the legislature are the critical actors in his model. The general foundation for such a development of the role of Parliamentary Committees in Australia is clear. Survey data highlights the general standing of parliament in the broader community. According to the Australian Electoral Survey, 49% of respondents expressed some or a great deal of confidence in the institution of parliament, whereas only 36% expressed equivalent degrees of confidence in the major parties.

There are powerful grounds for believing the addition of a ‘strong’ committee structure could add significantly to the renewal of strategic policy making, interest aggregation and public education more generally. In the particular context of interest aggregation, the addition of a structure, independent of the executive, but based in parliament, offers four potential benefits.

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<sup>4</sup> Speaking in the House of Representatives in a debate on education strategy, Prime Minister Howard observed: ‘We have got to have a capacity in this country to have a sensible discussion about long-term policy issues without everything being distorted and blown out of the water by misrepresentation’ (*Sydney Morning Herald*, 16th October 1999, p. 49).



First, policy makers could learn about interest group views before they became publicly committed to a course of action and interest groups could develop a deeper understanding of official thinking. Second, processes of social learning could be stimulated amongst interest groups, departments, ministers and parliamentarians. Third, the scope for at least partial bi-partisanship between some or all of the parties might be explored. Fourth, ministers and/or groups could assess the deployment of interests on a particular issue and determine the potential for building coalitions in support of the course of action they favour. The survey has particularly explored aspects of the potential of committees to contribute to the iterative process of social learning amongst groups.

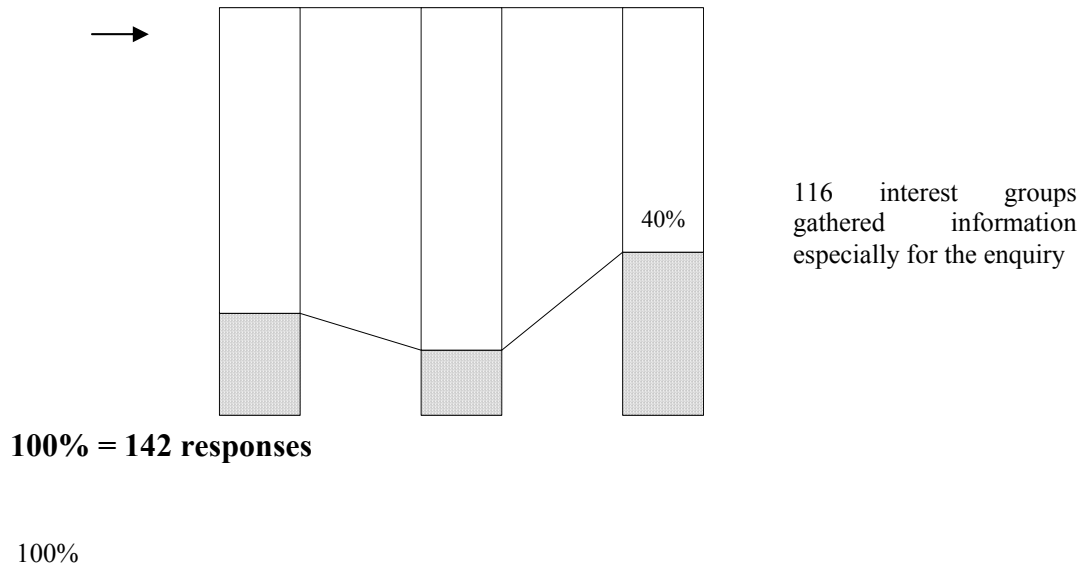
Because all these developments remain in embryo, the potential of committees remains to be more fully tested. The results of this survey provide strong grounds for future work. They give strong support for further development aimed specifically at building interest groups understanding of, and engagement in, this process. But an empirical judgement that the work of the committees affirms their theoretical potential to renew now atrophied policy-making capacities would be premature. Such a judgement must await further development of the parliamentary committee system.

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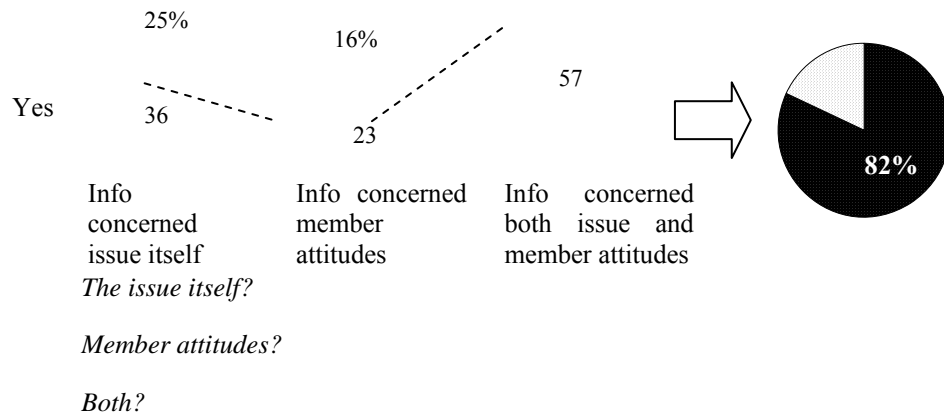
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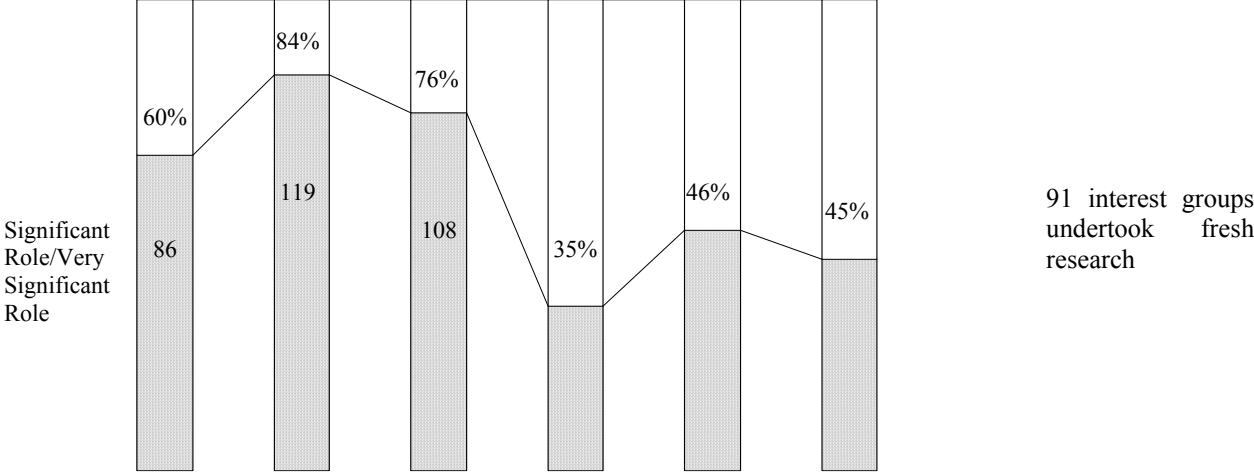
**Figure 1 : Impact of inquiry on information gathering**



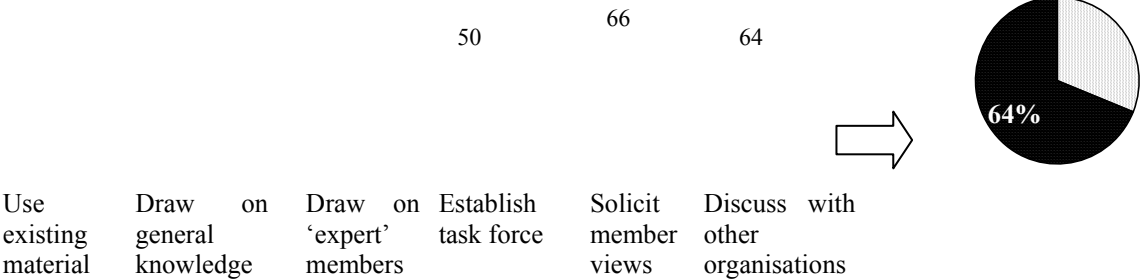
*Question: Was the information gathered concerned with :*



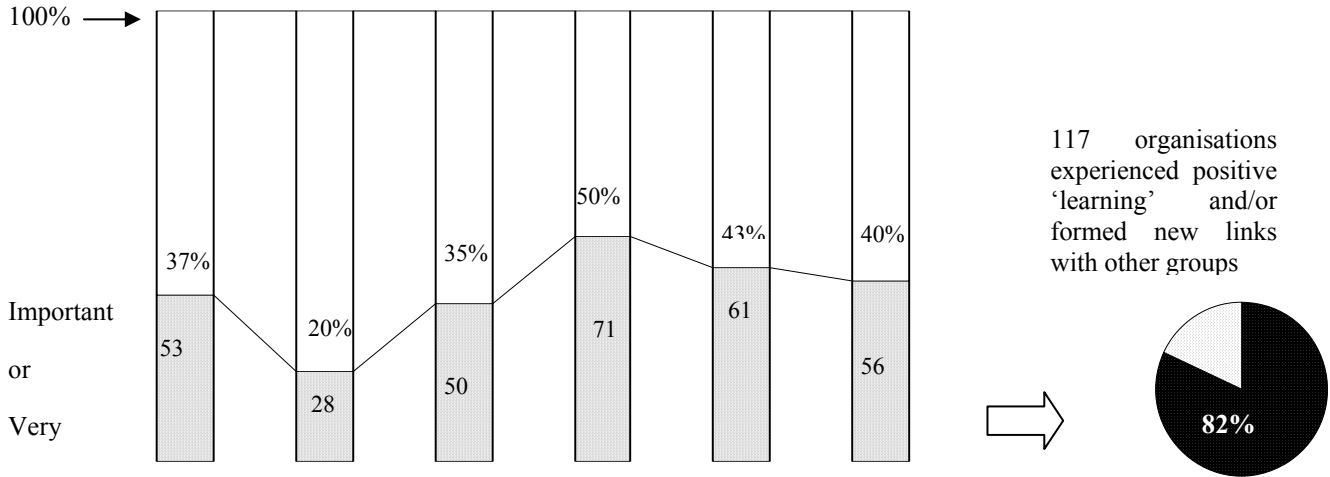
**Figure 2 : Impact of inquiry on internal research**



*Question: Please indicate the role of the following actions in preparing for the inquiry. (The questionnaire offered six choices—establish internal task force; circularise members inviting views; consult informally with selected members with special knowledge; use material already prepared; draw on general knowledge of existing office bearers; discuss with other organisations. The questionnaire invited groups to indicate the relative importance of these actions.)*



**Figure 3 : Impact of inquiry on interest group learning and links to other groups**



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*Question: Please indicate which, if any, of the following outcomes occurred as a result of the inquiry:*

*We obtained new information re issue*

*We obtained new information re government policy*

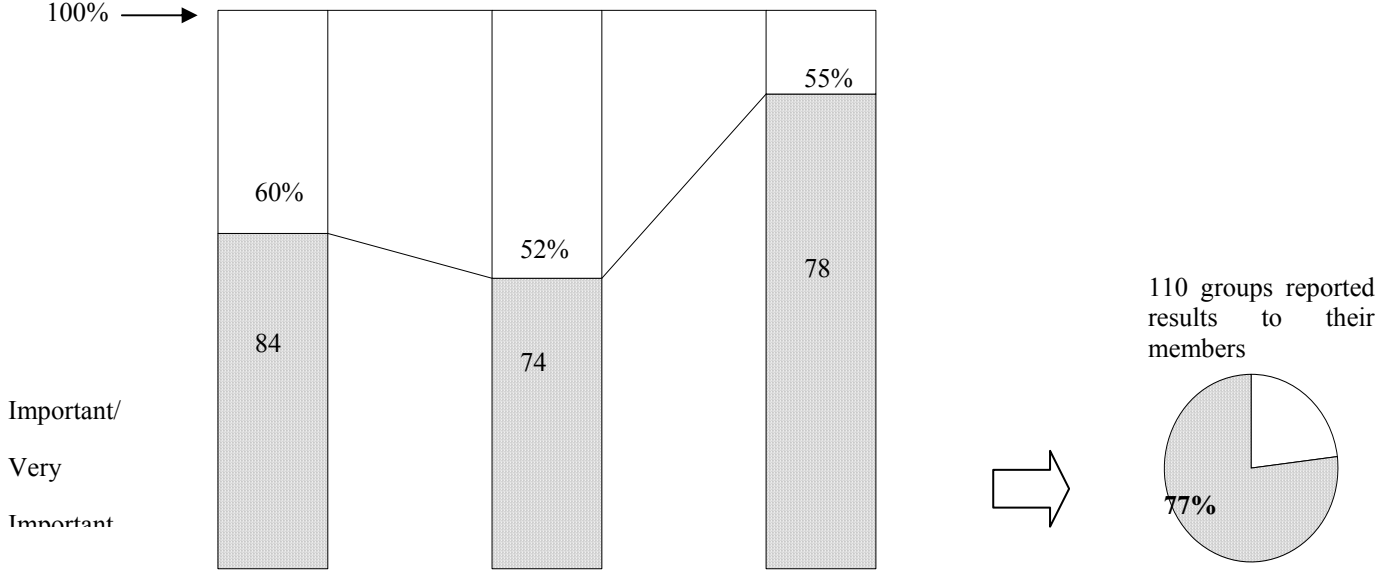
*We obtained new information re department attitudes/judgements*

*We obtained new information re friendly groups*

*We obtained new information re 'hostile' groups*

New info re issue itself	New info re govt policy	New info re dept attitudes/judgements	New info re friendly groups	New info re hostile groups	New links with other groups
<i>We formed new or strengthened</i>	<i>links</i>	<i>with</i>	<i>other</i>	<i>groups</i>	

**Figure 4 : Reporting participation to members**



*Question: Would you please indicate the role of the following actions in reporting back to members (indicating the relative importance):*

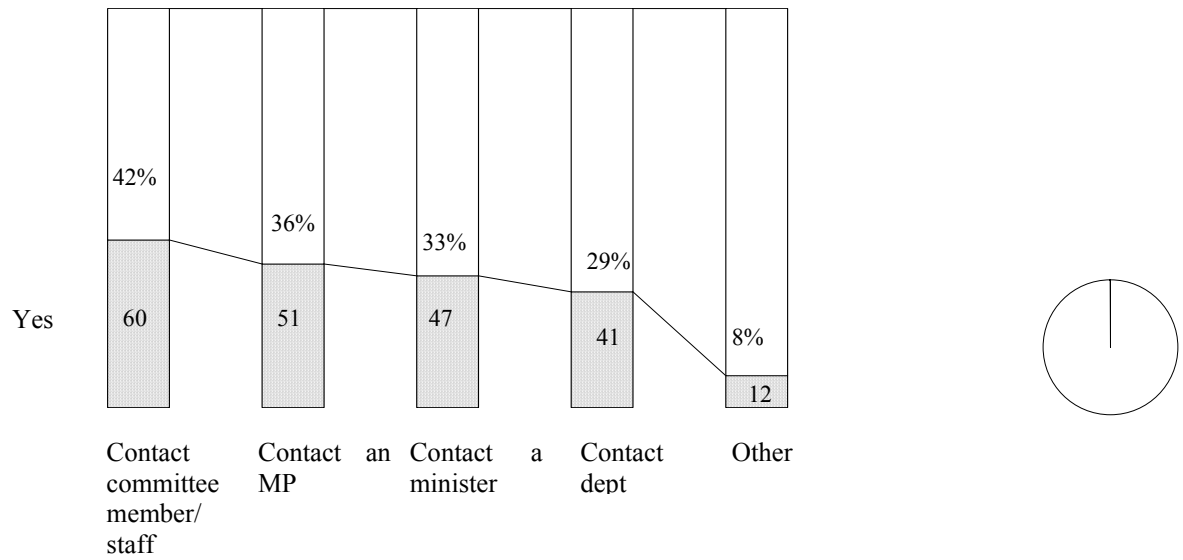
*Report to committee meeting*

*Article in journal/newsletter*

*Report to general meeting*

Report to committee meeting      Article in house journal/newsletter      Report to meeting of members

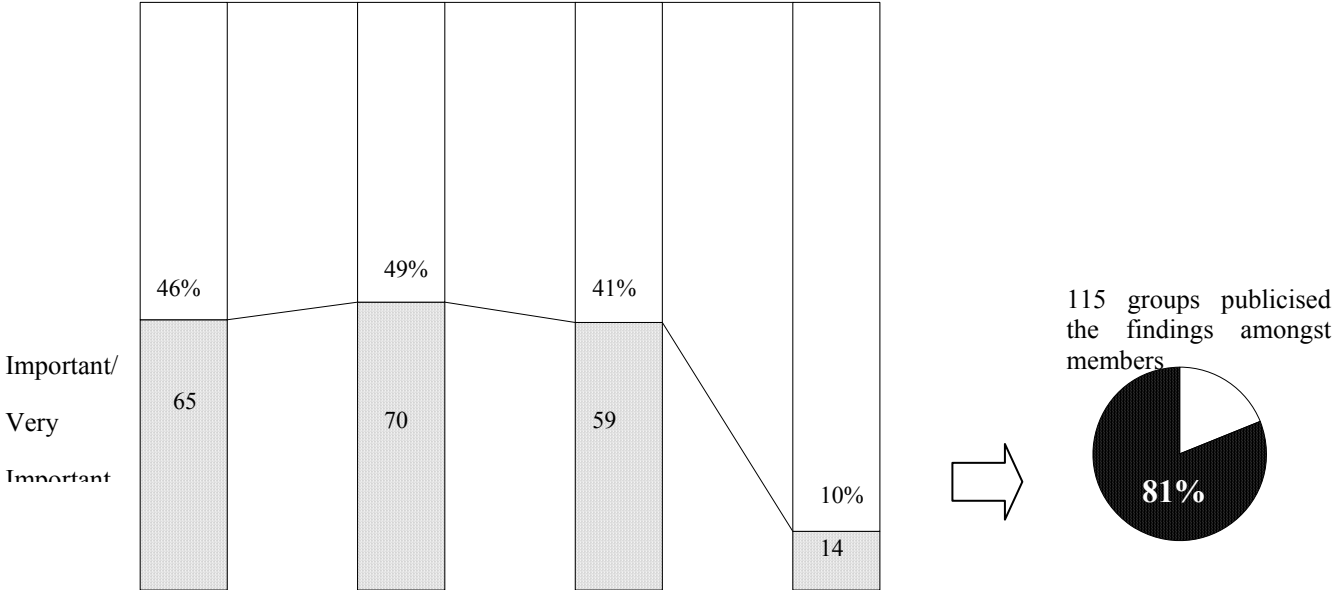
**Figure 5 : Interest group follow-up to committee report**



*Question: Did you take any action as a result of the committee report?*



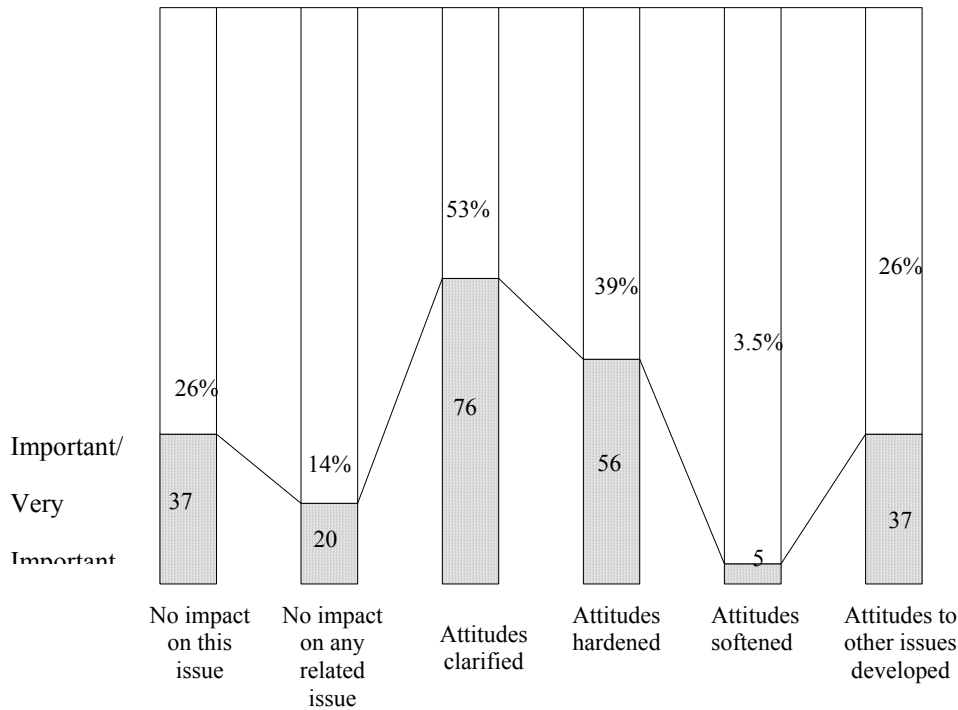
**Figure 6 : Reporting committee findings to members**



*Question: Were the Select Committee findings publicised amongst your members? Please indicate method (from above choices).*

Oral report to committee meeting      Printed report in journal      Other printed report      Other approach

**Figure 7 : Impact of inquiry on interest group attitudes**



*Question: Please indicate the impact of participation on your attitude:*

*Attitudes clarified*

*Attitudes hardened*

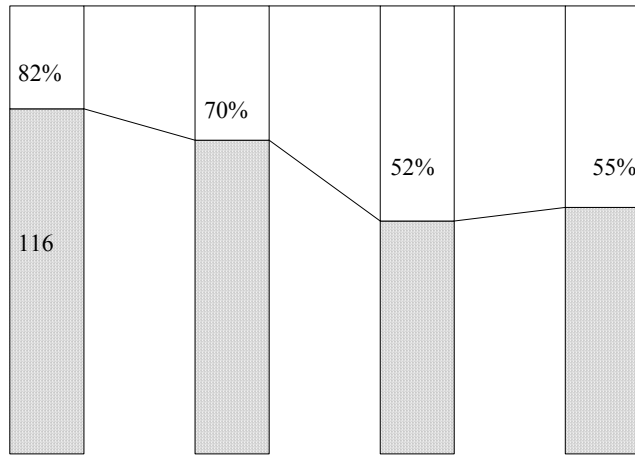
*Attitudes softened*

*Attitudes to other issues developed*

*No impact on attitudes to this issue*

*No impact on attitudes to other issues*

**Figure 8 : Specially valued attributes of Parliamentary Committee inquiries**

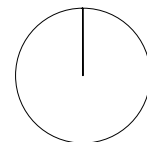


Question: How would you <sup>100</sup>

Agree/  
Strongly  
Agree

74

78



Open and  
public  
forum

Procedural  
fairness

Opportunity  
to learn

MPs right  
people to  
judge issues

*describe worthwhile features of a Select Committee compared with other ways of determining public policy questions?*

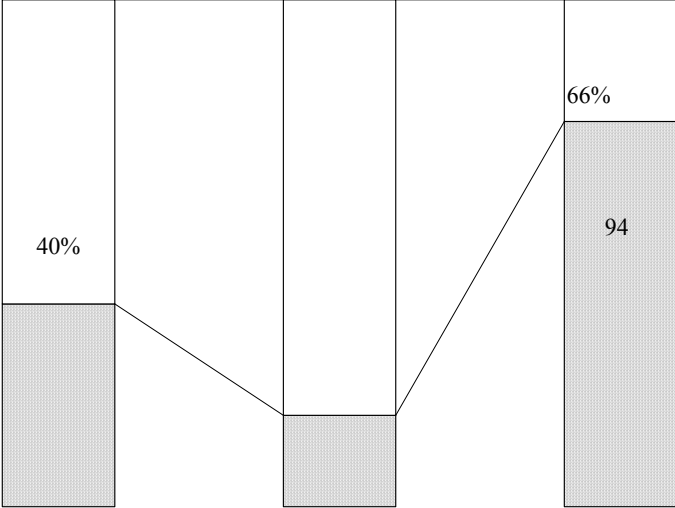
*Open and public form makes it preferable to departmental or other private approach*

*Select Committees are fairer*

*We learnt more this way*

*MPs are better qualified than civil servants to decide issues*

**Figure 9 : Group attitudes to extension of committee powers/role**



*Question: Do you favour extension of the Select Committee powers (indicating strength with choices given)?*

Agree/	57	18%	
Strongly		26	
Present role right		Committees waste of time	More power

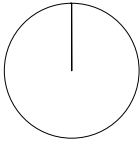


Table 1.

Comparison of Outcomes: U.K. and Australian Surveys.

	Participants in House of Commons Select Committee hearings	Participants in Senate Inquiries.
Proportion of eligible groups responding to the survey	30% (127)	142 (45%)
Groups gathering special information	64% (81 groups)	82% (116)
Groups undertaking fresh research	87% (109 groups)	69% (91)
Groups experiencing positive learning	55% (70 groups)	82% (117)
Number of groups reporting participation to members	90% (115 groups)	77% (110)
Groups following up committee reports	64% (81 groups)	66% (94)
Groups publicising committee findings amongst members	76% (96 groups)	
Proportion experiencing 'important or very important alterations of attitude	55% (70 groups)	
Proportion nominating a specially valued attribute	84% (107 groups)	
No. favouring extension of powers	63% (80 groups)	66% (94)



## **The changing role of parliamentary committees and the place of the community**

**Siobhan Leyne**

*Since their inception parliamentary committees have evolved from a focus on the workings of the parliament to becoming the main forum for the community to speak to the parliament. While committees are increasingly community focussed, the community is not necessarily as interested in committee work. Committee practices need to evolve to ensure that they remain relevant and accessible.*

Why is public participation in House of Representatives committees necessary? As creatures of the House, are they distracted from serving the House in the effort to engage the community? Or have committees evolved to the point that their primary purpose now is to serve as a conduit between the parliament and the community?

This paper will discuss the necessity of community involvement in parliamentary committees and the challenges posed in facilitating this involvement. It discusses the history of committees and how practices have moved from an internal focus to one that recognises and values the involvement of the community in committee work.

Despite the greater focus on involving the community in committee inquiries, this evolution is still hindered by the slow pace that changes to practices are adopted. Strategies for increasing community participation are posed throughout the paper, including the need for more strategic

thinking on community involvement and recognition of the educative role of committees. Fundamentally, evolution in committee practices are reliant on Members and secretariat staff being willing to confront standard practices and take risks on new methods of engaging the community.

The paper closes with a focus on strategies to increase Indigenous involvement in parliamentary committees. While the strategies discussed are aimed at the committees focussed on Indigenous matters, all committees would benefit from an improved engagement with Indigenous peoples. The Indigenous community necessitates special focus as it has particular needs, which have not always been addressed by House of Representatives committees, as well as a unique place as the original inhabitants of this land.

### **A glimpse at the evolution of committees**

Committees in the Westminster system of parliament have a long history of transforming themselves to suit the needs of the parliament. Originally formed for the purpose of ‘committing bills’ before the House they were not as we know them today formed of groups of Members. They were individual members who were required to ‘draft or redraft a bill, engross or make a clean copy of it, devise provisos or amend the text.’<sup>1</sup>

Committees evolved as the parliamentary system evolved, bicameralism led to the rise of joint committees and by the early to mid-sixteenth century committees were a feature, albeit irregular, of the conduct of parliamentary business. However, they remained focussed on the form and content of bills and the procedures of the parliament. Despite the ‘evidence attest[ing] to a variable conference relationship of co-operation and confrontation, hot tempers

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<sup>1</sup> Graves, M. 2002 ‘By committing of a bill to the Howse allowed of the bodie thereof.’ Tudor parliamentary legislative committees: Development, purposes, value and problems 1510-1601. In Kyle, C. and Peacy, J. (eds) Parliament at work: parliamentary committees, political power and public access in early modern England. Boydell: Woodbridge. pp 25-41. p. 25



and harmony,' by the end of the sixteenth century, committees had become a permanent part of the Westminster parliamentary system.<sup>2</sup>

Although co-operation, confrontation, hot tempers and harmony remain a feature of modern parliamentary committees. They have evolved into independent creatures of the parliament, conducting in-depth legislative and policy investigations and providing the most direct means for the public to have input into parliamentary deliberations.

While committees had operated under various guises in the Australian House of Representatives for many years, the establishment of a formal committee system had been a proposal before the Parliament for some twenty years before a Hawke Labor government undertook its development in 1987.

The general reluctance by successive governments to establish committees was due to role that committees had in monitoring executive activities. Governments held fears that committees would be outside of the control of the Executive and perhaps dangerous ground in which to let loose unpredictable backbenchers and a louder voice to a discontented opposition.

Eventually, however, it was recognised that committees provide an important level of parliamentary accountability and that the establishment of a committee system would enhance the meaning of democracy in the parliament. High hopes were held for the new system. One of its advocates, the then Member for Fraser John Langmore, was cited as stating: 'the committee system could be the backbone of democracy.'<sup>3</sup>

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<sup>2</sup> *ibid.*, p. 27, 40-41

<sup>3</sup> 'Changes afoot for Govt watchdog: Power to be spread in the House.' *The News Northern Territory*, 14 September 1987.

Committees were to be responsible, as they remain to this day, for the scrutiny of Executive responsibilities. However, the expected depth of this scrutiny is questionable. In controlling which inquiries committees undertake, the government of the day also has the capacity to deny committees scrutiny of contentious issues. Although committees do have some mechanisms to undertake inquiries without referral, the majority are referred by Ministers, and Government chairs are unlikely in the main to cross their executive.

House of Representatives committees largely content themselves with examination of the larger policy issues. This is appropriate considering the role that the Senate, as the house of review, plays in scrutiny of the executive. It means that House committees can focus on working to develop future policy direction and are therefore more appealing for public participation as the issues under discussion can be of direct relevance to the public. This also allows committees much greater scope to travel outside of Canberra, which not only enhances the inquiry process, but also opens the parliament to a greater number of people who would otherwise not have the capacity to engage with it.

In spite of this, committees often struggle to engage the community in inquiries. There are a variety of reasons for this including a lack of community understanding of the role of committees. This lack of understanding about what committees can accomplish can leave submitters resentful about the perceived lack of action or results from their submissions, the preparation of which can significantly tax the resources of individuals and small organisations. For larger organisations and lobby groups, the trend towards increased accessibility of Ministers in recent years combined with the slow pace of many committee inquiries leaves little incentive to contribute.

Parliamentary committees are evolutionary creatures, and as such, do not make sudden changes. Some of their procedures echo those of their sixteenth-century predecessors and while this does not mean they cannot transform, it does mean that they need to be aware of the limitations these procedures create. Although there have been significant evolutions in committee practices, these are not always in line with or at the speed of community expectations.

House of Representatives committees have gained a solid reputation for embodying sound parliamentary procedure and, in the tradition of parliament, do not deviate from these practices when away from Parliament House. The strict adherence to parliamentary procedures and the formalised structures of how committees and their work is presented make committees inaccessible to many with low education levels, minimal English language skills, or simply no understanding of the legal importance of adherence to parliamentary procedure.

Nonetheless, there is no reason why committees should not try to actively seek new ways of engaging the community and develop new methods of presenting committee work so that it is relevant to the community as well as the parliament.

### **Practices have moved**

Since the 1999 Standing Committee on Procedure report *It's your House*<sup>4</sup>, which formally recognised the importance of community participation in committee inquiries, a number of practices aimed at enhancing this relationship have been standardised. Advertising is undertaken through a variety of forums, including e-mail and the internet. More information about how the community can participate in committees is now being produced and the *About the House* magazine, a free magazine produced by the Department on the work of the House and its committees is widely distributed across Australia, and is particularly popular within schools.

Many other practices were adopted from the *It's your House* report – for example committees now make greater use of seminars, round table discussions and community statement sessions and more effort is being made to introduce innovative methods of seeking submissions. However, these innovations have been placed within existing standards and procedures and so they can be self-limiting.

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<sup>4</sup> Available at <[aph.gov.au/house/committee/proc/reports/pciwc/index](http://aph.gov.au/house/committee/proc/reports/pciwc/index)>

Inquiry terms of reference and advertising are generally written in a manner that assumes an understanding of the inquiry process and reasonably high literacy skills. Respondents to committee inquiries are therefore generally lobby groups or well organised organisations. Indeed, in public hearings, Members are most at ease with witnesses who are comfortable with the format and the manner of presentation.

Regardless, the ability of the community to access parliamentary committees is now greater than ever before. It is routine for committees to advertise for public input and conduct public hearings in locations other than Canberra. Members recognise the benefit of this, not only to the inquiry process, but also the benefit of these hearings being held in their own electorates.

Despite the increased capacity for individuals to access parliamentary committees, public hearings are not widely attended by members of the public. Although out of Parliament House, hearings have the same form and process as hearings held within precinct of the parliament itself. The physical setup of committee has a sense of formality, with Hansard recording and broadcasting equipment, witnesses needing to sit before a line of Members. This formality really does ‘take parliament to the people.’ However, it can also be intimidating for those with a limited understanding of the parliamentary process and this stands as a major barrier to participation – it is a brave and confident person who will front to be ‘examined’ by a committee. Naturally, for committee members, questioning is easier when witnesses understand and can engage robustly in the sometimes hostile and aggressive manner in which hearings take place.

It is not suggested that committees forgo any of the formalities that are necessitated by the parliament in circumstances where this is appropriate. However, at a time when the parliament is competing for public interest with a multitude of news, entertainment and opinion forums, committees need to be creative in their consultation to ensure that the widest possible cross-section of the community are able to have their views heard.

## **Apathy or inability?**

There is a general sense that apathy is the main approach to public involvement, or lack thereof, in political processes. While some inquiries can garner a high degree of public interest, a general, ongoing interest and involvement in the parliament is low. A 2005 British study found that despite a public desire to be more involved in decision-making, very few individuals were willing to be seriously involved beyond signing petitions. However, the study also found that those were willing to be involved were ‘overwhelmingly middle-aged, white, wealthy and educated.’<sup>5</sup>

This suggests that mechanisms for involvement are prohibitive and that desire does not translate into action because those who are not ‘middle-aged, white, wealthy and educated’ cannot make themselves heard. Rather than questioning why the community does not engage with the parliament, the methods on offer should be re-evaluated.

Despite the struggle that some committees have with low community involvement in inquiries, the community is certainly not proving itself to be apathetic when it comes to participation in other opinion forums. For those with the ability to access it, the spread of the internet and the ability to easily self-publish has seen a wealth of new consultation methods and avenues for people to express their opinions. Online news services are now offering the facility for people to comment on some news and current affairs items, and most have some capacity for interactivity, allowing users to post their own opinion pieces and this is proving popular. Individuals are self-publishing not only on personal ‘blogs’ but also on shared forums such as ‘YouTube’ and online discussion forums. This indicates that people want their opinion heard (or at least published), as long as it is through a forum and format that is engaging and easy to access.

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<sup>5</sup> McHugh, D. ‘Wanting to be heard but not wanting to act? Addressing political disengagement.’ Parliamentary Affairs Vol. 59, No. 3, June 2006, 546-552. p. 549.

Parliamentary committees have been slow to engage with these new technologies except on an ad hoc basis. It is time for committees as a whole to investigate strategies for more the innovative use of technology, including hosting online forums as a method of consultation. There are a range of legal implications that need to be considered and it may be that full parliamentary privilege cannot be conferred to information gathered through informal mechanisms. These formalities should not deter committees from investigating the range of options and considering how more informal opinions and evidence can be incorporated in the inquiry process. It is not as if all parts of an inquiry's evidence is currently granted parliamentary privilege. For example, site inspections and the valuable 'off the record' conversations that Members conduct at these times can shape their insights but are not taken as evidence.

Committees and staff need to ensure that the desire to engage new audiences does not create a situation where parliamentary privilege is conferred in inappropriate circumstances (such as where an individual's identity cannot be verified, or the information, by its very nature is automatically published, as is the case in online forums.) However, this should not prohibit the use of alternative methods of consultation.

Developing new methods of consultation will be essential to engage new audiences, however it will not be adequate to simply develop these new consultation methods and hope that the community discovers them. Each committee should as a matter of course, develop a communication strategy aimed at their target audience. This should encompass issues such as managing the media, appropriate communication styles, options for online consultation and advertising and a methodology to both educate the community about the committee and inquiry and encourage a diverse range of submissions.

This should not only enhance public participation, but would limit the waste of resources through inappropriate advertising. As committee staff are not necessarily communications specialists, the provision of enhanced support in this area will be greatly beneficial to the promotion of committees and their inquiries.

The challenge to find unique ways to engage the community in committee work is not one that is unique to the Australian Parliament, committees in parliaments across the world experiment with methods of engaging the community in their work. For example:

- The Scottish Parliament produces ‘easy read summaries’ of some committee reports which are distributed to the community as well as, or instead of, the lengthier, more bureaucratic, report presented to parliament.<sup>6</sup> The summary makes clear that these are the views of the committee on actions the executive should take and are therefore not necessarily actions which will be automatically implemented.
- British Columbia’s Legislative Assembly (Canada) Select Committee on Health developed a website for its 2006 inquiry into childhood obesity directly targeting youth involvement in the inquiry.<sup>7</sup> The language, form and content of this website not only sought submissions to the inquiry, but also explained what the committee hoped to achieve, in a manner that was relevant to young people. Rather than listing the terms of reference, the committee posed a series of questions to be answered.

### *Managing community and committee expectations*

A focus on the expectations of the committee is important. There is very little understanding in the community of what committees can actually achieve. It is not unusual for committees to receive requests from individuals to assist them with personal matters, often advocacy or the navigation of bureaucratic processes. Indeed, Members also often use the hearings process to grill witnesses (often bureaucrats) on matters of singular importance to their electorates. The community can be left disappointed if the aims of the committee are not articulated clearly, resulting in an expectation of resolution to matters over which committees have no influence, or an expectation that recommendations will automatically be implemented. Articulating the

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<sup>6</sup> For an example see the Easy Read Summary of the Removing barriers and creating opportunities report of the Scottish Parliament Equal Opportunities Committee, available at <[scottish.parliament.uk/business/committees/equal/reports-06/documents/061123EasyReadFinal.pdf](http://scottish.parliament.uk/business/committees/equal/reports-06/documents/061123EasyReadFinal.pdf)>. Accessed January 2008.

<sup>7</sup> See <[myhealthyspace.ca](http://myhealthyspace.ca)> Accessed January 2008.

committee's expectations of an inquiry (including why it is being undertaken) will assist both committees and staff to adequately focus the inquiry and the community to prepare useful submissions.

If committees want a diverse range of submissions and community participation in inquiries, it is no longer adequate to assume that the community has knowledge of their activities nor the capacity or interest to make submissions in the traditional ways. Efforts need to be made to ensure that committees target methods of consultation that are relevant and the most effective way of collecting quality evidence. There are no standard solutions as each committee will need to engage different sectors of the community and staff need to recognise that Members are best served through being able to effectively engage the community in their work. However, there are many institutions (i.e. academic institutions, professional associations or key industry groups) with the expertise to objectively advise committees in this regard and these should be utilised more often in the early stages of inquiries.

If committees are adequately focussed on why they are conducting their inquiries and how they wish to conduct them, appropriately focussing consultation will occur as a matter of course. Further strategies are outlined in the following section.

### **The educative role of committees**

The refrain that committees take parliament to the people is popular and oft used. If this is to be the case, committees need to recognise their educative role, particularly when undertaking inquiries that have the capacity to garner significant community involvement.

If committees are to continue to be a relevant part of the Parliament and relevant to Australian society, mechanisms need to be put in place to ensure that disenfranchised voices are able to



engage in the system and are not drowned out by those already adept at making their views heard.<sup>8</sup>

A challenge for all parliamentary committees is to avoid well-established lobby groups gaining disproportionate influence and already disenfranchised voices being more easily overlooked. With the demands placed on Member's time, it is challenging for committees to meet and travel for hearings. Therefore, they obviously try to make the fullest use possible of the little time available to them. Many regular submitters – peak organisations and lobby groups – have an expectation to appear before the committee, and the capacity to make Members very uncomfortable with accusations of biased or incomplete consultation should they not be invited to appear. This can result in these 'usual suspects' dominating hearings, particularly if the inquiry process is not adequately focussed and reliant on submissions to provide direction for the public hearings schedule.

The inquiry process is a good opportunity for members to immerse themselves in an issue, and for the community to highlight issues of concern at the highest level. To give the whole community an adequate opportunity to participate in the system, consideration should be given to running community education sessions, prior to, or concurrently with public hearings. Public hearings provide an ideal opportunity to undertake public education on the parliament as they tend to attract media attention and give relevancy to the inquiry.

Education sessions can also be a useful forum to assist individuals to prepare submissions. For those who rarely prepare submissions, trying to address bureaucratic terms of reference can be a daunting, if not impossible, task. A strategy to overcome this is to complement terms of reference with a list of focus questions that address the key issues of the inquiry.

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<sup>8</sup> McHugh, D. p. 551

It is important not to focus on the report as being the inquiry outcome, but to recognise the importance of the process. The experience of a 2005 Senate Select Committee on Mental Health

demonstrated that often the report is not the most important thing a committee provides. It can be the exposure given to issues in hearings, and the media coverage received, that is more important than the document produced weeks or months later.<sup>9</sup>

This point needs to be more widely recognised by committees and the community. Because reports are generally produced a long time after the completion of hearings and recommendations often ignored by the government, the real value in inquiries comes through the inquiry process itself. If the inquiry generates significant public and media attention, action can be taken well before a committee even has an opportunity to draft their report.

Indeed, on highly contentious issues where Members hold firm positions, organisations see little use attending public hearings for the sake of changing the mind of the committee, but rather value the chance to draw more public attention to an issue. A Canadian activist highlighted this point:

During my years at NAC, [an] ... organisation that was almost always in opposition to the ... government, I rarely got a positive hearing from a parliamentary committee. As a result, NAC usually viewed my appearances before a parliamentary committee as more of a way to get media coverage than to persuade politicians.<sup>10</sup>

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<sup>9</sup> Dermody, K. I. Holland and E. Humphery (2006). Parliamentary committees and neglected voices in society. *The Table*. Vol 74, 2006: 45-55. p. 53

<sup>10</sup> Rebick, J. 2000. *Imagine democracy*. Stoddart: Toronto. p. 77-78

Recognising that committee inquiries not only play a role in policy development but can play an important role in enhancing the democratic process is a first step to improving community involvement. Staff can take steps to give the community the skills to engage in the committee system and should consider this as an integral part of their role in supporting committees.

### **Disenfranchised and neglected voices**

While considering the general barriers to participation apparent in the wider community, it must be acknowledged that there are a range of disenfranchised and neglected voices which need particular support in order to participate in the parliamentary system. The barriers to participation in democratic processes are compounded for those people who are already socially disadvantaged.

As discussed throughout this paper, engaging with the community through a variety of means is essential. It is important for committees to understand how the community wants and is best able to communicate. This requires committees and staff being willing to take advice on language use, dress and culturally appropriate behaviour.

A number of parliamentary committees have been very successful in engaging these disenfranchised and neglected voices. In part this success has come from media focus on inquiries, which has publicised them more widely than the committees on their own could hope to do. However, the successes have also come from committees engaging with people in their own environments.

This means holding public hearings in locations other than central business districts of major cities and in a diverse range of venues (such as schools or community halls). For inquiries that involve culturally and linguistically diverse groups strategies that should be considered include providing on-the-spot translation services, information about the inquiry in relevant languages and conducting education sessions (with translators) on the work of the parliament either prior to or concurrently with public hearings. Most importantly, committees need to have an understanding of how to listen to groups in the most appropriate manner.

A 1999 Joint Committee investigating native title matters was the subject of protests from many Indigenous groups for failing to understand how, and where, to listen to them appropriately.

I asked quite a few people in 1996—they sat at the same place as you mob are sitting now—not to just come in a jet plane in and out of town. You think that the places we are talking about look like that: green grass, trees, bloody houses and lawn—no, it is bush. It is plain country, hilly country, rocky country. You just come here and sit for an hour or two a day and that is it.<sup>11</sup>

This same committee had earlier been confronted by a group of witnesses who chose to speak their own language in protest to the Bill under consideration. Translation services were not available at the time of the hearing, nor was the evidence later translated, appearing in the transcript as follows:

Thank you. You heard my name. I am a Walmajarri man. I have to speak my own language as I am a Walmajarri man.

*Evidence was then given in a language other than English--*

Mr Yu —Thank you. Mr Chairman, the next speaker will be Gemma Napanunga. She is a Googaja woman.

Ms Napanunga —My name is Gemma Napanunga. I am desert.

*Evidence was then given in a language other than English--*

Mr Yu —Thank you. The next speaker will be Hitcher Gordon and he will speak in Nardi.

*Evidence was then given in a language other than English--*

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<sup>11</sup> Mr Frank Sebastian, Member Rubibi, Transcript of Evidence, Australian Parliament, Joint Standing Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Section 206(d) of the Native Title Act 1993, 13 April 1999, Broome, p. 148.

Mr Yu —Thank you. The next speaker will be Peggy Patrick. She is a Gija woman.

*Evidence was then given in a language other than English--*

Mr Yu —The next speaker will be Mrs Maggie Long. She is a Jaru woman and Jaru speaker. She is the Co-Chairperson of the Kimberley Aboriginal Law and Culture Centre.

*Evidence was then given in a language other than English--*

Mr Yu —The next speaker will be Mr Peter Francis, who is a Nyigina man and who will speak in Nyigina.

*Evidence was then given in a language other than English--*

Mr Yu —The next speaker will be Mrs Edna Hopiga, who is a Karrijarri speaker.

*Evidence was then given in a language other than English--<sup>12</sup>*

While these witnesses used this process as a form of protest, to not later translate the evidence is not only disrespectful to the people involved, but to the process itself. Without access to the full evidence put to the committee, fair and balanced judgements cannot be seen to be made. Later committees have made greater use of translation services, however, the use of these services must be standard practice, rather than at the discretion of individual committees.

As well as the provision of translation services, it is essential that committees consulting with culturally and linguistically diverse groups have an understanding of the most appropriate forms of cultural address, including appropriate venues and forms of hearings. This may include ensuring that alongside public hearings, time is allocated to share informal time with witnesses, whether that be to share a meal or to tour sites that witnesses feel best represent their evidence (such as Indigenous sacred sites.)

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<sup>12</sup> Australian Parliament, Joint Standing Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Native Title Amendment Bill 1997, Transcript of Evidence, 6 October 1998, Broome, p. 968.

## **Indigenous participation**

Unlike other countries with similar parliamentary structures<sup>13</sup>, the Indigenous peoples of Australia do not have a formal mechanism for participating in a parliamentary system that recognises their traditional governance structures. This limitation is beyond participation in parliamentary committees and extends to all democratic processes. Yet because of this, aside from direct lobbying, parliamentary committees can be the most important avenue that Indigenous peoples have to access the parliament.

Indigenous peoples suffer significant social and economic disadvantage against most key indicators, including health, housing, education and income levels. While these issues in themselves have immediacy, self-determination is also a key priority. Self-determination for Indigenous peoples, that is, the right to ‘determine their political status and freely pursue their economic, social and cultural development’<sup>14</sup> is essential to improving social and economic disadvantage.

In practice, self-determination will translate in different forms. While Indigenous people are widely politically active, this political activism has not translated into engagement with the parliamentary system, either in terms of representation through seats in Parliament or contribution to the many parliamentary committee inquiries that run each year beyond those specifically targeting the Indigenous community.

Because of their ability to travel to remote communities and translate this evidence into parliament language through their report, committees should be taking more proactive steps to lessen the barriers to participation in democratic processes. There are many barriers to participation for Indigenous peoples. The Queensland Parliament’s Legal, Constitutional and

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<sup>13</sup> For example, the New Zealand Parliament has Māori constituencies to ensure Māori seats in Parliament; Canada has a formal treaty with Aboriginal peoples recognising the right to self-government as well as Aboriginal representation in the Parliament.

<sup>14</sup> United Nations, International Covenant on Civil and Political Rights, Article 1

Administrative Review Committee in its inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's found that barriers include:

- lack of civics education, including lack of education on how to vote and become more involved in political processes;
- racism;
- lack of self-confidence;
- other issues being of higher priority (such as addressing health and housing);
- mistrust of Government;
- Westminster systems are inappropriate for Indigenous people;
- participation may be seen as a concession of sovereignty.<sup>15</sup>

These factors must be taken into account by parliamentary committees when constructing consultation processes, and the challenges they present must not dissuade committees from seeking ways to engage Indigenous participation. Indigenous participation in parliamentary inquiries is essential. As the original inhabitants of this land they therefore have a unique perspective on how the land and people should be governed. Yet without an official, high-level Indigenous representative body that has the resources to initiate engagement with the parliament, committees are left to actively seek Indigenous input, often with little understanding of how to do so.

Committees have tried a variety of methods to engage effectively with Indigenous communities. Indigenous peoples, like many in the wider community have a degree of cynicism when it comes to the presence of politicians in their midst:

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<sup>15</sup> Lim, S. 2003. Hands on Parliament – a parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic process. Conference Paper. Australasian Study of Parliament Group. July 2003. p. 2.

We have voted people into the government nearly every two years or whatever. They promise you the world; they promise you the sky. But when it comes to the day they are in, you are gone. You are out, Jack or George. You can sit there till next election day. Before the election day they are there like flies hanging on to you. They will not even let you go because they want your vote.<sup>16</sup>

Before seeking involvement in a particular community, committees must question whether the community really wishes to speak to the committee. Consultation for consultation's sake, without consideration of the impact this will have on the community, is highly disrespectful and will only result in further mistrust between the Indigenous community and the parliament.

The most valuable resource when consulting with Indigenous peoples is time. Acceptance and authority is not granted through titles and positions, trust must be slowly gained by the community. Parliamentary committees do not have the capacity to spend the time to undertake consultation in this manner, nor are their processes flexible enough to accommodate differing notions of governance. For these reasons, it is essential that the secretariat responsible for supporting the committee charged with the Aboriginal the Torres Strait Islander (ATSI) portfolio areas has in place arrangements that will maximise opportunities for effective consultation. If the community has little understanding of why politicians are seeking to talk to them with no apparent benefits or outcomes, why should they want to make the effort (which often includes lengthy travel in remote areas) to speak to a parliamentary committee?

Although secretariats are many times constrained by the desires of the committee, there are strategies that can be put in place that will enhance the relationship of the committee with the community and also provide more effective consultation which in turn will encourage more Indigenous peoples to engage with parliamentary committees.

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<sup>16</sup> Mr Frank Sebastian, Member Rubibi, Transcript of Evidence, Australian Parliament, Joint Standing Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Section 206(d) of the



### *Ex-officio committee positions*

As there are currently no Indigenous Members of Parliament, there are no opportunities for Indigenous representation on the committee concerned with ATSI matters. One possibility is for an ex-officio Indigenous position to sit on the committee with equal status of Members, but no voting rights for specific inquiries. This would provide an opportunity for the committee to gain a deeper understanding of Indigenous issues and ensure that inquiries are targeted more appropriately.

This has been proposed for Canadian House of Commons committees on several occasions, most recently in the 37<sup>th</sup> Parliament (January 2001 to May 2004). A motion was passed that would allow non-elected Aboriginal representatives to participate in the Standing Committee on Aboriginal Affairs and Northern Development's consideration of bills related to Aboriginal peoples. The Committee did not take advantage of this possibility and the motion is no longer in effect. However, unlike the Australian Parliament, the Canadian Parliament does have a number of Aboriginals as elected representatives who are able to sit on this committee.<sup>17</sup>

An ex-officio member position would require a substantial resource commitment, both in terms of an appropriate wage, travel and training support. In addition, given the multi-tribal nature of Indigenous peoples, it may be difficult for one position to provide adequate representation. Although committees work in a bipartisan manner, when they are divided on party lines, on issues of party politics, a position of this type could be seen to be tokenistic. While in principle this is an attractive solution to improving Indigenous representation in parliament, in practice it may have limitations and there are better ways of engaging a wider range of Indigenous peoples.

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Native Title Act 1993, 13 April 1999, Broome, p. 157.

<sup>17</sup> See <[cmte.parl.gc.ca/cmte/CommitteeList.aspx?Lang=1&PARLSES=392&JNT=0&SELID=FAQ&COM=13176](http://cmte.parl.gc.ca/cmte/CommitteeList.aspx?Lang=1&PARLSES=392&JNT=0&SELID=FAQ&COM=13176)> Accessed January 2008

### *Committee advisors*

A more appropriate advisory position may be for a formal committee advisor to be engaged for the life of parliament to advise not only the committee in their inquiry conduct but in particular to advise the secretariat on the best way to engage both formally and informally with Indigenous peoples.

This position would not need to necessarily be an Indigenous person, but rather an individual who has a specialist understanding of Indigenous culture and governance such as a cultural anthropologist. Such a specialist advisor should have the skills to facilitate engagement with Indigenous groups to ensure that the committee is talking not just to those who are skilled communicators, but those who are the most appropriate to represent their community.

There are precedents, and processes in place, to engage specialist advisors for committee inquiries. While these tend to be on a issues base, engaging a specialist should be matter of course for the Indigenous affairs committee. Appointing an advisor for the life of parliament will allow them to build a relationship with the committee and secretariat and understand the needs of the committee.

### *Staffing*

While the Department has no control over the composition of committees, it is entirely responsible for staffing and so has great scope to improve committee processes through the provision of appropriate staffing.

There are strong grounds to consider creating an identified position for the research roles serving the committee for Indigenous affairs, particularly considering the low likelihood of Indigenous representation on the committee itself. An identified position differs from a designation position in that the individual filling the position is not required to be Indigenous, but is required to demonstrate an understanding of the issues affecting, and a demonstrated capacity to communicate sensitively and effectively with Indigenous peoples. This will

require commitment to and investment in training to ensure that current staff have the opportunity to meet the requirements of an identified position. Any advisor engaged to the committee should also be able to assist staff in gaining these skills.

All committee and inquiry secretaries should be given (and avail themselves of) the opportunity to travel to an Indigenous community to gain an understanding of the unique nature and culture of these environments. This can be done through the provision of shadowing opportunities on ATSI committee trips. As many committees work with Indigenous peoples this opportunity will provide an important training opportunity to enhance consultation processes across all committees.

### **The way forward...**

The consultation methodology of House of Representatives committees has proved successful. Generally, inquiries are wide ranging and inclusive. As the only way the community can speak directly to the parliament<sup>18</sup>, committees are an essential link between the parliament and the community. However, the practices of committees need to keep pace with changes in society to ensure that they have the capacity to engage with difference community groups and most importantly with Indigenous communities.

At this, the twentieth anniversary of the House of Representatives committee system with the inevitable changes that come with a new Government, committees have an ideal opportunity to reflect on what their role is to be both in relation to the parliament and the community.

The success of committee inquiries is in part dependent on the attitudes of their support staff. The ideas put forth in this paper will take additional time and effort, and in some cases, resources. How do staff fit these additions into an already demanding workload? It will take

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<sup>18</sup> While there has been precedent for visitors to address the House, this arises only in exceptional circumstances. Harris, I. (ed.) 2005. *House of Representatives Practice*. Fifth Edition. Canberra. p. 114-115.

recognition from all staff that committee processes are continuously evolving. Committee support must be undertaken with an attitude of flexibility, creativity and innovation, both aware of and responsive to changes in the community.

Although Members and committees are the key clients for committee staff, it must be recognised that Members are best served through ensuring that they have the best possible opportunities for engagement with the community. The groundwork is in place but it requires sustained organisational support and the ongoing commitment and enthusiasm of the leadership team.

Committees are fulfilling Langmore's vision as a vehicle to enhance democracy but need to continue to embrace evolution in their practices to execute their role as an important conduit between the Parliament and Australian society.

*I would like to acknowledge with thanks the many people I had lengthy conversations with in the preparation of this paper. In particular, Anna Dacre and Robyn Webber of the Department of the House of Representatives Committee Office and Patrick Sullivan of the Australian Institute of Aboriginal and Torres Strait Islander Studies.*

**EVOLUTION OF THE COMMITTEE SYSTEM IN THE HOUSE OF  
REPRESENTATIVES – A PATH FORWARD –  
INCREASING PARLIAMENTARY ACCOUNTABILITY**

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It is perhaps stating the obvious to say that over the last twenty years parliamentary committees have been an emerging and powerful force for more effective representation by members of the broader constituency they represent. More importantly, however, they have potentially become an even greater force through which to increase the accountability of government.

In particular the trend in Australia to return Upper Houses in which the government does not have a majority has created a dynamic through which executive accountability may be tested in a way not previously possible. Inevitably Lower Houses have sought to mirror this activity lest they be seen as abdicating this vital role, even though the forensic intensity of their probing may be blunted by the government majority in that house.

Committees are a valuable tool for a richer democracy, however, to fulfil this role more emphasis must be given, particularly in Lower Houses, to reinforcing their independence from executive control. To do this, the parliament, and thus de facto, the executive must ensure they are properly resourced, that is, adequate staff and accommodation, unfettered access to expert advice, including legal and fiscal advice, and an unrestricted capacity to call for public records in all but specified exceptional circumstances where the public interest requires non-disclosure, for example, genuine risk to the administration of justice or to national security. In relation to papers and documents expeditious access should be guaranteed, in accordance with the true spirit of freedom of information.

Committees should also be free to call whomever they think necessary as witnesses to their inquiry, and all current restrictions, whether by law or convention, should be lifted, including personal ministerial staff and departmental officers. Ministers should do nothing to prevent or hinder their appearance when staff is requested to attend.

Another important development for consideration is to involve all members in committees by making committee work an integral part of a member's duties, and recognised as such by the general community. Thus, instead of parliament sitting, say sixty to seventy days a year, without public recognition of the time spent on committee work, parliamentary sittings should be divided between plenary sessions and committee hearings. In other words committee days would be publicly listed as normal parliamentary sitting days, lifting the total number of sitting days closer to, say, a hundred, in truer reflection of members' parliamentary workload. All committees would sit on the days set aside for this purpose.

Extended work in committee would, I believe, produce more informed, succinct and tighter debate on the floor of the Chamber, and indeed, there would be much to be gained from more measured control of the length of debates generally. The concept of limited second reading debates was canvassed by Carmen Lawrence in her presentation to a 2001 Victorian conference, 'Parliaments: Meeting Public Expectations'. She suggested steps should be taken to ensure all legislation had extensive pre-introduction consultation and that speaking lists for bills at their second reading should be structured to cover the scope of matters in the bill rather than the present practice of disembodied speeches which often cover the same ground.

And if committee reports are to have real significance, debate on their recommendations must be allocated adequate parliamentary time and generate a specific government response. If it is worth establishing committees it is worth ensuring the public gets maximum value for the expense and effort.

Participation on committees helps develop bonds of understanding and mutual respect between members across party lines. This can only be beneficial. Most committees already produce worthwhile results.

I will now deal with these issues in greater detail.

A problem exists in the sheer physical demand on backbenchers to service an ever proliferating number of special reference committees. To overcome this, I would recommend

a switch to subject committees, along the lines of the New Zealand model, covering the full range of portfolios and taking references on matters falling within their area of jurisdiction.

If my mathematics is correct there are currently eighteen House of Representatives Standing Committees and twelve Joint Committees. There are one hundred and thirty places on single House subject committees, forty three on the various House and procedural committees and seventy nine House of Representative places on Joint Committees, a total of two hundred and fifty two placements to be filled by about eighty members, a ratio of approximately four to one.

I would seem a far more efficient distribution of human resources to establish something like fifteen single House portfolio committees with ten members and five joint portfolio committees with five House of Representatives, creating a ratio of slightly less than two to one. Matters currently referenced to select committees would be referred to the appropriate portfolio committee.

Coupled with the concept of specific days being set aside for committee deliberations in the same way they are allocated for plenary sessions, committee work would be promoted to the public as proceedings of parliament in session as much as conventional sitting days with the workload distributed evenly among all members eligible to sit on them. In this way more productive use could be made of members' time with probably less time being spent in the parliament's plenary sessions.

In 1991 British MP Roy Jenkins highlighted the essence of the problem. He said,

The real question is how much, if any, independent life should Parliament have, beyond providing the forum for the rituals of government and opposition. In theory, it is the cockpit of the nation's life, where independent-minded legislators guard liberties and query the activities of the state and its servants. In practice it is a less bloody and useful arena in which committees are meant to help correct the balance. By gathering backbenchers across parties, they encourage them to think as parliamentarians, not as party yes-men. By enabling them to track particular departments for months or years, they give them a level of knowledge about government that few MPs would otherwise

have. One chairman said they ought to be providing a third force in Parliament between the two big parties – and should get a third of the chamber’s debating time too.

A calculation of the time devoted to debating committee matters in the House of Representatives, against the time spent in other debates, would show it to be much less than a third.

If committees are to become the ‘cockpit of the nation’s life, where independent-minded legislators guard liberties and query the activities of the state and its servants, they must be given more emphasis and facility to fulfil this role than is now provided by stage managed parliamentary sittings.

A strong committee system has the potential to return greater sovereignty to parliaments through empowerment of the rank and file. Perhaps this is why governments are reluctant to give them a greater share of the parliamentary table. It is, however, imperative that meaningful debate on committee reports occur in the House itself and the government offers a measured response to each report outlining its level of commitment to the recommendations.

Further efficacy would be delivered to committee work if their efforts could become the driving force of parliamentary activity, for example, if reports could recommend action that would bind the government if adopted without amendment. This would have the effect of forcing government to make positive decisions to reject or amend recommendations only if there was good reason to do so. Where recommendations call for government action they should be couched in clear, unequivocal terms and set within a time frame in which that action is to take place.

It is each member’s individual and collective responsibility to probe, gather evidence and information, and seek advice from relevant departments, agencies, the corporate sector and the broader community. In doing this members have to balance the competing demands of their office including the way in which the establish conduits to their constituencies. In this



way the parliament, the elected body of peoples' representatives, can make a valid and valuable contribution.

Nor am I alone in making this suggestion, Lawrence also suggested committees should have the power to initiate legislation, noting that in many cases nothing was done to implement important committee recommendations.

Of equal importance is the need for an effective follow-up mechanism to track government responses. Committees should have, for example, the power to reconvene a hearing if, after a reasonable period, the government's response is deemed inadequate. Even government members should be concerned at the waste of time and effort each time an excellent and well-received report disappears into the proverbial 'black hole'. While it may be seen that a chair's career prospects may be endangered by shaking the government's tree, it could also be argued such a person may further their prospects by being seen as a strong contributor to the public good. And if the House, in the best of all possible worlds, was able to determine for itself, through a non-partisan agenda committee, the business it wished to consider and the time to be allocated to that business, a concept also strongly supported by Lawrence, debate on committee reports might command the higher priority they deserve.

It is worthwhile to look carefully at the New Zealand committee system under MMP which appears to serve both the parliament and the community very well. The switch to MMP brought significant change in the way their parliament operates. I hasten to add that I am not advocating that we introduce MMP to the Australian electorate; merely that we look at the committee system which has developed from it.

Committees prior to MMP were smaller with an average of five members and always had a government majority. Committees are now larger, with mostly eight but sometimes up to twelve members and have the power to invite additional members to sit in on their proceedings. They do not always have a government majority. As a consequence the scrutiny role of committees has increased dramatically.

Most New Zealand committees are subject committees, of which there are thirteen, broadly aligned to ministerial portfolios. Select committees may also be established to inquire into a particular area of interest. There are also several specialist committees, Regulation Review, Officers of Parliament and Privileges as well as Standing Orders and Business committees, the latter chaired by the Speaker.

All legislation, whether introduced by the government or a private member, is forwarded to the relevant committee for its consideration and a report has to be completed within six months unless an earlier time is specified. Extra time may be granted but this requires the approval of the parliament.

When a bill is introduced to the New Zealand parliament the first reading is taken as a formality and sent off to a committee. The first step is to call for public submissions on the content of the bill by advertisement in the public notices column of the major daily or relevant local newspapers. Six weeks are normally allowed for the return of submissions which are generally in written form and may be reinforced by oral submissions if approved by the committee. Public hearings are heard on most bills and submitters wishing to be heard are usually given that opportunity. This is usually the norm, it would be unusual for a committee not to hold public hearings. At the same time committees are assisted in their consideration by officials from relevant government departments who analyse submissions and make recommendations on possible amendments to the bill as a result of issues raised in submissions and elsewhere.

After the receipt of submissions the committee considers their content and drafts amendments as necessary. Parliamentary counsel assists with this process and the final wording. Bills are often substantially amended. After the bill is reported, usually with amendments, the original bill and the amendments are considered in the second reading debate. If the amendments are accepted the bill is read a third time before passing into law.

There are two types of amendments, those unanimously agreed to by the committee and those agreed to by a majority of members. The first opportunity for majority amendments to be

defeated is the second reading. If there are majority amendments, that is amendments sponsored by the government, they are debated by the Committee of the Whole House and put as a single, separate question prior to the question that the bill be read a second time. If the former question is defeated, the bill is reprinted without them. As majority amendments are put as one question, not individually, an objection to one defeats them all. This has rarely happened and in such instances the amendments were not critical to the bill.

The task of any minority government is to make sure it has the numbers to carry the vote on each question. To achieve this it may need to reach a compromise with a minor party, a not infrequent occurrence. If a bill emerged from the Committee of the Whole House in an unacceptable form the member in charge could write to the clerk discharging the order of the day for the third reading, although as far as I know this has not happened to date.

Considerable effort is made to ensure the public have the best possible opportunity to participate. Submissions that are inappropriately worded may be returned with suggestions for improvement. Frivolous, vexatious or offensive material is rejected. Broad ranging natural justice provisions protect both witnesses and those who may be subject to statements which go to personal reputation or are of alleged criminal activity.

Inquiries can be referred by the House or initiated by a select committee if compatible with the terms of reference under which the committee was established. They do not have the standing or resources of a commission of inquiry but they are an important part of the parliament's scrutiny of the executive and thus a powerful tool for individual members. So too is the provision for expression of a minority view which may detail any divergence of opinion within the committee. This ensures balance while not diminishing the substance of the majority view. The report is then tabled in the House. The government must respond to any recommendations contained in the report within 90 days. Unfortunately it would appear the structure of business which gives members' bills precedence on days set down for members' orders of the day means that reports are unlikely to be debated.

As an extension to debate within the Chamber, a strong committee system gives greater scope and legitimacy to differing points of view within parties. It provides an opportunity to test arguments and reach consensus. By taking something from each point of view a conclusion may be reached without a display of public division.

The last major point I wish to canvass is the potential role for legislation committees in the House of Representatives. To debate legislation before broadly canvassing its need and scope reduces the opportunity for effective law. Public interest in significant areas such as stem cell research, anti-terror laws or a substantial re-write of taxation law, industrial relations and the social welfare framework demand a wider and more informed debate than is presently possible. Governments should facilitate free-ranging 'take note' debates on such subjects.

Paul Kelly, then international editor of *The Australian* also presenting at the 2001 conference 'Parliaments: Meeting Public Expectations' observed such debates usually result in an improved standard of debate. Members, he said, are able to apply their experience to suggestions on ways of dealing with the problem. The removal of any predetermined government position facilitates more objective consideration.

If this concept of free ranging debate was adopted as the first element of a more inclusive process the drafting of consequent legislation would then have a substantial pool of views and ideas to assist in shaping it in line with community need. It would also be possible to coordinate such debates with forums on the internet to draw in otherwise unsolicited comment from the community.

Obviously not all legislation would necessitate such an approach. Bills could be classified either as public interest or major legislation and machinery or minor legislation. Major legislation would relate to new fields or major changes to existing principal Acts, such as those mentioned above, while minor legislation would be bills not fundamentally altering the objectives of a principal Act.

A government wishing to introduce major legislation would be required to put the proposal to the parliament in generic form, giving in broad outline the need for the legislation and the objective the government wished to pursue. At the conclusion of the debate the government would then make a decision whether to proceed to legislation and bring a bill to the House.

If it decided to go ahead the first reading would canvass general principles only, after which the bill would be referred to the appropriate standing committee which, after taking evidence from interested groups, would develop guidelines for Parliamentary Counsel to draft the bill. The relevant minister should sit on, but not chair, the committee. This general concept has already been adopted successfully in New Zealand.

Parliamentary Counsel would then draft a bill for Cabinet to consider after which the proposed bill would go to the government party room for approval and passage to the second reading.

This process would, I believe, produce better legislation, and facilitate the ultimate passage of the bill through a limited second reading debate and a much a simpler Committee of the Whole.

While it may seem to prolong the legislative process I believe this more thorough, methodical and consultative approach would result in better legislation, reduce errors which themselves cause delay and hardship, and probably be quicker and more effective in the long run.

The House of Representatives must make its processes more open to the public. This would enable them to be seen as truly representative rather than a group of delegates working in a rarefied atmosphere. This can only be achieved by generating more informed public debate. This is why committees can also benefit from promoting their inquiries on a free to air public affairs channel. Committees already receive submissions by email, so seeking comment from a wider audience in this way would be a simple step. The interactive nature of the internet may well prove a useful complementary tool for generating submissions, and allow witnesses to give evidence on-line.

In an outstanding example of public consultation the United Kingdom Parliament in 2002 established a committee to consider legislation in the area of domestic violence. An analysis of policy input up until that time revealed it had been confined to police, health and community workers, and peak bodies. Women actually suffering abuse had not been consulted. The committee set up an on-line forum which ran over a period of one month. During that time they received one thousand pieces of information from women who had suffered or were suffering domestic violence. This information was of great value to the committee and guided subsequent legislation in a number of significant areas. While the identity of the women remained anonymous, information afforded by an independent and confidential registration process showed most of the women had never communicated with a member of parliament previously, never visited parliament, never been on-line, nor were they particularly computer literate. Nonetheless, given the opportunity they were anxious to have their say. In other words a target group was reached that would otherwise be shut out of the normal process. There is a significant lesson to be learnt from the United Kingdom experience.

Committees already receive submissions by email so why not canvass opinion on specific issues via the net, or seek the advice of a wide range of sources on general questions. The interactive nature of the internet could well prove a most useful tool.

Twenty years down the track the role of committees in the House of Representatives has grown and developed but they must continue to do so. We must never become complacent in believing the system we have is the best available, as much for the reason that society itself changes and evolves as for any other reason. Holding our governments to account, and indeed our parliaments to account, is an essential plank of democracy. It will be interesting to see whether over the next twenty years committees can deliver their potential in this regard, and whether the executive will allow them.

## **The House of Representatives' Committee System**

### **The Changing Committee System of the British Parliament**

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#### **Introduction**

Concerns about the demise of parliament in the UK have been widespread. However, the committee system has increasingly been seen as its potential salvation: a variety of reviews from within parliament and external expert commissions have concluded that the committee system is '...House of Commons at its best'.<sup>1</sup> As a consequence, the House of Commons' select committee system has steadily acquired greater responsibilities and resources. Even further responsibilities are still being mooted. Some of the notable ones are briefly considered here.

The committee system of the British parliament has clear similarities with the House of Representatives. As a fellow bicameral parliament, the UK parliament also has committees in both houses as well as joint committees. The select committee system in the House of Commons is slightly older than the Representatives' standing committee system, having been established in 1979. But it seems that the experience of the Commons' select committee system to some extent informed the House of Representatives' deliberations when considering the introduction of its own committee system.<sup>2</sup>

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1 Liaison Committee, 2000, *Shifting the Balance: Select Committees and the Executive*, First Report of Session 2000-01, HC 300, para. 5. All the House of Commons' reports referred to are available online at [www.publications.parliament.uk/pa/select.htm](http://www.publications.parliament.uk/pa/select.htm)

2 AR Browning, 1987, *Development of the Committee System*, Unpublished House of Representatives Paper

But there are significant differences in the way the committees of the House of Commons operate. The most obvious contrast is that, in the UK, the functions performed by the House of Representatives' standing committees are divided between the select committees and what are now called the public bill committees. The public bill committees consider bills. They come into existence when a bill is referred to them and cease to exist once they have reported. Until 2007, these *ad hoc* committees were confusingly named 'standing committees'. They were simply named after letter of the alphabet. Standing Committee A or B might be sitting throughout the session, but the membership would change once its consideration of a bill had been concluded, with the members replaced by a new set for the next bill. Mercifully, their anomalous name was changed to 'public bill committees', with each one named after the bill it is established to consider. Virtually all bills are considered by a public bill committee following second reading in the House, with bills proceeding from the committee with the amendments incorporated.

The select committee system is organised around the structure of government departments, with each major ministry having a departmental select committee shadowing it: each change in the structure of government departments prompts a corresponding change in the select committees. These departmental select committees are charged with examining the policies, administration and finance of the government department within their jurisdiction. They do not have any role in considering bills; the closest they get to this is their role in pre-legislative scrutiny. In addition to these departmental select committees, there are a few with cross-departmental briefs. Some of these are essentially procedural, such as the Modernisation and the Liaison Committees. Others, such as Regulatory Reform and European Scrutiny, deal with narrow legislative matters. Others, such as Environmental Audit, Public Administration or Public Accounts have a genuinely cross-departmental brief.<sup>3</sup>

Many of the complaints heard in Australia about the demise of parliament in the face of executive dominance are also commonplace in the UK. And yet in spite of their relatively

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<sup>3</sup> Unlike Australia, the Public Accounts Committee is a lower house and not joint committee. The Public Administration Committee has increasingly taken on the role as the *de facto* departmental select committee for the Cabinet Office.



limited role, the select committee system has increasingly been seen as perhaps the key vehicle for a revival of parliament. Various changes have been introduced or are currently being discussed designed to enhance this apparent parliamentary renaissance. The public bill committees have been rather less venerated. Seemingly, central to this is that the select committees are unwhipped and their reports usually unanimous. On public bill committees, on the other hand, the party lines are usually drawn fairly firmly with the government generally able to get its legislation through the committee stage as a consequence and the usual complaints about partisanship, adversarialism and executive dominance applied to the proceedings of the Chamber also applied to them. But the change of name from Standing to Public Bill in 2007 was accompanied by some important changes as well.

## **Background**

By the start second term of Tony Blair's government in 2001, considerable attention was being directed towards parliamentary reform, and within that, towards the roles of select committees. The Liaison Committee, the committee comprising the chairs of the departmental select committees and charged with overseeing matters relating to their operation, argued that the select committee system introduced in 1979 had been a success and an example of parliament '...working on the basis of fact, not supposition or prejudice; and with constructive co-operation rather than routine disagreement'.<sup>4</sup>

For the Liaison Committee, the select committees system was so effective because it was able to operate largely independently of government interference and in an atmosphere where the party lines that they suggest dominate proceedings elsewhere in parliament are absent. As a consequence, the select committees were able to work in a constructive rather than adversarial way and the conclusions reached and recommendations made were better as a consequence. This was a theme reiterated by the Hansard Society's Commission on Parliamentary Scrutiny which noted that the select committees '...avoid many of the most sterile and partisan aspects

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<sup>4</sup> Liaison Committee, 2000, *Shifting the Balance: Select Committees and the Executive*, First Report of Session 2000-01, HC 300, para. 5

of parliamentary activity in the chamber and standing committees'.<sup>5</sup> Such were the benefits, both real and potential, of the select committees that the Commission put the committees at the centre of parliament's operations: 'Parliament should become a more committee-based institution'.<sup>6</sup> Another extra-parliamentary report, the Power Inquiry, also recommended a significantly enhanced role for select committees along the lines of the powerful US Senate committees.<sup>7</sup> The Conservative Party endorsed the proposals from the Labour dominated Liaison Committee in the report of an internal party commission chaired by the prominent parliamentary scholar, Lord Norton.<sup>8</sup> The Modernisation Committee is chaired by the Leader of the House and was established in 1997 to provide ongoing consideration of how the parliament's practice and procedures could be improved. It picked up on many of the proposals of the Liaison Committee and the extra-parliamentary commissions in its report of September 2002.<sup>9</sup> More recently, a government Green Paper, *The Governance of Britain*, has suggested that select committees should take on a greater role in scrutinising public appointments.<sup>10</sup>

### **Pay for Chairman<sup>11</sup>**

Central in enhancing the role of select committees and enhancing their independence from government influence was the idea that they could provide MPs with fulfilling parliamentary career and be a viable alternative to the pursuit of a position on the front bench. The primary means put forward to achieve this was through providing Committee chairmen with an additional salary. The Liaison Committee, the Norton Commission and the Hansard Society's Commission all recommended that committee chairmen should be additionally remunerated

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5 Hansard Society Commission on Parliamentary Scrutiny, 2001, *The Challenge for Parliament*, London: Vacher Dod Publishing, p. 19

6 *Ibid.*, p. 19

7 Power Inquiry, 2006, *Power to the People*, [www.makeitanissue.org.uk/resources/](http://www.makeitanissue.org.uk/resources/)

8 Commission to Strengthen Parliament, 2000, *Strengthening Parliament*, London: The Conservative Party, [www.conservatives.com/pdf/norton.pdf](http://www.conservatives.com/pdf/norton.pdf)

9 Modernisation Committee, 2002, *Select Committees*, First Report of Session 2001-02, HC 224-I and II

10 Ministry of Justice, 2007, *The Governance of Britain*, CM 7170, London: The Stationery Office

11 Parliament's Standing Orders still refer to 'committee chairmen' rather than 'chairs'.

for their post. This was a means to enhance the prestige of the post of select committee chairman. And it was also a recognition of the extra time commitment that the position brings, a commitment which one Committee chairman noted might prevent them engaging in lucrative extra-parliamentary work.<sup>12</sup> The decision to introduced payments for chairmen was not universally welcomed, even by existing committee chairmen. It was argued that it might undermine the collegiality of the committee if one member of it were paid more on the basis of their membership. Another concern was that introducing an enhanced salary would bring the posts under closer control of the party whips. Ultimately though, the concerns were not sufficient to prevent their introduction in October 2003.

### **Select Committees and legislative scrutiny**

Almost all bills are automatically referred to a public bill committee after second reading. However, with the main principles of the bill already established, this stage has mostly involved a detailed focus on amending individual clauses. Moreover, the standing committees which performed this task prior to the establishment of the system of public bill committees took no written or oral evidence.<sup>13</sup> There were complaints that bills were arriving at the Committee Stage 'half-baked': MPs experience of Child Support Act in 1990-91 was apparently a particular spur for the incoming Labour Government to investigate the possibility of greater pre-legislative scrutiny.<sup>14</sup> And of course there were concerns expressed about the quality of the scrutiny performed in their predominantly partisan and adversarial atmosphere.

Both the Modernisation Committee and the Liaison Committee considered this and recommended a significantly greater use of pre-legislative scrutiny. Pre-legislative scrutiny was already used when Labour won office in 1997: draft bills have often been referred to *ad hoc* Joint Committees of the Commons and Lords. However its use had been sporadic and there was a desire to make greater use of it and on a more systematic basis:

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12 A lot of backbench MPs have an extensive range of extra-parliamentary positions including as consultants and directors. Disclosure is generally considered sufficient protection from conflict of interest.

13 This is discussed in more detail below.

14 Andrew Kennon, 2004, 'Pre-Legislative Scrutiny of Draft Bills', *Public Law*, Autumn

The scrutiny of bills in draft is a development of great significance. It offers the prospect of properly examined, better thought out and so higher quality legislation. It also makes the legislative process more accessible and inclusive, involving a wide range of interests rather than only “the usual suspects” who are routinely consulted by Governments.<sup>15</sup>

Rather than relying on *ad hoc* committees to perform pre-legislative scrutiny, along the lines of the public bill committees, select committees have increasingly taken on the responsibility for scrutinising the draft bills of the departments under their jurisdiction. Government for its part has committed to increasing the proportion of draft bills published and to publish bills in draft bills unless there is a good reason not to do so. Thus far, the number reached a high point of 12 in the 2003-04 session, though the average since 1997-98 has been rather lower: of the 58 draft bills published between the 1997-98 and 2006-07 sessions 45 were subject to pre-legislative scrutiny in a committee.<sup>16</sup> Government has tried to use the process to build consensus in cases where the prospective legislation is particularly contentious or complex.<sup>17</sup> The committees have no power to alter the draft bills, which, as drafts, have no official status. They can only make recommendations for changes that might be incorporated when the full bill is subsequently introduced.

Whilst the process is generally is considered to have been successful, it has not been without problems. The most notable relates to timing of bills: inevitably it seems, government departments produce draft bills later than hoped. With the intention to introduce the full bill in a relatively short space of time, and time needed to incorporate any recommendations the committee may make, the time available for the committee to review the draft bill, receive written submissions, and arrange oral evidence, is often very limited. Deadlines have even

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15 The Liaison Committee, 2000, *Independence or Control? The Government's Reply to the Committee's First Report of Session 1999-2000 Shifting the Balance: Select Committees and the Executive*, Second Report of Session 1999-2000, HC 748, para. 58

16 Richard Kelly, Helen Holden and Keith Parry, 2007, *Pre-legislative Scrutiny*, House of Commons Library Standard Note SN/PC/02822, p.7

17 Jennifer Smookler, 2006, 'Making a Difference? The Effectiveness of Pre-Legislative Scrutiny', *Parliamentary Affairs*, Vol. 59(3)

been set by government during parliamentary recess. This type of stampede clearly undermines the usefulness of the exercise.

In spite of this, the general consensus is that the process has delivered tangible benefits in terms of improving the quality of legislation. Interestingly, this has not been limited to changes incorporated when the full bill is introduced. The committee deliberations and reports have informed debate on the full bill and government has been forced to concede on matters that it had originally rejected in its response to the committee's pre-legislative scrutiny. With some of the members of the pre-legislative scrutiny committee serving on the relevant Public Bill Committee, there is also the potential for their greater specialist knowledge to be drawn on.<sup>18</sup> The Government has acknowledged the benefits it has gained from the process: '...the Government believes that, overall, pre-legislative scrutiny has contributed greatly to the quality of legislation'.<sup>19</sup>

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18 With the Public Bill Committees only temporary and *ad hoc*, specialist knowledge can be limited.

19 Constitution Committee, 2005, *Parliament and the Legislative Process: The Government's Response*, Sixth Report of Session 2004-05, HL 114, para. 10

## Public Appointments

In July 2007, one of Gordon Brown's first moves was to restart debate on constitutional reform with the release of a Green Paper, *The Governance of Britain*.<sup>20</sup> One of its main proposals was that select committees might conduct confirmatory hearings on significant public appointments. Concerns about the integrity of the appointments process had initially led to the establishment of the Commissioner for Public Appointments, following the Nolan Committee's report on Standards in Public Life,<sup>21</sup> and the Green Paper's proposals were presented as a development of that. Interestingly, in its response to a report from the Liaison Committee in 2000, the proposal for confirmatory hearings by select committees was strongly rejected by the Government on the grounds that:

- it would break the clear accountability of ministers for appointments;
- risk creating 'lame duck' appointments that had been appointed by the minister but not approved by the committee;
- and contravene select committees' role as scrutiny bodies rather than decision-making bodies.<sup>22</sup>

The Green Paper proposed two levels of committee involvement, depending on the post. For most, the relevant committee would convene a hearing with the Ministerial nominee for the post. The Committee's recommendation would not be binding but '...in the light of the report from the committee, Ministers would decide whether to proceed'.<sup>23</sup> For more 'market sensitive' positions such as the Governor of the Bank of England, or the various industry regulators for instance, the hearing would take place after the Minister had made the appointment but before the nominee has actually taken up the post.

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20 Ministry of Justice, 2007, *The Governance of Britain*, CM 7170, London: The Stationery Office. It had previously recommended by a number of other bodies including the Commons' Public Administration Select Committee, the Liaison Committee and the Power Inquiry.

21 Commission on Standards in Public Life, 1995, *First Report of the Committee on Standards in Public Life*, Cm 2850-I, London: HMSO

22 Lucinda Maer, 2007, *Parliamentary Involvement in Public Appointments*, House of Commons Library Standard Note SN/PC/4387, p. 5

23 Ministry of Justice, 2007, *The Governance of Britain*, CM 7170, London: The Stationery Office, para. 76

Select committees have already been taking an active interest in significant appointments to bodies within their jurisdiction. Most have held hearings with new appointees soon after they have taken up the post, and the hearings have been less confirmatory and more an exploration of the plans of the new appointee for their organisation. Some, however, have taken a more proactive role. The Treasury Committee is one such. Since the Bank was given operational independence, the Treasury Committee has sought to play a confirmatory role in appointments to the Monetary Policy Committee (MPC) and has taken oral evidence from each new appointee since 1998.<sup>24</sup> They have only recommended that one appointee should not take up their post. The Government went ahead with the appointment regardless of the Committee opposition but was forced to publicly state its reasons for doing so.<sup>25</sup> The Green Paper's proposals have not, as yet, been acted upon.

### **Public Bill Committee Evidence**

Whilst most of the attention has been focused on the select committee system, the committees considering legislation have also been subject to important change. As noted earlier, scrutiny of bills has until recently been conducted by standing committees which confined themselves to detailed consideration of the bills and the proposed amendments. Dominated by partisan lines with very few successful amendments proposed by backbenchers or by non-government parties accepted. As a consequence, they have been subject to 'an extraordinary level of opprobrium'.<sup>26</sup> In its report on *The Legislative Process*, the Modernisation Committee focused on the committee stage of bills, acknowledging that it 'has been one of the most criticised aspects of the legislative process'<sup>27</sup>

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24 The MPC is the body that sets interest rates in the UK. See Lucinda Maer, 2007, *Parliamentary Involvement in Public Appointments*, House of Commons Library Standard Note SN/PC/4387, p. 18.

25 This essentially involved reiterating highlights from the appointee's curriculum vitae.

26 Hansard Society evidence to Modernisation Committee. Modernisation Committee, 2006, *The Legislative Process*, First Report of Session 2005-06, HC 1097, Ev. 108

27 Modernisation Committee, 2006, *The Legislative Process*, First Report of Session 2005-06, HC 1097, para. 50

The solution proposed to address the problems of the standing committee process was to make it more akin to the select committee process by moving to a two-part committee stage. Firstly, the committee would receive written evidence and, where it so chooses, follow this up with oral evidence hearings. Then the committee would proceed to the traditional, 'line by line' scrutiny of the bill. In conjunction with this, the Modernisation Committee also proposed that the term 'standing committee' should be replaced with 'public bill committee'.

In the report and subsequent debate it was suggested that this would bring a number of benefits. Firstly, it would improve the understanding of the members of the committee of the bill by allowing a more deliberative stage with input from relevant (and competing) stakeholders prior to the detailed textual scrutiny. It would also allow a greater engagement with the general public:

...the point of the proposals is to improve the way in which we debate matters and introduce matters in the House, not only for members' convenience and to ensure that the work they undertake in the House is more effective, but to improve the ability of people outside the House to access our legislative process, participate and understand the processes that we go through.<sup>28</sup>

And, more ambitiously, it was hoped that the evidence stage would actually change the way committees operate. In place of the adversarialism and, ultimately, the executive dominance, of the standing committee system, it was hoped that this evidence-taking stage would create a different culture: 'Evidence-gathering is also, by its nature, a more consensual and collective activity than debate'.<sup>29</sup> This is perhaps a contentious claim but the then-Leader of the House, and chair of the Modernisation Committee, modified it a little in debate: 'If consensus cannot be achieved, the process [of evidence taking] will highlight areas of division, which is an important part of the political dynamic'.<sup>30</sup>

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28 Theresa May MP, House of Commons Debate, 1 November 2006, c320

29 Modernisation Committee, 2006, *The Legislative Process*, First Report of Session 2005-06, HC 1097, para. 54

30 Jack Straw MP, House of Commons Debate, 1 November 2006, c307



Unlike the proposals for select committee involvement in scrutinising public appointments for example, the proposals for evidence-taking by legislative committees was introduced swiftly and has been in operation since January 2007, with all public bill committees on programmed bills able to receive written evidence and expected to hold at least one oral evidence session. Initial assessments from members have evidently been positive.<sup>31</sup> However there is a concern that the time allowed for the committee stage of bills is inadequate. It seems that the consequences in terms of time of the introduction of this evidence-taking stage have yet to be fully appreciated by the parties' business managers. Written evidence needs to be called for and the interested parties need time to compile their submissions. Oral evidence sessions will need to be scheduled and briefings for the committees prepared. Inevitably it will slow the passage of a bill and the lead times are greater.

## **Resourcing**

The resources available for this increased committee activity are also an issue and an area where there have been developments. Like Australia, each select committee has a small staff – typically two clerks, one or two 'committee specialists',<sup>32</sup> and a couple of administrative staff. This is supplemented by the research capacity of the parliamentary library. A recent addition to this has been the Scrutiny Unit. Located within the Committee Office, the Scrutiny Unit has contained specialists such as lawyers, economists, statisticians, and estimates experts available for consultation by the select committee staff. Standing committees were, by contrast, staffed by clerks from the Public Bill Office. Their role has been primarily procedural with little in the way of research capacity. But the changes associated with the new public bill committees have inevitably meant a greater demand for support. Thus far, this has been absorbed within the existing arrangements: in addition to the Public Bill office, the Scrutiny Unit has taken on an important role in briefing these committees, and the departmental select committee teams have contributed analysis in areas of their competency.

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31 Richard Kelly, 2007, *Modernisation: Public Bill Committees*, House of Commons Library Standard Note SN/PC/04541, p. 8-9

32 External recruits on fixed-term, two to four year contracts. They are tied to a specific committee and will have relevant policy expertise.

## Conclusion

The UK's select committee has clearly proved popular with successive reviews – both internal and external – singing its praises. This has led to an increase in the roles it performs, with the potential for still greater tasks being added in the near future. Staff resources have increased accordingly. Standing committees, much criticised in the past, have been reformed on the grounds that should operate more like select committees.

However, whilst they would seem to be a clear success story there are some *caveats* that should be added. The extent to which committees can fulfill these expectations is one. They have certainly operated in a more collegial manner than other elements of the parliamentary process. But ever greater responsibility may put this under strain. Furthermore, it does not follow that increasing their roles will somehow transform the adversarial culture of parliament more generally: if the expectation that it will lead to a sort of deliberative, consensual 'non-politics', it is likely to be frustrated.

But perhaps the most serious constraint on an ever greater role for parliamentary committees is the availability of members themselves. Select committees, often sitting several times a week, are already considered to be running close to the limits of MPs' time. Complaints have also been made that debate in the Chamber has suffered from their other commitments.<sup>33</sup> And these meetings often clash with public bill committees, so members serving on both are frequently 'double-booked'. The exponential rise in constituency work has been blamed.<sup>34</sup> One solution would be to increase the staff resources available to the committees but this has been resisted due to fears that they might become too staff driven with inadequate input from the MPs. Moreover, the actual benefits of this in freeing up members time is limited: the committee staffs already provide briefing, organise the receiving of written and oral evidence, arrange any trips required, and draft, edit and publish committee reports: the committee

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33 See Modernisation Committee (2007), *Revitalising the Chamber: The Role of the Backbencher*, First Report of Session 2006-07, HC 337

34 *Ibid.*, para. 16 and Ev 20

members will still have to be present in order for the committee to actually perform their tasks. If parliament is to be radically changed through the committee system, this is clearly something that will need to be addressed first.



## **Background discussion papers**



## **The Committees of the House of Representatives in Comparative Perspective**

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This paper attempts to locate the standing committee system of the House of Representatives in a broader perspective by comparing it with the committee systems of the British House of Commons, the New Zealand parliament, the Canadian House of Commons, and the Scottish parliament. The focus is justifiable on a number of levels. Firstly, committees do not exist independently of the parliaments of which they are a part. Whilst these parliaments all operate differently, both in terms of their official rules and their operational norms or culture, nonetheless they all share still share much. They may have diverged significantly, but they have diverged from a common point of origin: in a sense they all share Westminster 'DNA'. But, perhaps more significantly, the experience of these other committee systems was evidently both a contributory factor in the establishment of the House of Representatives and an influence on their shape and functions, with the experience of these other parliaments examined as the plans for the House of Representatives committee system were developed.<sup>35</sup> And they also all have in common the government-forming function: they are either lower houses of bicameral parliaments (Australia, Canada, and the UK) or unicameral (Scotland and New Zealand).<sup>36</sup>

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35 A.R. Browning, 1987, 'The Development of a Committee System', Unpublished House of Representatives Discussion Paper

36 Because of the focus on committees of the government-forming chamber, there are slight inconsistencies. For instance, in omitting joint committees, the Australian Public Accounts Committee is excluded from the survey, whilst included for Westminster where it is a Commons committee.

In their comparative study of the legislative strength of the committee systems in Western Europe, Ingvar Mattson and Kaare Strom compared the committees under three broad headings: their structure; their procedures; and their powers.<sup>37</sup> Here, their headings and subheadings are used to extend the comparison to the House of Representatives and the other Westminster parliaments mentioned.

Mattson and Strom confined their study to legislative committees, but here it has been expanded to include 'policy relevant' committees. In most of the cases, this makes no difference as the committees that deal with legislation also deal with other matters within the same policy area. However, for the UK it allows the inclusion of the Select Committees which do not deal with bills, instead covering the scrutiny of policy and departmental administration. They are included as, in the course of their policy work in particular, they have sought to influence legislation.<sup>38</sup> Pre-legislative scrutiny of draft bills also falls to the Select Committees.

### **Committee Structure**

Mattson and Strom note that there is a tendency to view parliamentary committees as a homogenous group, whereas they vary widely in both the form they take and the functions they perform.<sup>39</sup> Whilst the focus here is on the House of Representatives' Standing Committee system, it like any parliament will have a variety of types of committee. And even focusing on the equivalent types of committee in the relatively similar Westminster-derived parliaments here, important differences are evident.

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37 Ingvar Mattson and Kaare Strom, 1995, 'Parliamentary Committees' in Herbert Doring (ed.), *Parliaments and Majority Rule in Western Europe*, St Martins, New York

38 The extent to which they have achieved this is harder to demonstrate. See Andrew Hindmoor, Phil Larkin and Andrew Kennon (forthcoming 2009), 'Assessing the Influence of Select Committees: The Education and Skills Committee, 1997-2005', *Journal of Legislative Studies*

39 Mattson and Strom, 'Parliamentary Committees', p.257-8



### *Types and tenure*

Mattson and Strom, simplifying more refined but more convoluted typologies, distinguish between four broad types of committee:

- *ad hoc* committees;
- Permanent, specialised legislative committees, divided by function (not policy area);
- Permanent, legislative committees divided by policy area;
- Non-law making.

The House Standing Committees fall into their category C, as do the other committee systems under consideration here, with the exception of the UK. The UK distinguishes between *ad hoc* legislative Public Bill Committees (category A) and permanent Select Committees mirroring the structure of government departments which perform the other functions that the House Standing Committees and other committees under consideration here (category D).

### *Committee numbers*

It is suggested that a proportionately higher number of committees should increase the independence of the parliament from the executive: firstly, a large number of small groups are rather harder to force into line than one large one; secondly, the greater the number of committees, all other things being equal, the greater range and volume of work the parliament should be able to get through.<sup>40</sup>

The House of Representatives has 13 General Purpose Standing Committees performing the full range of scrutiny, accountability and strategic roles discussed in the previous section, for a chamber of 150 members. The UK House of Commons has 32 Select Committees, for a chamber of 646 members. Of these, there are 19 Departmental Select Committees, and another four could be seen as dealing with policy or legislation. The remainder deal with internal management or procedural matters. However, in addition to those there are also the *ad hoc* Public Bill Committees to consider proposed legislation. There is no formal limit to the number of these committees that can be established at any one time though, in practice, the

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<sup>40</sup> Mattson and Strom, 'Parliamentary Committees', p. 259-60

number of bills that can be pushed through parliament simultaneously is limited, and the number of committees is constrained, by factors such as MPs' availability and even the number of committee rooms on the parliamentary estate. Such apparently mundane factors are often overlooked in academic studies but can provide a very real constraint on the way in which a parliament actually operates in practice. Ordinarily, there are between five to seven at any one time. In the Scottish parliament there are currently seven multi-purpose Subject Committees. Of the eight Mandatory Committees, three could be seen as dealing with policy, scrutiny or legislation, with the remainder dealing with procedural and compliance matters. In addition, there is currently one *ad hoc* bill committee sitting. Canada has 24 Standing Committees and also has the capacity to establish *ad hoc* committees, with a chamber which currently has 308 members.<sup>41</sup> New Zealand has 13 Select Committees, with a parliament of 121. Unsurprisingly, the number of committees would appear to be an approximate function of the size of the chamber from which they are drawn. As an indicator of this, the number of committees divided by the number of seats in the chamber is broadly similar in each of the cases, with the exception of the UK which has a much larger chamber and proportionately fewer committees (see Table 1).

### *Committee size*

The optimal size for a committee is the subject of debate. Even where membership of the committee includes members from most or all of the parties represented in the parent chamber, small committees risk an overly narrow range of interests and expertise amongst the members which can be brought to bear in its deliberations. But increased representation can have costs too: the only way for the committee to completely reflect the composition of the parent chamber is for it to include all the members, entirely defeating the purpose of the committee in the first place. Moreover, the potential for committees to overcome partisan bias and establish a certain *esprit de corps* of their own, which some have seen as their strongest and most useful contribution, is potentially reduced if they are too large.<sup>42</sup> Furthermore, with

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<sup>41</sup> The size of the Canadian House of Commons is reviewed after each 10 yearly census. The only stipulation is that it must have at least 282 seats.

<sup>42</sup> Mattson and Strom, 'Parliamentary Committees', p.268

a limited number of members to fill all the committees, if they are too large then the number that can be properly sustained is reduced.

Allowing for this, one might expect committee size to simply be a function of the size of the parent chamber. This roughly holds with the largest committees found in the largest parliament and the smallest committees in the smallest parliament: the UK Public Bill Committees can be as large as 50 but are usually less than 30, whilst the smallest in are in New Zealand at six.

**Table 1. Committee numbers, size and chamber size**

	Australia	Canada	New Zealand	Scotland	UK
<b>No. Committees /chamber size</b>	13 /150 = 0.09	24/308 = 0.08	13/121= 0.1	11/129 = 0.09	23 (plus 5-7 public bill committees)/646 = 0.04
<b>Committee Size</b>	10	16-19	6-13	7-9	Select: 11-16 Pub.Bill:<30

*Jurisdictions*

The House has a system of general purpose Standing Committees which cover a range of functions that are, in many parliaments, disaggregated into separate committees. There are 13 Standing Committees, divided along policy lines with each taking responsibility for specific government agencies. Thus each of the 13 Standing Committees performs all the functions relating to its jurisdiction. This means that the committees are charged with examining bills and pre-legislative proposals from the departments they shadow, as well as the administration, policy and expenditure of those departments, and more future-oriented, strategic inquiries. These committees are ostensibly permanent: they are established at the start of each parliament for its life and ordinarily simply re-established following a general election.

In these respects, the House of Representatives' Standing Committee system would appear to differ from the British House of Commons. The Commons divides the roles performed by the House's Standing Committees between two distinct committee systems. In Westminster, bills are considered by Public Bill Committees: a series of temporary *ad hoc* committees established to scrutinize a specific bill and ceasing to exist once having reported. Meanwhile, each government department has a Select Committee charged with scrutinizing its expenditure, administration and policy.<sup>43</sup> These Select Committees, like the House of Representatives' Standing Committees, are established for the life of the parliament and normally re-established at the start of the next.

However, whilst the House of Representatives' committees do have jurisdiction over the full range of committee functions, in practice something of a division of labour with the Senate committees seems to have emerged, with the House committees taking on little in the way of legislative scrutiny, for instance, and focusing more on strategic review.<sup>44</sup> The New Zealand Select Committees, whilst also having the same broad-ranging remit as the House of Representatives' Standing Committees, in practice spend a very high percentage of their time on consideration of bills with relatively few inquiries. Consideration of petitions also accounts for some of their time. In Scotland there is a series of multipurpose subject committees which scrutinise the proposed legislation and the activities of the government department within their remit. Like New Zealand, the Scots committees also consider relevant petitions but time is still found for the committees to undertake inquiries as well.<sup>45</sup> *Ad hoc* committees are also established for specific purposes. And in Canada, committee structure reflects the structure of the government, with most committees shadowing government departments. Others have a thematic remit which may cover a particular aspect of the work of a number of departments.

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43 There are a few non-departmental select committees such as the Environmental Audit Committee, which have a cross-departmental brief. The Public Administration Committee also has a cross-departmental brief but has also acted as the *de facto* departmental committee for the Cabinet Office to some extent.

44 See John Halligan, Robin Miller and John Power, 2007, *Parliament in the Twenty-First Century*, Carlton, Vic: Melbourne Univ. Press, p. 69-70

45 David Arter (2004), 'The Scottish Committees and the Goal of a 'New Politics': A Verdict on the First Four Years of the Devolved Scottish Parliament', *Journal of Contemporary European Studies*, Vol. 12(7), p.77

Bills are also ‘routinely referred’ to the relevant Standing Committee.<sup>46</sup> However, draft legislation can be referred to *ad hoc* committees similar to British Public Bill Committees.<sup>47</sup>

### *Multiple member restrictions*

Mattson and Strom hypothesise that the influence of a committee will increase with the greater specialization of its members brought about by limiting the number of committees they can serve on simultaneously. That said, they found that, whilst in most of the parliaments they studied, there were no formal barriers to multiple committee membership, few had members serving on more than a couple of committees at the same time. There are no formal restrictions on the membership of multiple committees in the House of Representatives. Indeed many members will serve on more than one committee, at least of more than one type of committee simultaneously. However, they would not normally serve on more than one or two Standing Committees at the same time, a pattern the House of Representatives largely shares with the other committees in the study. New Zealand is the partial exception to this: as the smallest chamber in the study, and with government and opposition frontbenchers largely excluded from committees, it is not uncommon for MPs to serve on three simultaneously.

Also noteworthy is the ability of the House of Representatives’ Committees to allow up to two temporary members (one government, one non-government) to sit on the committee for a particular inquiry.<sup>48</sup> It shares this with Canada and Scotland. In New Zealand, non-voting members can be appointed in addition to the normal members.

### *Subcommittees*

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<sup>46</sup> Robert Marleau and Camille Montpetit (eds) (2000), *House of Commons Procedure and Practice*, <http://www.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch001&Seq=1&Lang=E>

<sup>47</sup> An experiment with permanent, specialist legislative committees started in 1991 was short-lived and the *ad hoc* system reinstated in 1994. See Marleau and Montpetit, *House of Commons Procedure and Practice*, Chapter 20, footnote 91).

<sup>48</sup> SO 215(d)

One perspective on subcommittees is that, because of their small size, they limit the range of interests that can be brought to bear on the issues under their consideration. Consequently, the existence of subcommittees can create dispute when the full committee reconvenes. However they can also increase the committee's capacity by allowing it to undertake more work simultaneously as well as potentially enhancing the expertise of the members through greater specialisation.

The House committees are empowered to establish subcommittees of three under Standing Order 234. Other members of the committee may take part in the subcommittee's proceedings but may not vote. The Standing Orders of the UK House of Commons empower most committees to establish subcommittees. But they have primarily, though certainly not exclusively, been used where there has been a merging of policy jurisdictions into a single government department, with the subcommittees reflecting the distinct policy areas within the single department that is shadowed such as Environment and Rural Affairs, for example. Some of the non-departmental committees, however, are not. Canada's Standing Committees are empowered to establish subcommittees and these need not be drawn solely from the membership of the parent committee but may include associate members as well. The Standing Orders of the New Zealand parliament give Select Committees power to establish subcommittees.<sup>49</sup> Committees in Scotland can also establish subcommittees

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49 SO 199

## Committee Procedure

As much as structure, the procedures of the committees have a considerable impact on the way in which they function and the impact they have. Moreover, the procedures also say much about their parent institution and the way in which it operates more broadly: for instance, about the extent of majority party dominance or the balance between party leaders and their backbenches.

### *Committee assignments*

The process of assigning members to committees would seem to be an area with scope for considerable political conflict, both within parties and between them. It is interesting then that Mattson and Strom note that it is a process that is managed consensually in most parliaments.<sup>50</sup> The party composition of the House of Representatives' Standing Committees is set out in the Standing Orders: six government members and four non-government members.<sup>51</sup> In the UK, the composition of Select Committees is as close to reflecting the allocation of seats in the parliament as practicable. Thus, the number of non-governmental members increased following 2005 general election saw the government returned with a smaller majority. Canada, New Zealand and Scotland also have committee membership approximately reflecting the composition of the House. But in Canada, it seems that committee membership is tightly controlled by government and they are '...often criticised for their arbitrary membership.'<sup>52</sup> Most members serve on two committees, frequently on those which they have no prior knowledge of prior interest in. Given the proportional electoral systems of New Zealand and Scotland have delivered minority governments at the most recent elections, both have committees without government majorities.

Whilst allocation of seats between the parties is something set out in the Standing Orders of the respective parliaments, in each case under consideration, the allocation of individual

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<sup>50</sup> Mattson and Strom, 'Parliamentary Committees', 1995, p.276

<sup>51</sup> SO 215(d)

<sup>52</sup> Jonathan Malloy (2004), 'The Executive and the parliament in Canada', *Journal of Legislative Studies*, Vol.10(2), p.209

members to committees is something managed internally by the parties. In Scotland, this has resulted in a very high turnover of members, including moving ‘ill-disciplined’ government members before a contentious bill comes before a committee. A high turnover of members would tend to mitigate against the development of specialist expertise. 53

### *Chair selection and allocation*

The allocation of committee chairs is perhaps potentially even more politically charged than the allocation of committee members. Part of this potential is mitigated in the House of Representatives by the fact that the committee chairs are all allocated to the governing party. Consequently, any controversy over the allocation of chairs is contained within the party. This has not, however, removed all the controversy from the process elsewhere. The chairs of the UK Select Committees are allocated between the parties roughly proportionate to their parliamentary representation and the detail negotiated between the business managers of the respective parties. Committee Membership is negotiated in the Committee of Selection, largely comprising party whips. Whilst the nominations to Select Committees require the approval of the House of the committee, these are usually something of a formality.<sup>54</sup> However, the controversy over the reappointment of the Labour chairs of the Transport, Local Government and the Regions and the Foreign Affairs committees in 2001 demonstrates that this is not always the case: in this case, the Labour backbenches revolted against their party leadership’s attempt to remove the controversial chairs from these committees and forced their reinstatement. Surprisingly then, subsequent proposals to reduce the power of the party whips in the appointments process were rejected.<sup>55</sup> In Canada, the government has generally sought to control the appointment of committee chairs.<sup>56</sup> The frequent lack of a government majority on committees in New Zealand means that when they come to choose their chairs, the government cannot guarantee its preferred candidate succeeds.<sup>57</sup> The convenorship of the

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53 David Arter (2004), ‘Scottish Committees and the Goal of a ‘New Politics’’, p.82

54 Membership of the Public Bill Committees does not require the House’s ratification.

55 See Greg Power, 2007, ‘The Politics of Parliamentary Reform: Lessons from the House of Commons (2001-2005)’, *Parliamentary Affairs*, Vol. 60(3), p.496-8

56 Marleau and Montpetit, *House of Commons Procedure and Practice*, Chapter 20, p.22

57 Chau Pak-Kwan (2003), *The Chairmanship of Parliamentary Committees in Some Selected Places*, Research and Library Services Division, Legislative Council Secretariat, Hong Kong, p.15-16



Scots committees is distributed between the parties according to the number of seats in the parliament.

#### *Public or private meetings*

Mattson and Strom speculate that open committee meetings act to reinforce party discipline as the behaviour of the members can be readily monitored by the party leadership. The House of Representatives' committee can, and usually does, hold its hearings in public. But it has the power to meet *in camera* and its deliberations will be in private. It shares this with the other committee systems here.

#### *Minority reports*

The capacity to submit minority reports allows a greater range of perspectives and arguments to be expressed as a result of committee deliberations: minority opinion cannot be silenced by the government majority if the possibility of a minority, dissenting reports exist.

In the House of Representatives, minority committee reports are permitted, as they are in the Senate.<sup>58</sup> Indeed they are common, particularly in the Senate where it seems a significant number of inquiries, particularly on potential 'wedge' issues, inevitably result in minority reports. A dissenting report does not require the permission of the whole committee and neither need the dissenting member(s) divulge the content of their minority report to the committee. The only restrictions are that it need be relevant to the Committee's reference and that any evidence taken *in camera* that the minority report refers to needs to be cleared by the committee.<sup>59</sup>

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58 SO 244(e)

59 I.C. Harris, B.C. Wright and P.E Fowler (2005), *House of Representatives Practice*, Canberra, Department of the House of Representatives, p.685

Minority reports are not permitted in UK Public Bill Committees where matters are voted on with the majority position prevailing. They are, however, permitted in Select Committee inquiries. Interestingly though, they are relatively rare and the prevailing culture amongst the Select Committee members is to maintain unanimity where possible. Indeed, it is seen as one of the particular strengths of the Select Committee system and has been contrasted favourably with the Public Bill Committee system where the debate (and voting) tends to be predominantly partisan. Certainly there is no equivalent to their regular use in the Australian Senate, for instance. New Zealand and Scotland both permit minority reports.

### *Committee stage in legislative process*

One of the factors that make the legislative committees of the US so powerful is that the committee stage in the American congress is before the major plenary debate in the main chambers. Consequently, the committee is in a position to establish the terms of the debate. There is no automatic committee stage in the Australian parliament: bills *may* be sent to a committee for investigation. Where this does take place, it is usually following the proposing Minister's second reading speech. The second reading debate and consideration of the bill in detail continue once the committee has reported. This means that, where a bill has been referred to a Standing Committee, the committee's report can inform the debate on both the principle of the bill (second reading) and on the detail (consideration in detail).

Unlike Australia, in the UK the committee stage in the legislative process is the norm, with virtually all bills being sent to Public Bill Committees. However it does not take place until after the second reading and, with the debate on broad matters of principle already completed, the committee stage has mostly been a close and more technical consideration of the bill. The closest to committee input to these broader matters of the principle of a bill is through the Select Committees, either specifically, through pre-legislative scrutiny of a draft bill, or more generally, through inquiries which may recommend that new legislation is needed or existing legislation needs replaced. In Scotland, the first stage of a bill's passage through parliament is its referral to the relevant committee. At this stage, the committee usually comments on the bill's general principles and the accompanying financial memorandum before the plenary debate. After this, the bill returns to committee for detailed consideration and amendments.

The bill then returns to the parliament in plenary session for its final consideration. In New Zealand, bills pass to select committees following the first reading (though this includes a more substantive debate of up to two hours). In Canada, ordinarily a bill will be referred to committee following second reading, once the principles are established. The committee stage is then limited to a consideration of the text of the bill. However, bills can be referred to committee before second reading, allowing a broader review.

### **Committee Powers**

The formal powers of the various committees give the most obvious means through which we can examine their respective role in their parliaments. However, the consideration of the formal rules reveals only part of the picture: the manner in which these powers are enforced (or not enforced) is just as important in terms of the influence the committees can exert.

#### *Initiation of legislation*

The capacity of a parliamentary committee to initiate its own legislation is the most obvious way in which it can impact on the legislative process. It is, however, relatively uncommon and in only a few parliaments do committees have this power. In spite of Docherty's observation that 'Westminster parliaments do not initiate legislation; rather they pass or defeat legislation that originates with the cabinet',<sup>60</sup> in Scotland committees do have the power to initiate legislation. At the time of writing, three committee bills have been introduced and a committee is considering the introduction of a committee bill on the Scottish parliamentary pension scheme.

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60 David C Docherty (2005), *Legislatures*, Vancouver, UBC Press, p.19

### *Revision of bills*

The capacity to redraft bills is another means by which a committee can exercise considerable power in legislative process: ‘if a committee cannot rewrite government bills, the legislature as a whole is...in a comparatively weaker position *vis-à-vis* the executive’ .61

The House of Representatives’ Standing Committee reports are only advisory: as with Senate Standing Committees, recommended changes may be incorporated but there is no obligation to do so. This is something of a contrast with some of the other systems under consideration here. In the UK, Public Bill Committee amendments are not binding in the sense that they can be rejected by parliament at the Report Stage. Moreover, the House of Lords will also examine the bill and may recommend changes. However, the bill goes forward to the Report Stage and beyond *with* the amendments of the Committee incorporated and so they actually need to be removed. In Scotland, amendments can be proposed by any member but are debated and accepted or rejected in committee. In Canada and New Zealand, amendments are also incorporated, as they are in the UK, before the bill returns to the chamber. But in New Zealand, amendments agreed unanimously in committee are automatically adopted by the House.

### *Control of committee timetable and agenda*

House of Representatives’ Standing Committees rely on references from the main Chamber or from a minister. They cannot initiate their own inquiries and are bound by the terms of the references.<sup>62</sup> Committee members can and do, however, press for particular references. In Westminster, Select Committees control their own agenda, initiating their own inquiries and conducting them according to their own timetable (pre-legislative scrutiny is the partial exception: a particular deadline may be required by the department to allow the committee recommendations to be taken into account in the full bill). Public Bill Committees, by

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61 Mattson and Strom, ‘Parliamentary Committees’, 1995, p.291-2

62 The exceptions to this restriction relate to annual reports from government agencies and to reports of the Auditor-General which are automatically referred to committee and do not require a specific reference. Committee inquiries into these may result in a recommendation that a matter be referred to the committee for further investigation.

contrast, exist only to examine specific bills and cease to exist having reported so, in that sense, their agenda is determined for them. However, there has also been an increase in the use of programming motions which set the amount of time available to a committee to consider a bill, and timetable the subsequent stages of its passage through parliament. Opposition has claimed that programming is a means through which government can curtail debate: initially, the programming was decided by cross-party agreement, but this was short-lived. Programming has continued in the absence of this consensus, with motions simply passed on a majority, in spite of the Modernisation Committee's repeated insistence that cross-party agreement is necessary for it to work.<sup>63</sup> Furthermore, it seems that the committees have found themselves under considerable time-pressure since they were granted the capacity to take oral and written evidence in 2007. The implication that this change might slow the legislative process has evidently not become sufficiently engrained in the Westminster *modus operandi* as yet. In Scotland, the committee must report on a bill five days before the plenary debate on it. However, the onus is on the business managers to allow the committee due time to consider rather than imposing an arbitrary deadline to curtail scrutiny. In New Zealand, bills are almost automatically sent to committee, which will then have six months to examine and report. In Canada, committees do have an obligation to report but ordinarily this is at a time of their choosing, though the House may impose a deadline (especially if the committee is not reporting as a delaying tactic).<sup>64</sup>

#### *Information acquisition: hearings and documents*

House of Representatives' Standing Committees are empowered to summon witnesses and to demand documents.<sup>65</sup> However, in practice it is a power that they rarely exercise, relying instead on cooperation from those summoned or in possession of the documents. This is similar to the situation in the UK where, whilst committees are empowered to 'send for

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<sup>63</sup> The Modernisation Committee is the select committee established in 1997 to consider House procedure. Chaired by the Leader of the House, it has consistently supported the use of programming. However, it has also split on this, publishing dissenting minority reports opposing programming.

<sup>64</sup> Marleau and Montpetit, *House of Commons Procedure and Practice*, Chapter 16, p.39

<sup>65</sup> SO 236

persons and papers', in practice they generally rely on the cooperation of those involved.<sup>66</sup> Up until recently, this was a power held only by Select Committees and not by the Standing Committees which considered legislation. However, with the changes of 2006 that saw them renamed 'Public Bill Committees' came the right to take oral and written evidence as part of their scrutiny of the bill under consideration. The Canadian, Scottish and New Zealand committees are able to receive public submissions and hear oral evidence in their inquiries.

## **Conclusion**

In comparing the committees in their study of Western Europe, Mattson and Strom gave scores on the basis of the committee's drafting authority and the control of the committee agenda, with the highest scores going to the committee systems that had the greatest autonomy from the executive in these respects. They awarded the UK Standing Committees low scores in both dimensions. Ireland, the only other Westminster-derived parliament in their sample, ranked similarly poorly, evidently confirming the impression of various other academic studies that characterise the Westminster model as inherently executive-dominated with a weak legislature.<sup>67</sup>

However, judged by the official powers the various committee systems under consideration here, there is a reasonable degree of variation within the Westminster model. Of particular note is the extent to which the committee's agenda is outside the control of the executive and of the parent chamber. The House of Representatives' committee system is perhaps the one in which the extent of executive control is greatest: committees have no capacity to initiate their own inquiries, instead relying on references from the main chamber, and there is no automatic referral of bills. Given the capacity of the executive to dominate the chamber, there is clearly the potential for the government to exert considerable influence over the committees' activities. Even if this does not extend to 'micro-managing' committee inquiries or recommendations, there is the scope for the government to veto certain inquiries, for example.

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<sup>66</sup> The example of the Maxwell brothers has demonstrated that the power is a relatively hollow one without cooperation from those involved: they were eventually compelled to attend a committee hearing but refused to answer any questions.

By way of a contrast, the Scots parliament, building on the example of New Zealand amongst others, has been explicit attempt to modify the conventional Westminster model of executive dominance. The committee system has been a central component in that ‘rebalancing’ of executive-legislative relations. In Scotland, committees have an automatic pre-legislative stage, before a bill is properly introduced to the House, and considerable capacity to amend it subsequently. Nonetheless, with the Scottish executive limited in its capacity to control committee agendas, it has sought to influence committee activity in other ways, notably through the manipulation of committee membership.

This highlights perhaps a greater influence over the how powerful various committee systems are seen to be, which is how they actually operate in practice. Canada's committee system is not conspicuously weak, judged by its standing orders for instance. Yet Canadian governments seem to have been able to systematically dominate their proceedings. Party leaders’ capacity to dominate their backbenches contributes considerably to this.<sup>68</sup> However, the relatively low priority apparently accorded to committee work by Canadian MPs means that the dominance is made easier.<sup>69</sup> Meanwhile, the UK Select Committees, with their quite limited powers, are being increasingly seen as the vehicles behind a parliamentary renaissance, largely because of the relatively limited influence of the government or opposition leadership.<sup>70</sup>

The relative size of the parliament, with large backbenches, might be expected to be the determining factor in the power of the respective committees. This would seem not to be the case, with the committees of the smallest parliaments, Scotland and New Zealand, with the greatest formal powers. In the UK, however, it seems that, in spite of the relatively weak

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<sup>67</sup> Mattson and Strom, ‘Parliamentary Committees’, p. 299-300.

<sup>68</sup> Malloy, ‘The Executive and the parliament in Canada’, p.209

<sup>69</sup> Docherty, *Legislatures*, p.130

<sup>70</sup> They are unwhipped, for instance.

powers of the Select Committees in particular, the extent of the influence of government or opposition front bench is perhaps weakest.



**Opportunities for greater consultation?**  
**House Committee use of Information Communication Technology:**  
**A Discussion Paper**

John Baczynski

*Abstract*

*With the expansion and online deliberative potential of Information communications technologies (ICTs) within all aspects of committee work, should committees adjust how they use technology?*

*This paper explores the impact of technology on committee consultation and reviews the ICTs used by the Australian Parliament's House of Representatives Committees during the 41<sup>st</sup> Parliament. Deliberative ICTs used by committees of UK Parliament's House of Commons are also examined and the applicability of these technologies to committee deliberation and communication is assessed. The overall aim of this investigation is to determine whether greater use of deliberative ICTs will ultimately aid or hinder the work of House Committees.*

## Introduction

The year 2007 marked twenty years since Australia's House of Representatives moved to establish a comprehensive committee system which aligned House Committees with all federal government departments, giving the House 'the capacity to monitor' the work of these departments and instrumentalities.<sup>1</sup> Moreover, 2007 also marked 10 years since these committees came online, allowing them to publish and provide access to committee information to a far broader audience than ever before.

Since the late 1990s, information communications technologies (ICTs) have been increasingly used by House Committees to share information and great amounts of public information are now available to a rapidly increasing proportion of the population. The way that information is distributed and used online has also evolved with technologies now providing sophisticated yet easy to use mechanisms to publish, share, and contribute information to online environments such as discussion forums, opinion polls and debates. When the current system of House Committees was established in 1987 such technologies were not at the disposal of House Committees. However, as information distribution has undergone enormous change globally, this has also impacted on how committees can choose to consult or distribute information. The 20<sup>th</sup> anniversary of the House Committee System is an appropriate time to also observe how committees are now using technology and the challenges that House Committees may face in the future when integrating ICTs into committee deliberation.

This paper explores the ICTs used by House Committees during the 41<sup>st</sup> Parliament<sup>2</sup> and whether deliberative ICTs should be better utilised to provide additional online avenues of engagement for committees. Specifically, this paper investigates: arguments over the effect of technology on democratic process; examples of technologies which have already been adopted by House Committees; what the impact of adopting 'new' communication technology might be on House Committee practice; what can be learned from examples of other Parliamentary Committees that have been early adopters of computer aided deliberation; and who is likely to use the new technologies to communicate with House Committees.

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<sup>1</sup> I. C. Harris, B. C. Wright & P. E. Fowler, eds., *House of Representatives Practice*, 5<sup>th</sup> edition, Department of the House of Representatives, 2005, p. 623.

## ‘New’ ICTs impact on democracy

The term Web 2.0<sup>3</sup> is used to collectively describe a second generation of internet communication technologies that provide a more interactive online experience and the ability for internet users to easily contribute information to or generate their own information on web sites.<sup>4</sup> The emergence of these more interactive ICTs provide the opportunity for House Committees to reassess how communication flows during a committee inquiry and may provide a new means for engaging with target audiences regardless of their physical location. Debate over the impact of communications technology on democracy existed well before the term Web 2.0 was coined but the emergence of ‘new’ Web 2.0 communication technology has reignited debates over the transforming potential of technology on democratic processes.<sup>5</sup> This debate is also useful when assessing the potential impact of new ICTs on House Committees. Author Scott Wright identifies and summarises three main schools of thought contributing to the technology and democracy discourse. Firstly the ‘revolutionaries’ who argue that ‘the Internet can and will transform our democratic system’.<sup>6</sup> Revolutionaries suggest that ICTs allow a direct form of democracy where large numbers of citizens participate directly in policy making and will ultimately render representative democracy obsolete.<sup>7</sup> However, since these revolutionary predictions were articulated in the late 1990s the sudden obsolescence of representative forms of democracy is yet to occur. The second school maintains that technology can re-invigorate democracy by providing technical fixes to

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<sup>2</sup> The 41<sup>st</sup> Australian Parliament was over the period 2004 to 2007.

<sup>3</sup> Web 2.0 is a term which loosely describes online communication technologies which allow online discussion and collaboration. While this technology has existed since the 1990s, the term mainly refers to ‘new’ online social networking technologies such as Facebook, YouTube and MySpace. See: [www.facebook.com](http://www.facebook.com) [www.youtube.com](http://www.youtube.com) and [www.myspace.com](http://www.myspace.com)

Also see: *Microsoft Eyes Stake in Facebook*

<http://www.smh.com.au/articles/2007/09/25/1190486262533.html> (accessed 18 January 2008).

<sup>4</sup> For example creating a ‘personalised space’ on a website which provides users tools to customise and tailor the information they choose to display. Sites such as Facebook and MySpace allow users to do this.

<sup>5</sup> The term Web 2.0 was first coined in 2004 see: *Web 2.0*, [http://en.wikipedia.org/wiki/Web\\_2.0](http://en.wikipedia.org/wiki/Web_2.0) (accessed 15 January 2008).

<sup>6</sup> Scott Wright ‘Electrifying Democracy? 10 Years of Policy and Practice.’ *Parliamentary Affairs* vol. 59, no. 2 p. 237.

<sup>7</sup> *ibid.*

See also: Stephen Ward, Thierry Vedel. ‘Introduction: The Potential of the Internet Revisited.’ *Parliamentary Affairs: vol. 59, no. 2 p. 210.*

problems identified within the current representative system. This group believes that technology can be used to strengthen traditional practices or be used to support representative democracy through computer aided participatory and deliberative tools. Wright refers to this group as the ‘reformers’.<sup>8</sup> The third group asserts that political institutions will normalise ICTs into already established structures and thus the technology will have limited impact. This position is based on empirical studies, which have shown that mainstream political actors adopt and normalise technology into the traditional political world.<sup>9</sup> This group argues that established and powerful institutional arrangements not only shape but also resist change, particularly if change results in the loss of institutional power or control. They paint the pessimistic view that any institutions which are driving technological change are doing so in pursuit of their own interests with the aim to assert control over technology to ‘neutralise any pluralist tendencies of the new media’.<sup>10</sup> Wright does not assign a term to describe this group, but for the purpose of this paper they are referred to as the ‘regulators’.<sup>11</sup>

While this paper does not scrutinize theories of democratic reform in detail, the revolutionary, reformer and regulator theoretical framework is a useful point of reference when observing how technology has already been integrated into House Committees and which ‘new’ technologies might be used by committees in the future. There is no evidence to suggest that the current use of ICTs by House Committees will ultimately undermine representative structures and practices as the revolutionaries suggest. However, the question whether the reforming potential of ICTs are being realised by House Committees, or if the technology used by House Committees is reinforcing existing power structures as the regulators assert remains open. Whether House Committees are technological regulators or reformers will be

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<sup>8</sup> Scott Wright ‘Electrifying Democracy? 10 Years of Policy and Practice.’ *Parliamentary Affairs* vol. 59, no. 2 p. 237.

This group is also referred to as ‘cyber-optimists’. See: Karina Pedersen and Jo Saglie, ‘New Technology in Ageing Parties Internet Use in Danish and Norwegian Parties’, *Party Politics* vol. 11, no. 3, p. 359.

See also: J. Shahin and C. Neuhold, “Connecting Europe’: The Use of ‘New’ Information and Communication Technologies within European Parliament Standing Committees”, *The Journal of Legislative Studies*, vol. 13 no. 3, p. 391.

<sup>9</sup> Stephen Ward, Thierry Vedel. ‘Introduction: The Potential of the Internet Revisited.’ *Parliamentary Affairs: vol. 59*, no. 2 p. 210.

Michael Margolis and David Resnick, *Politics as Usual? The Cyberspace Revolution*, Sage, 2000.

<sup>10</sup> Stephen Ward, Thierry Vedel. ‘Introduction: The Potential of the Internet Revisited.’ *Parliamentary Affairs: vol. 59*, no. 2 p. 210.

<sup>11</sup> This group is also referred to as ‘cyber-pessimists’. Karina Pedersen and Jo Saglie, ‘New Technology in Ageing Parties Internet Use in Danish and Norwegian Parties’, *Party Politics* vol 11, no. 3, p. 359.

determined by which ICTs House Committees are empowered to use and how they choose to use them.

## 41<sup>st</sup> Parliament Committee Technology

Throughout the 41<sup>st</sup> Parliament, House Committees each maintained a webpage which provided access to static information such as committee reports, inquiry submissions and transcripts of evidence.<sup>12</sup> These pages were hosted from the Parliament's main website within the Committee area of the House of Representatives webpages.<sup>13</sup> Publishing information on each Committee's webpage was devolved to staff within Committee Secretariats responsible for ensuring the information such as the Committee's Membership remained current.<sup>14</sup> The '*Committee activities (inquiries and reports)*'<sup>15</sup> part of a committee's website contained the highest proportion of current information and was updated as events occurred such as public hearings, submissions authorised for publication, or tabling of committee reports.<sup>16</sup> Information about past inquiries for specific committees was also available online, although this information was generally limited to committees which had been in existence since 1996. Specific websites for committees prior to this period had not been created.<sup>17</sup>

House Committees also used a number of ICTs internally to communicate between Members and secretariat staff as well as a number of technologies to maintain databases of committee-related information.<sup>18</sup> However, a committee's website was the main method used to deliver

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<sup>12</sup> Static webpages tend to only provide information at set points in time (ie when web administrators upload documents to the site). In comparison dynamic pages present information in a number of ways and may have the ability to display information, from multiple users as it is created. An example is online forums which show information dynamically as it is posted to the site.

<sup>13</sup> See: [http://www.aph.gov.au/House/committee/comm\\_list.htm#standing](http://www.aph.gov.au/House/committee/comm_list.htm#standing) (accessed 12 December 2007).

<sup>14</sup> For Example <http://www.aph.gov.au/House/committee/primind/Members.htm> (accessed 3 January 2008).

<sup>15</sup> For example <http://www.aph.gov.au/House/committee/atsia/reports.htm> (accessed 3 January 2008).

<sup>16</sup> Documents such as committee reports, inquiry submissions, media realises and public hearing schedules are provided on these pages.

<sup>17</sup> Work is underway to digitise the reports of committees that existed before 1996 in an effort to make digitally available all the reports of all House Committees.

<sup>18</sup> A number of internal databases, intranets, email and electronic document management systems are used by House Committees to communicate internally.

information online to external audiences. The content on House Committee websites was also tightly controlled and aside from a generic email address provided on committee webpages there were no facilities available for end users to interact online with House Committees.<sup>19</sup>

Controlling the information posted on a committee website is an example of a ‘top down’ communication model where end users of the site have no facility to directly contribute information to the site.<sup>20</sup> Such a system is well suited to controlling committee information such as submissions which must undergo a formal authorisation process by the committee before they are published.<sup>21</sup> While this is a mechanism to ensure that information presented to the committee is appropriately handled, not providing online avenues for interaction with committees could be viewed as exerting tight control over the technology to maintain power as the ‘regulators’ suggest. Yet without House Committee websites, public information such as committee reports, submissions and transcripts of evidence would not be as accessible. Whilst placing such documents online provides a level of transparency and accessibility to the committee process that previously did not exist, such a model does not provide the opportunity to utilise the ‘bottom-up’ deliberative potential of the internet.<sup>22</sup>

## Online Consultation?

House Committees generally spend a significant period of time consulting and deliberating. Tasks such as collecting evidence are undertaken by House Committees in traditional face-to-face forums such as public hearings and private briefings. This requires all parties involved to

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<sup>19</sup> There are examples of committees of other Parliaments such as the UK’s House of Commons Defence Committee, which not only provide static committee information online but are also experimenting with more sophisticated ICTs to enable deliberative modes of communication and consultation through online forums.

<sup>20</sup> Pippa Norris, ‘Preaching to the Converted? Pluralism, Participation and Party Websites’, *Party Politics*, vol. 9 no. 1, p. 26.

Parliament of Victoria, The Scrutiny of Acts and Regulations Committee *Inquiry into Electronic Democracy Report on the Evidence obtained in North America*, November 2004, p. 5.

<sup>21</sup> House of Representatives, *Standing and Sessional Orders*, 29 March 2006, SO 242.

<sup>22</sup> J. Shahin and C. Neuhold, “Connecting Europe’: The Use of ‘New’ Information and Communication Technologies within European Parliament Standing Committees”, *The Journal of Legislative Studies*, vol. 13 no. 3, p. 391.

be in the same physical location, although in some instances when a witness or Committee members cannot be present at a specific location, audio visual links can be organised.<sup>23</sup> Consultation is an essential and valued aspect of a committee's work, however the time pressures which Committee members face increasingly make it extremely hard for Members to balance time spent collecting committee evidence with all the other aspects of their parliamentary work. The reformist perspective argues for a technical fix to assist time pressured committee members to engage with witnesses. Applying existing deliberation technologies to committee work could reduce the time pressures on Committee members as such technology is not dependant on all parties involved physically attending the same location or taking part in the discussion at exactly the same time.<sup>24</sup> Moreover, application of this technology has the potential to engage with communities and individuals which might not otherwise interact with committees in traditional methods.

The intention to allow committees to communicate by integrating communication technology with committee procedures was articulated by the House Procedure Committee in its 1998 report which reviewed the House Committee system. This report recommended that:

The existing procedures relating to the use of electronic communication devices by committees be reviewed by the Standing Committee on Procedure prior to the end of the 39<sup>th</sup> Parliament with a view to their incorporation in the standing orders. (recommendation 22)

The standing orders be amended to recognise, as evidence, documents received by committees by electronic means. (recommendation 23)<sup>25</sup>

These recommendations reflected the intention to accept electronic documents as evidence for a committee inquiry, as well as utilising video conferencing technology to take evidence from remote witnesses or involve remote Committee members in a hearing. Standing order 339 was amended on 6 December 2000 to reflect this change and states:

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<sup>23</sup> House of Representatives *Standing and Sessional Orders*, 29 March 2006, SO 235.

<sup>24</sup> Discussion boards can allow participants to contribute to discussions at different points in time.

A committee may resolve to conduct proceedings using audio visual or audio links with Members of the committee or witnesses not present in one place. If an audio visual or audio link is used Committee Members and witnesses must be able to speak to and hear each other at the same time regardless of location.<sup>26</sup>

Incorporating this provision into the standing orders provides House Committees with another avenue to gather formal evidence and reflects the intention to allow committees to utilise appropriate technologies to deliberate. It also sets a precedent in allowing those formally interacting with the committee to be in separate locations. Since this amendment there have been no additional moves to revise the Standing Orders to allow House Committees to incorporate recent advances in electronic communication technologies such as online discussion forums, blogs or feedback forms. However, a 2001 Procedure Committee report on promoting the work of committees states the intention that committee websites ‘will eventually incorporate a ‘Have your say’ facility enabling people to submit their views in relation to particular committee inquiries.’<sup>27</sup> Providing a user feedback form on a committee website would be relatively simple although feedback forms or more sophisticated online forums, which are widely used in other contexts to gather information, are yet to be integrated into House Committee websites. Online forums could be used to collect and present views for particular committee inquiries, however before such deliberative ICTs can be incorporated into committee websites, their impact on the way evidence is gathered and the protections afforded to those providing evidence must be considered.

When the Procedure Committee first proposed to allow committees to utilise audio video links to conduct formal hearings the impact this had on the evidence collection process was considered in detail. Foremost was the question whether information taken from a remote

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<sup>25</sup> House of Representatives Standing Committee on Procedure, *Ten years on A review of the House of Representatives Committee System Report*, May 1998, p. 31.

<sup>26</sup> House of Representatives, *Votes and Proceedings*, 1998-01, p. 1985. (note: standing order 339 was renumbered to 235 as of the 41<sup>st</sup> parliament)

<sup>27</sup> House of Representatives Standing Committee on Procedure, *Promoting Community Involvement in the work of Committees, Conference of Committee Chairs, Deputy Chairs and Secretaries*, May 2001, p. 11.



witness would be covered by privilege.<sup>28</sup> While it was ultimately decided that such evidence would be covered by Parliamentary Privilege this was contingent on the remote witness remaining within the jurisdiction of the Commonwealth Parliament, as witnesses providing evidence via video link overseas could not be covered by privilege and would be subject to the laws of the country in which they were located.<sup>29</sup> Other aspects of the process considered were elements such as: how to facilitate swearing in witnesses remotely; whether remote Members could constitute a quorum; and whether the technology limited the subtleties of communication and building rapport with a witness to an extent which would effect the quality of the evidence presented. The Procedure Committee report also raised concerns that over-reliance on this technology would result in less committee hearings being conducted outside Parliament House. Ultimately, the committee concluded that the opportunity which the technology provided for increased flexibility and effectiveness was beneficial. However, they also noted that use of this technology would have to be carefully considered in each instance to ensure that the quality of the evidence received remained high, and that the ‘continued application of the necessary safeguards for Members of the public’ was maintained.<sup>30</sup> Therefore, if House Committees are to use deliberative ICTs such concerns must also be taken into consideration.

It is evident when reviewing how video technology was integrated with committees that the application of this technology closely matched procedures and practices applicable to in-person hearings. This ensured that use of this technology would not breach already established norms, principles and laws. Aside from certain participants being physically elsewhere during a video linked hearing, the hearing takes place in the same manner as when all participants are in the same room. This is not the case when considering how the majority of deliberative ICTs would operate if used for formal committee hearings. The flow of information for online

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<sup>28</sup> Parliamentary Privilege provides Members and others participating in formally with a committee, such as witnesses giving evidence, protection from being sued or prosecuted for anything they may say during formal proceedings. Written evidence received by a committee is similarly protected. See House of Representatives *Infosheet 4*, <http://www.aph.gov.au/house/info/infosheets/is04.pdf> (accessed 12 January 2008).  
and House of Representatives *Infosheet 5*, <http://www.aph.gov.au/house/info/infosheets/is05.pdf> (accessed 12 January 2008).

<sup>29</sup> House of Representatives Standing Committee on Procedure, *Application of modern technology to committee proceedings Report*, November 1994, p. 3.

<sup>30</sup> House of Representatives Standing Committee on Procedure, *Application of modern technology to committee proceedings Report*, November 1994, p. 11.

discussions is very different to formally structured face-to-face consultations. Like video linked deliberation, online discussion forums do not require all parties to be present in the same location and, depending on how the forum is configured, not all parties taking place in the discussion need be online at the same time. If committees were to attempt to conduct a formal hearing in such a manner, there would be a number of obvious breaches to the rules governing formal proceedings. For example, maintaining quorums online would be hard to monitor due to difficulties in ensuring that all Members logged on and remained in front of their computer throughout all stages of the consultation. Verifying the identity of those giving evidence online could also be difficult due to the inherently anonymous nature of online interactions. As with video link technology, issues of privilege are of particular importance especially if those interacting online are physically outside Australian jurisdictions when providing information.

Such impediments to conducting formal hearings online suggest that replicating current practice may not be achievable and that House Committees might only provide a ‘regulated’ online environment. However, rather than attempting to replicate current practices, the strengths of this technology should be emphasised and integrated into House Committees as there is the potential to engage with audiences who would not otherwise interact with a committee through traditional communication channels. Another advantage is that online deliberation allows Members to interact at times and locations which suit them may reduce time burdens. This is not suggesting that the formal hearings should be replaced entirely and while online deliberations may be more convenient, if the evidence gathered through this mechanism is not of high quality, then online deliberation may be an additional and unnecessary time burden to Members.

While House Committees have not formally deliberated online and do not have the facilities to conduct online forums through their own websites, the Standing Committee on Health and Aging experimented with using external online forums to gather evidence in 2007. A relevant point of comparison to this experiment is the experience of committees of the UK Parliament’s House of Commons which have been using ‘in-house’ online forums for committee deliberation.

## Committees Using Deliberative Technologies

In its 2007 Inquiry into the Benefits of Breastfeeding, the Committee for Health and Aging ‘utilised several parenting websites with online forums as a means to promote the inquiry and to observe current community perspectives on the topic.’<sup>31</sup> One such site was the Australian Breastfeeding Association Online Forum.<sup>32</sup> The committee approached the owners of this site and a number of other relevant forums and asked that they promote the inquiry.<sup>33</sup> This proved to be very successful and the Committee Secretary attributed a sudden surge in the number of submissions received through the use of these forums.<sup>34</sup> While this was a success, the style and information contained in the submissions received varied widely. For example, the site ‘*bellybelly.com.au*’ ran a poll to gather information from its Members which later formed a supplementary submission to the inquiry that consisted of a series of forum postings.<sup>35</sup> This was formally accepted by the committee as a supplementary submission, but the way that the information was presented made it difficult to identify the authors of the forum postings as they were shown only by their online screen name.<sup>36</sup> While the forum itself does not strictly follow the guidelines for how to construct a submission it was accepted by the committee in the form of a printed screenshot which documented each of the forum comments at a set point in time.<sup>37</sup> After the forum was ‘submitted’ further comments were made to the discussion online which cannot be covered by Parliamentary Privilege since they were not included with the authorised submission. This highlights the difficulty of applying Parliamentary Privilege to information that is created dynamically. This particular example also shows that there is no

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<sup>31</sup> House of Representatives Standing Committee for Health and Aging, *The Best Start Report on the inquiry into the health benefits of breastfeeding*, August 2007, p. 5.

<sup>32</sup> Australian Breastfeeding Association *Online Forum*, <http://www.lrc.asn.au/forum/viewtopic.php?t=9125&highlight=parliamentary> (accessed 12 January 2008).

<sup>33</sup> The Committee specifically sought information from mothers who were having trouble breastfeeding as the Committee had identified that this group was under represented in the evidence gathered for the inquiry to that point.

Other forums approached were: <http://www.bubhub.com.au> (accessed 12 January 2008) and <http://bellybelly.com.au/> (accessed 12 January 2008).

<sup>34</sup> 479 submissions were received and authorised for publication. see:

<http://www.aph.gov.au/house/committee/haa/breastfeeding/subs.htm> (accessed 12 January 2008).

<sup>35</sup> <http://bellybelly.com.au/forums/archive/index.php/t-38973-p-1.html> (accessed 12 January 2008).

<sup>36</sup> Also known as an avatar, an online screen name uniquely identifies a member of a forum, but is rarely the same as the individual’s real name.

<sup>37</sup> <http://www.aph.gov.au/house/committee/documnts/howsub.pdf> (accessed 12 January 2008).

see also: Supplementary Submission 441 a, b and c, available from

<http://www.aph.gov.au/house/committee/haa/breastfeeding/subs.htm> (accessed 12 January 2008).

indication where each person contributing to the forum was physically located, which makes it difficult to prove that all contributions to the forum were made by people within Australian territory, thus privilege may not necessarily extend to each of the forum users who contributed to the submission.

Another method to collect evidence that the Health and Aging Committee adopted was for the Inquiry Secretary to register as a forum user and post an advertisement to the forum promoting the inquiry and asking forum users to submit submissions directly to the Health and Aging Committee. The Committee Secretary reported that this was particularly successful, as it resulted in a large number of submissions from individuals on the topics which the committee had trouble collecting evidence for. While this is a unique example for a House Committee, it shows that targeted online audiences can respond to Committees using deliberative online technologies. This example also highlights how the way information is created and presented in an online context is very different to what committees have traditionally received and accepted, forcing committees to rethink how to handle information presented in this form.

### **House of Commons Online Committee Consultations**

A significant Information Committee report produced in July 2002 emphasised the need to the UK parliament to utilise deliberative ICTs. This report focused on identifying how to help Members engage with the public more effectively and as a result the Information Committee recommended that that House of Commons adopt the following set of principles:

- A. The House is committed to the use of ICT to increase its accessibility and to enable the public, exercising its right to use whatever medium is convenient, to communicate with Members and with Committees of the House.

- B. The House is committed to using ICT to enhance the professionalism of Members, their staff and House staff in all aspects of parliamentary life.
- C. The House is committed to the use of ICT to increase public participation in its work, enabling it to draw on the widest possible pool of experience, including particularly those who have traditionally been excluded from the political and parliamentary process.
- D. The House recognises the value of openness and will use ICT to enable, as far as possible, the public to have access to its proceedings and papers.
- E. The House will develop and share good practice in the use of ICT by other parliamentary and governmental bodies both within the United Kingdom and elsewhere, and will work in collaboration with outside bodies.<sup>38</sup>

Point A and C in particular highlight a ‘reformist’ approach in advocating the use of technology to better facilitate communication between Parliament and the public. Evidently, a number of House of Commons (HoC) committees have formally utilised online tools to interact with the public, and since the Information Committee report an increasing number of committees have run online consultations in conjunction with their inquiries.<sup>39</sup>

The Hansard Society, which is an independent, non-partisan organisation, have facilitated a number of online consultations which are available through their ‘Tell Parliament’ website.<sup>40</sup> These online consultations include: the Commons Defence Committee’s inquiry into Educating Service Children, The Northern Ireland Affairs Committee’s inquiry into hate crime, The Select Committee on Modernisation’s inquiry into Modernisation of the House of Commons, and the Science and Technology Committee inquiry into Human Reproductive

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<sup>38</sup> House of Commons Information Committee, *Digital Technology: Working for Parliament and the Public*, July 2002, pp. 7-8.

<sup>39</sup> The UK Parliament has been a particularly early adopter of online consultations, having experimented with online consultations since 1998. See: Stephen Coleman, *Connecting ‘Parliament to the Public via the Internet Two Case Studies of Online Consultation’*, Information Communications & Society, March 2004. For House of Commons Online consultations see: <http://forums.parliament.uk/html/index.html> (accessed 18 January 2008) and <http://www.tellparliament.net/> (accessed 17 January 2008).

<sup>40</sup> For information about the Hansard Society see: <http://www.hansardsociety.org.uk/> For online consultations administered by the Hansard Society see: <http://www.tellparliament.net/> (accessed 17 January 2008.)

Technologies.<sup>41</sup> For each of these inquiries the Hansard Society maintained and regulated the online consultations. Each consultation was advertised by the committee and ran for a specified period.<sup>42</sup> During this period participants were invited to register their details and granted permission to add comments to the committee's discussion forum. Participants that chose to provide comments to these forums also had to abide by a set of rules (see: Appendix 1). When making postings to the forum, each contribution is moderated by the Hansard Society before it is made public on the forum. Again such tight control of how the information is placed on the forums, reinforces the regulator perspective of restricting the use of technology for political purposes. The decision to administer and moderate these forums through an independent third party (the Hansard Society) somewhat weakens the regulator argument, as an apolitical body controlling the discussion removes perceived political prejudice from decisions of whether to post or not to post comments to the forums. In such an environment those contributing to the forums, whether they are Members of the Committee or Members of the public are on equal terms as neither decides which comments are suitable.

'Tell Parliament' is not the only site which has hosted online consultations for HoC committees. Recently a number of 'eConsultations' have emerged on the UK parliament website.<sup>43</sup> This site lists current and past consultations including the House of Commons Defence Committee's inquiry into Medical Care for Armed Forces.<sup>44</sup> This is not the first online deliberation for this committee as the Defence Committee had previously conducted an online consultation through 'Tell Parliament' for its inquiry into Educating Service Children.<sup>45</sup> These consultations provide a comparison for the differences between the 'Tell Parliament' administered consultations and the UK Parliament administered 'eConsultations'. As with the 'Tell Parliament' consultation the UK Parliament administered consultation was moderated so that users could not post directly to the discussion. The approval process for the

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<sup>41</sup> House of Commons Defence Committee, *Educating Service Children Online Consultation* <http://defcom.tellparliament.net/>, Select Committee on the Modernisation of the House of Commons, *Online Consultation*, <http://www.tellparliament.net/modernisation/> and House of Commons Science and Technology Committee, *Human Reproductive Technologies and the Law and Online Consultation*, <http://www.tellparliament.net/scitech/> (accessed 17 January 2008).

<sup>42</sup> Generally the consultations run for a set period. For example the Defence Committee's inquiry into Defence Education ran its consultation from 18 April – 26 May 2006.

<sup>43</sup> see: <http://forums.parliament.uk/html/index.html> (accessed 18 January 2008).

<sup>44</sup> For the consultation see: [http://forums.parliament.uk/defence-medical/index.php?index\\_1](http://forums.parliament.uk/defence-medical/index.php?index_1) (accessed 18 January 2008).

<sup>45</sup> For the consultation see: <http://defcom.tellparliament.net/> (accessed 18 January 2008).

moderated comments was also determined by users conforming to a set of rules (see Appendix 2) similar to those which ‘Tell Parliament’ applied to their online consultations (see Appendix 1). The interface for the online consultations were also similar as they both provided a discussion board listing a number of discussion topics (suggested by the committee) where registered users could add their comments. The major point of difference between the two systems is that ‘Tell Parliament’ consultations are moderated by Hansard Society staff whereas ‘eConsultations’ appear to be moderated by staff of the House of Commons. Comments from Committee members are presented on the ‘eConsultation’ message board with a ‘Commons Moderator’ logo next to the text of the message.<sup>46</sup> This gives the immediate impression that all comments posted to the forum are ‘moderated’ by the Committee members. Even if Committee members are not actually moderating postings, this perception remains and may discourage people from interacting with the discussion. In contrast the Tell Parliament method clearly indicates that Tell Parliament moderators are not Committee members or parliamentary staff.

Both the ‘Tell Parliament’ approach and the House of Commons ‘eConsultations’ are ‘reformist’ in the sense that they are using technology to broaden avenues for Members of the public to engage with the committee processes. They also provide Committee members with another mechanism to gain evidence and community views from groups relevant to a particular inquiry. However, such use of technology can also be viewed through a more pessimistic ‘regulator’ perspective as both systems very tightly control who can participate and, to an extent, what they say. The more recent approach by the House of Commons to moderate its own consultations further strengthens the regulators assertion that institutions attempt to tightly control technology to maintain their own interests. While this may be so, it cannot be dismissed that the collection of formal evidence for committee inquires traditionally follows a number of procedures and practices. Attempting to apply these rules to online consultation is particularly difficult, however providing a framework through a set of ‘rules for posting’ and moderating postings to the discussion are useful as ensures that the information collected for the committees’ consultation remains relevant to the topic and remains within the boundaries of what is considered appropriate. Furthermore, the strict registration systems that require forum users to submit information which identifies them

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<sup>46</sup> see: <http://forums.parliament.uk/defence-medical/index.php?read.1.221> (accessed 18 January 2008).

assist the committee to not only identify who is providing the evidence but also discourages individuals from posting information under a number of online identities. If privilege is to be applied to information placed online, such a controlled environment is also essential. Therefore, these examples of online consultations cannot to be easily placed within reformer or regulator categories.

## **Conclusion**

Twenty years of the current House Committee system has coincided with a transformation in how committees communicate and present information. Today, each House Committee maintains a unique presence online and provides detailed static information about the topics which the committee is inquiring into. While this provides a level of transparency that previously had not existed, House Committees are not taking advantage of the additional avenues which ICTs can provide for committee deliberation. Because of this it appears that House Committees are regulating communication technology and are not willing to reform how committees can deliberate. In 2000 reforms to House practice were made to allow some video linking technologies to be utilised by House Committees. While this is a move in the reformist direction, when compared with the UK which was already experimenting with online consultation in 1998, House Committees still have much change ahead if they are to be seen as truly reforming current communication and deliberation practices. The Health and Aging Committee's use of discussion forums to gather evidence for its inquiry into breastfeeding is a step towards reform. This experiment by the Committee was very successful in identifying a target online audience and provided a large volume of relevant evidence for the Committee's inquiry. How the consultation was implemented in this example also revealed a number of issues in relation to collecting evidence from online forums, particularly when verifying the identity and location of forum participants. To better protect those providing evidence online, it may be necessary for online consultations to be more tightly controlled.

The UK's House of Commons who have been early adopters of online consultations employ a particularly refined approach to conducting consultations online. House of Commons' committees have at their disposal online spaces to host discussion boards specific to each inquiry. These spaces are run under a strict set of rules and the identities of the participants



are recorded. However, it appears that a recent move away from using an independent third party to moderate these discussions could be perceived as an overly regulated environment and may discourage participation. Regardless of the specific implementation of online committee consultations, each of these examples show that there are online communities willing to use the technology to express their views to committees. Therefore, House Committees may wish to examine more closely how they choose to communicate in the networked communication age and whether or not to provide online opportunities for greater consultation.

## **Appendix 1 – Rules for Online Consultations Administered by the Hansard Society (Modernisation Inquiry Forum)**

### **Discussion Rules**

1. To ensure users feel safe and keen to participate, please:
2. Do not use insulting, threatening or provoking language.
3. Do not incite hatred on the basis of race, religion, gender, nationality or sexuality or other personal characteristic.
4. Do not swear, use hate-speech or make obscene or vulgar comments.
5. Do not break the law. This includes libel, condoning illegal activity and contempt of court (comments which might affect the outcome of an approaching court case). You may post a small amount of third-party material, but please help us to avoid breaching copyright by naming its author and publication. We are unable to investigate all third party material, so where possible, please provide a link instead.
6. Do not engage in spamming. Please do not add the same comment to more than one forum.
7. Do not advertise. You can mention relevant, non-commercial websites as long as they support your comment.<sup>47</sup>

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<sup>47</sup> See: [http://www.tellparliament.net/modernisation/forum/discussion\\_rules](http://www.tellparliament.net/modernisation/forum/discussion_rules) (accessed 17 January 2008).

## **Appendix 2- House of Commons Administered ‘e-consultations’ Discussion Rules**

Keep your comments relevant to the discussion topic.

Do not submit defamatory comments (comments that are untrue and capable of damaging the reputation of a person or organisation).

Do not condone illegal activity or incite people to commit any crime, including incitement of racial hatred.

Do not submit comments that could prejudice on-going or forthcoming court proceedings (contempt of court) or break a court injunction.

Do not submit comments containing someone else’s copyright material.

Do not swear or use language that could offend other forum participants.

Do not otherwise submit comments that are unlawful, harassing, abusive, threatening, harmful, obscene, profane, sexually orientated or racially offensive. This includes comments that are offensive to others with regards to religion, gender, nationality or other personal characteristic.

Do not impersonate other forum Members or falsely claim to represent a person or organisation.

Do not submit comments that contain personal information that would identify yourself or others. For example last names, addresses, phone numbers, email addresses or other online contact details either relating to yourself or other individuals.

Do not post comments in languages other than English.

Do not advertise or promote products or services.

Do not spam or flood the forum. Only submit a comment once. Do not resubmit the same, or similar, comments. Keep the number of comments you submit on a topic at a reasonable level. Multiple comments from the same individual, or a small number of individuals, may discourage others from contributing.

Do not use an inappropriate user name (vulgar, offensive etc.).

If you are aged 16 or under please get your parent/guardian’s permission before participating in this forum. Users without this consent are not allowed to participate or provide us with personal information.

Comments will be pre-moderated before being posted on the discussion forum. If a comment contravenes any of the discussion rules it will not appear on the forum and will be returned to the participant by e-mail, along with a reference to the rule(s) contravened. The participant will be invited to resubmit their comment, after making appropriate changes, but a participant who repeatedly submits comments which contravene the discussion rules will have their account closed.<sup>48</sup>

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<sup>48</sup> see: <http://forums.parliament.uk/html/rules.html> (accessed 18 January 2008).



**Parliament to the people and back again: a discussion of the House Legal Committee's inquiry into human cloning and stem cell research**

**Catherine Cornish**

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*Abstract*

*This paper considers the House of Representatives Legal and Constitutional Affairs Committee's inquiry into human cloning and stem cell research.<sup>1</sup> The inquiry bears examination for two reasons. First, because of the possibilities it reveals for working relationships between parliamentary committees and Executive Government, and between committees and Australians (whether individuals, or members of interest groups, or business). Second, because of ideas that may be drawn from the way the Committee examined evidence and promoted debate on a major social issue and arrived at recommendations that had an impact on the Executive. Both these elements may provide some background for those interested in the engagement of Australians in the work of Parliament and the work of government.*

*This paper does not purport to canvass the complexities of the issues facing the Committee, nor the legislative responses that ensued. Rather, it seeks to outline pragmatically the process: the way the Legal Committee managed the contributing witnesses, the evidence, the report, and its own performance. That is, the way it handled the 'basics'.<sup>2</sup>*

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<sup>1</sup> The Committee's report, *Human cloning: scientific, ethical and regulatory aspects of human cloning and stem cell research*, was presented by the Chair, Kevin Andrews MP, on 20 September 2001. The report is often referred to as the 'Andrews report'. In this paper it is referred to as the LACA report

<sup>2</sup> See Uhr, 2001, at p. 52 for a discussion of what is significant for parliamentary committee work

## Receipt of the reference

The birth of Dolly the sheep, in the United Kingdom in 1996, prompted public concern and consultation about the possibility of cloning human beings. In Australia, on 14 January 1998 the Minister for Health and Family Services, Dr Michael Wooldridge (the Minister) acknowledged public concerns and sought advice on the need for legislation:

The Commonwealth does not have complete power to legislate on human cloning - it's a matter for the States and Territories and already Victoria, South Australia and Western Australia have enacted legislation banning human cloning.

I have asked the Australian Health Ethics Committee (AHEC) of the NHMRC [National Health and Medical Research Council] to provide me with advice on the potential and need for further pronouncement or possible legislation regarding human cloning.<sup>3</sup>

AHEC completed its inquiry in December 1998, essentially recommending a reaffirmation that practices contrary to human dignity not be permitted; that the Minister urge those States and Territories that had not already done so to limit research on human embryos; that the Minister urge States and Territories without relevant statutory authorities to regulate human embryo research, to establish them; and that the Minister promote informed discussion on the potential benefits and risks of cloning techniques.<sup>4</sup>

In August 1999 the Minister asked the House Legal Committee to review the AHEC report. The Legal Committee had established a reputation for constructive work on complex inquiries, including a greater number of legislative inquiries than is usual for House

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<sup>3</sup> Wooldridge, Dr M, 'Federal Government Against Human Cloning', *Media Release*, 14 January 1998, <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-archive-mediarel-1998-mw298.htm>

<sup>4</sup> LACA report, pp. 5-6. AHEC's report *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings*, (1998), is available at <http://www.nhmrc.health.gov.au/ethics/clone.pdf> (accessed 2 February 2008) but the NHMRC notes it was rescinded on 18 September 2003

committees.<sup>5</sup> At the time it was chaired by Kevin Andrews MP, with Nicola Roxon MP, the Deputy Chair, and it comprised ten members.

### **Undertaking the inquiry**

The Committee was supported by its usual secretariat, which was boosted by the secondment of a senior legal officer from the Attorney-General's Department and a scientific researcher. In fact, the scientific issues were so new and complex that the Committee sought the support of Professor John Hearn, who became its Scientific Adviser for the inquiry.

The Committee advertised the inquiry shortly after receiving the terms of reference and written submissions were sought in newspaper advertisements, on the Committee's website, and also by letters to departments, groups, and individuals considered likely to have an interest in the issues. The requests yielded 347 submissions. An additional 316 letters were received, simply urging a ban on human cloning. Most of the Committee's oral evidence was received at two public forums at which evidence was received from representatives of government, religious, scientific and other interest groups, as well as individuals who were simply interested in the inquiry.<sup>6</sup>

The Legal Committee had already pioneered the use of public forums during inquiries—still managed through the Committee Chair—in which witnesses had an opportunity to question and respond to each other, rather than be questioned, each in turn, by the Committee. For this inquiry the public forums were extended, both in terms of the number of witnesses, and in the

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<sup>5</sup> A history of the Legal Committee's work is available at its website <http://www.aph.gov.au/house/committee/laca/reports.htm>. This also reveals that at the same time as undertaking the lengthy human cloning inquiry, the Committee completed inquiries on copyright enforcement, the advisory reports on the Privacy Amendment (Private Sector) Bill 2000, the Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999 and the Copyright Amendment (Digital Agenda) Bill 1999. These obligations, as well as the complex and evolving cloning inquiry evidence, had an impact on the length of the cloning inquiry

<sup>6</sup> A list of the submissions, and the text of some, is available at <http://www.aph.gov.au/house/committee/laca/humancloning/submiss.htm>. Public forums were held on 1 March 2000 in Melbourne (26 witnesses represented a range of organisations and interests, most of them focused on ethical issues) and 29 March 2000 (27 witnesses represented a range of interests, mostly focused on scientific and legal issues) in Canberra. Transcripts are available on the Committee's website: <http://www.aph.gov.au/house/committee/laca/humancloning/ph.htm>

format. The Committee, through the Chair, invited members of the public to question the Committee and witnesses. The result on each occasion was a long and lively public debate during which varying opinions were treated with equal respect by the Committee and other witnesses. Perusal of the transcripts reveals some passionate debate but no suggestion of intolerance or discourtesy between Committee members, between the Committee and its witnesses, or between the witnesses. Considering the nature of the issues, and the strongly held views of participants, this was a significant achievement.

Because the issue was such a topical one, the Committee had little need to promote the inquiry—other than to ensure that a range of views was received and heard. The original question, whether a whole human being might be cloned (and which had very little support), was overtaken to some extent as a result of scientific developments that raised more complex issues. ‘Cloning’ had come to include reference to processes involving the replication of cells (including embryonic and adult stem cells) and tissues, some of which are regarded as ‘therapeutic cloning’. The possible use and destruction of embryos to obtain stem cells caused grave concern to some people. The scientific and ethical issues caused both optimism and alarm in scientific, health, and religious sectors, and the legal issues were correspondingly new and complex.<sup>7</sup>

### **Preparing the report**

The Committee was made up of six government and four non-government members. However, party allegiances did not appear to influence their views. The range of members’ views reflected the range held by the public. As the inquiry drew to a close, a principal question, particularly for the Chair, was how to accommodate those views and still provide recommendations that were workable.

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<sup>7</sup> See chapter 2 of the LACA for an introduction to the scientific issues, for example. During the inquiry the ABC Four Corners program, *The Clone Age*, featured the work of the Committee in its discussion of the possibilities being offered by developing science



The Committee and its secretariat produced a final report that was comprehensive, including a survey of the background issues (scientific, ethical, and regulatory) on national and international levels, before reviewing in detail the evidence it received on those issues, and the conclusions it formed from the evidence. The scientific evidence and even the background were highly technical and certainly not the usual content of a legal committee report, however, they were necessary to ensure the Committee's response to the debate was complete. Most significant, perhaps, is the way members acknowledged their individual views but combined to produce a unanimous report. Ethical viewpoints are essentially personal, subjective matters, but members spelled out their own views on the ethical issues surrounding research involving stem cells. This was done in the full knowledge that the report would have a wide readership, not just public servants and scientists, but also the electorate.<sup>8</sup>

The report concludes with a chapter on proposed regulation of human cloning. The Committee again acknowledged the differing views held by members on the use of stem cells, and whether procedures that involve the destruction of embryos should be permissible, but resolved the issue with a reasonable and pragmatic approach that would leave no doubt as to its views for action that government needed to take. The Committee as a whole proposed a model for the regulation of human cloning and related research:

All members recognise, however, that the final decision about cloning in Australia will be made by Commonwealth, State and Territory Parliaments. If Australian Governments and Parliaments decide to regulate human cloning involving stem cells derived from embryos surplus to assisted reproductive technology programs, all committee members agree upon the proposed system of regulation outlined in this chapter.<sup>9</sup>

The report is lengthy and detailed, in an attempt to do justice to the issues, to the contributors, and to those who would rely on the report for guidance. The Committee also catered for more casual readers by providing an unusually comprehensive Executive Summary and by

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<sup>8</sup> LACA report, pp. 117-25 contains discussion of the views held by members on the ethics of stem cell research, as well as the reasons for holding the views

<sup>9</sup> LACA report, pp. 217-8

beginning chapters with comprehensive outlines of the contents that followed. The language of the report is plain but quite unambiguous.

Like the report itself, the report drafting and consideration processes were detailed and lengthy. For private and public meetings, the Committee's quorum requirement was three members.<sup>10</sup> The Committee's report consideration process comprised 18 meetings (held between May and August 2001. At these meetings, attendance was never less than five members and at most meetings, comprised seven members.<sup>11</sup> This high level of attendance is one measure of the commitment of members: meetings were held in private sometimes at the end of long days and were occasionally quite lengthy.

There is sometimes cynicism about parliamentary committee reports and the statements that are made when they are presented to Parliament. On this occasion, at least, the statements were thoughtful. The Chair and Deputy Chair acknowledged the hopes and needs of those who had given evidence, and the way in which the Committee had sought to have regard to their views:

The subject of human cloning is a fundamental one and should not be left to any one sector of our community to determine. The committee hopes that this report will contribute to informed debate and consultation. ... The Legal and Constitutional Affairs Committee has a tradition of constructive debate and goodwill. I think all members for the respect they have shown for opinions they may not necessarily share.<sup>12</sup>

The Deputy Chair's statement was gracious, while still acknowledging her own views:

I would also like to specifically thank the chair of the committee. This has been a demanding inquiry, grappling with the science, the ethics, the current research and our personal beliefs. Managing our differing views, differing levels of understanding and differing temperaments over the two years was quite a task and one that he definitely managed with grace. ...

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<sup>10</sup> Standing Order 337(a), House of Representatives *Standing and Sessional Orders*

<sup>11</sup> The Committee's *Minutes of Proceedings*

<sup>12</sup> Kevin Andrews MP, 20 September 2001, *House of Representatives Hansard*, 31094

This was not an easy issue, and I commend the report to the House and urge the government, the interested media and the public to consider this report fully and carefully. By setting out in detail the current state of the science, the range of ethical arguments and much more, I believe we will save the need for repeated inquiries into this issue. However, the debate that must now follow will need to be thorough and respectful of a range of views. Calm and thoughtful debate can lead to a clear and sensible resolution as shown through the work of this committee.<sup>13</sup>

All members attended the customary post-presentation media conference, and all expressed their satisfaction with the report and the inquiry process.

### **The role of the report**

If a measure of the impact of committee reports is the content and timeliness of the Government Response, then this inquiry's impact might have seemed limited. The Government Response stated simply: 'The response to the report has been overtaken by the Cloning Implementation Working Group report to COAG via Australian Health Ministers' Advisory Council'.<sup>14</sup> In fact, the LACA Committee's report had been long-awaited, not just by scientists and the public, but also by governments, including COAG. COAG based its further deliberations on human cloning on the LACA report and subsequently agreed that Commonwealth, State and Territory governments should introduce nationally consistent legislation to ban human cloning and some related practices that were unacceptable; and to regulate research involving human embryos that had been created for assisted reproductive technology treatments but were surplus.<sup>15</sup> This must have been heartening for Committee members, as would have been the legislative response.

In June 2002, the Prohibition of Human Cloning and Research Involving Human Embryos Bill was introduced to Parliament and was later divided into two bills that were passed in

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<sup>13</sup> Nicola Roxon MP, 20 September 2001, *House of Representatives Hansard*, 31094-5

<sup>14</sup> Footnote 22 to *The Speaker's Schedule of outstanding Government Responses to Committee Reports*, presented 27 June 2002

<sup>15</sup> See the COAG communiqué of 5 April 2002, accessed online on 4 February 2008 at <http://www.coag.gov.au/meetings/050402/index.htm#art>

December 2002: the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*.<sup>16</sup>

During debate references were made by a range of members to the contribution to understanding and public debate that had been made by the LACA report.

### **What conclusions may be drawn from this inquiry process?**

Uhr has stated what parliamentary staff know but prefer not to dwell on: ‘The dull truths of law and policy contained in reports of parliamentary committees are, although important, often virtually unreadable, let alone marketable’.<sup>17</sup>

Despite acknowledging the gloomy truth, Uhr offered tips for marketing parliamentary committees:

- ensure they deliver a message to Parliament and government
- ensure they deliver a message to government—loudly—and thus encourage people to come to the Parliament but
- remember that it is the people who own the democratic system when you promote one component of that system.<sup>18</sup>

The cloning inquiry was an unusual one in some ways. The topic automatically generated interest from the public, the media and government. That interest was advantageous in that it prompted a flood of evidence, and encouraged a responsive attitude from the Executive. However, this intense interest might have caused the Committee and its report to lose cohesion. By sticking to the basics the Committee engaged the people and the Executive, to such an extent that it was a fine marketing exercise. The Committee ensured first, a

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<sup>16</sup> In 2005, pursuant to their provisions, both Acts were reviewed independently by a Legislation Review Committee known as the Lockhart Committee. The Lockhart report is available online, accessed 2 February 2008, at <http://www.lockhartreview.com.au/>

<sup>17</sup> Uhr, 2001, p. 46

<sup>18</sup> Uhr, 2001, pp. 46-7. Some liberties have been taken with Uhr’s tips to enhance their marketability

perception by the public that the process had integrity, that a range of them (private individuals, interest groups, and experts) all had an opportunity to put their case to representatives who were listening, whether or not they agreed; second, an acknowledgement within the report of the evidence and an explicit statement of the Committee's conclusions; third, a clear statement of what action the Committee recommended to the Executive; and fourth, that those recommendations mattered to the Executive.

The Committee's experience offers scope for some amplification of Uhr's tips for committees:

- ensure they deliver a message to Parliament and government *and offer a message they are obliged to consider*
  - ensure they deliver a message to the government—loudly, *clearly, and in unison*—and thus encourage people to come to the Parliament
  - remember that it is the people who own the democratic system when you promote one component of that system *and ensure they can believe that participation in committee work amounts to participation in government.*
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## Government responses to Parliamentary Committee inquiries

Clare James

‘Government responses are not the be all and end all. It is not all purely us providing a report and then begging the government to please accept it, but the government’s lack of response is a key flaw and I believe it is significantly diminishing the effectiveness of the committee report process.’<sup>1</sup>

Recently, there has been an increasing amount of media interest in government responses to parliamentary committee reports at the federal level. In June 2005, the Sydney Morning Herald newspaper published several articles in what they termed a ‘special Herald investigation’ into federal government responses to parliamentary inquiries.<sup>2</sup> The articles questioned the effectiveness of parliamentary committees, pointing out the number of committee reports which had not received a formal government response. The Herald reported that the federal government had not replied on time to a single public inquiry of the 62 it had ordered in the House of Representatives since December 1998, and it had given no reply to almost half of them.<sup>3</sup>

### *Aim and scope of paper*

The aim of this paper is to investigate the self-imposed requirement on the federal government to respond to parliamentary committee reports and to consider to what extent government responses are important in evaluating the effectiveness of committees. The paper will also consider some suggestions for improving the government response process as a way of increasing the effectiveness of parliamentary inquiries.

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<sup>1</sup> Senate Debates, 24.6.06, 143 (Senator Andrew Bartlett).

<sup>2</sup> G. Ryle and L. Pryor, ‘Democracy denied’, *Sydney Morning Herald*, 20 June 2005.

<sup>3</sup> *Id.*

The scope of this paper is limited to discussion of parliamentary committees at a federal level, focussing on House of Representatives select and standing committees concerned with the scrutiny of policy and administration. This paper will not attempt to discuss government responses to the inquiries of estimates committees, Senate legislative review committees which scrutinise government and other bills, specialised oversight committees, nor other committees to which the government response time limit does not apply, such as the Joint Standing Committee on Public Works.<sup>4</sup>

*History & authority for requirement to respond to parliamentary committee inquiries*

In Australia, the federal government formally responds to committee reports by way of a statement presented to the House, or Houses.<sup>5</sup> This practice was first introduced in 1978 when Prime Minister Malcolm Fraser stated on behalf of the government that the responsible Minister would report within six months of the tabling of a parliamentary committee report indicating the government's attitude towards recommendations in that report.<sup>6</sup>

In 1983, the Hawke Government reduced the period in which a response should be made from six months to three months.<sup>7</sup> According to Senator the Honourable John Button, 'that has been done because it is desired to make the reports of committees as relevant as possible to any considerations which the government may have to make in respect of policy matters'.<sup>8</sup> Senator Button further went on to explain the government's policy in the event of the government not being able to respond within the three-month period: 'Ministers responsible have been requested to advise Parliament accordingly, together with reasons why responses cannot be given'.<sup>9</sup>

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<sup>4</sup> Both the 1978 and 1983 government statements made it clear that the response mechanism excluded certain reports, including those made by the Joint Standing Committee on Public Works: Department of the House of Representatives (Committee Office), *Register of Reports from Committees of the House of Representatives and Joint Committees*, Canberra, May 1998, page vi.

<sup>5</sup> I. C. Harris (ed.), *House of Representatives Practice*, 5<sup>th</sup> Ed, Canprint Communications, Canberra, 2005, p 689.

<sup>6</sup> House of Representatives Debates, 25.5.78, 2465-6.

<sup>7</sup> Senate Debates, 24.8.83, 141-2.

<sup>8</sup> Ibid, p 141.

<sup>9</sup> Ibid, p 141.



On 27 June 1996, the Leader of the House, the Honourable Peter Reith MP, presented a paper to the House which affirmed the commitment of the Howard Government to respond to parliamentary committee reports within three months of their presentation.<sup>10</sup>

This three month deadline is also embodied in a Senate resolution of continuing effect,<sup>11</sup> which was first resolved in 1973<sup>12</sup> and later amended.<sup>13</sup> However, there is no such equivalent in the House of Representatives Standing and Sessional Orders. In 1998, the House of Representatives Standing Committee of Procedure attempted to incorporate the requirement for governments to respond to committee reports into the standing orders rather than leave it to the discretion of the government of the day. The Committee recommended that the standing orders be amended to:

- require the government to respond to committee reports within three months of tabling; (recommendation 13)
- enable a Member to request the Speaker to write to the Minister if, after three months, a response has not been made; (recommendation 14)
- require the Speaker to table in the House, at six monthly intervals, a schedule of government responses to the reports of the House of Representatives and joint committees, and reports presented to which responses are outstanding. (recommendation 15)<sup>14</sup>

The government did not support these recommendations. Mr Reith stated: ‘The government already maintains its three-month target for responses to reports and provides a six-monthly schedule of government responses to reports in the House of Representatives and joint committees and also of the reports presented to which responses are outstanding. In my view that is perfectly adequate, and we therefore do not propose to pick up this recommendation.’<sup>15</sup>

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<sup>10</sup> House of Representatives Debates, 27.6.96, 3026-3027.

<sup>11</sup> The Senate, ‘Procedural Orders and Resolutions of the Senate of Continuing Effect’ (No. 37), *Standing Orders and other orders of the Senate*, Canberra, September 2006, p 134.

<sup>12</sup> Senate Journal, 14.3.73, 51.

<sup>13</sup> Senate Journal, 24.8.94, 2054.

<sup>14</sup> House of Representatives Standing Committee on Procedure, *Ten Years On: A review of the House of Representatives Committee System*, May 1998, chapter 3, pp 4-5.

<sup>15</sup> House of Representatives Debates, 3.12.98, 1302 (The Hon. Peter Reith MP).

### *Form of government responses*

As indicated in Mr Reith's statement, at approximately six-monthly intervals, the Speaker presents to the House a schedule listing government responses to the House of Representatives and joint committee reports, as well as responses outstanding.<sup>16</sup> In response to this, the Leader of the House presents a document which lists current parliamentary committee reports and the stage reached by the relevant government department in each case.<sup>17</sup>

Critically, neither the list presented in response to the Speaker's schedule, nor correspondence from a Minister directly to a committee chair, constitutes a formal response to a committee report.<sup>18</sup> Accordingly, 'the government's response to a committee report is considered to have been formally made only when presented directly to the House(s)'.<sup>19</sup>

According to the *Guidelines for the Presentation of Government Documents to the Parliament*, a document that provides advice to officers of government departments on procedures for tabling government documents in Parliament, 'responses to parliamentary committee reports may be an in principle statement of the government's intentions, but must address all the recommendations and, if applicable, indicate reasons for not accepting any specific recommendation. Minority or dissenting reports and recommendations should also be dealt with in the same manner.'<sup>20</sup>

Further, 'if a final government response cannot be prepared within the three month time frame the responsible Minister should provide a brief explanation about the delay in the six monthly

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<sup>16</sup> For example, House of Representatives Votes and Proceedings (VP) 1993-95/2687; VP 1996-98/95; VP 1998-2001/1156.

<sup>17</sup> For example, VP 1993-95/1683; VP 1996-98/340; VP 1998-2001/1595.

<sup>18</sup> I. C. Harris (ed.), *op cit* (n 5), p 690.

<sup>19</sup> *Id.*

<sup>20</sup> Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament*, Canberra, June 2006, p 10.

reports to the Parliament about outstanding government responses, indicating when a detailed response will be available.’<sup>21</sup>

### *Importance of government responses to parliamentary committee reports*

Recent media attention given to government responses to committee reports raises the question: why are government responses to parliamentary committee reports important? Under a democratically-elected system, the government is under an obligation to listen to the people and to rule on their behalf. In this sense, the Sydney Morning Herald articles advocate that lack of or late government responses to committee inquiries has led to the denial of democracy: ‘Millions of taxpayers’ dollars have been wasted on more than 70 parliamentary inquiries whose recommendations have been ignored and left to collect dust’.<sup>22</sup>

In a similar vein, most commentators on this topic indicate that the response of governments to committee inquiries is an integral part of the separation of powers doctrine, allowing the Parliament to scrutinise the executive government of the day. Dr John Uhr stresses the importance of government responses to committee reports in terms of parliamentary accountability: ‘If governments were genuine about their obligations of parliamentary accountability, they would at the very least respond to reports from parliamentary committees of inquiry. They do not have to agree with the reports or accept any of their recommendations, but they should formally respond, on the public record in Parliament and invite open debate about the appropriateness of the government’s response ... Why should community groups bother to put their views to parliamentary committees if governments never bother to listen to the committees? And why should community groups bother to pay attention to parliamentary committees if parliaments do not act to repair the problem of non-listening governments?’<sup>23</sup>

Politicians also see government responses as important in terms of both democracy and accountability. Recently, Senator Andrew Bartlett charged the government with contempt for the committee system in speaking to the President’s report on outstanding government

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<sup>21</sup> Ibid, p 11.

<sup>22</sup> G. Ryle and L. Pryor, op cit (n 2).

<sup>23</sup> J. Uhr, ‘Issues Confronting Parliaments’, *Australasian Parliamentary Review*, Autumn 2002, Vol. 17(1), 119-30: 129.

responses to committee reports. Senator Bartlett was discussing the recent tabling of a government response to a superannuation committee report: ‘The government rejected, I think, all but one of the recommendations, and that is fine. The government can reject them and put forward the reasons why. The problem is that that response took four years and four months to be presented—it took four years and four months to say, “No—don’t think so”. How ridiculous! It shows contempt not just for the Senate and the committees but also for the public.’<sup>24</sup>

*Evaluating the effectiveness of parliamentary committees: relevance of government responses?*

Government responses to parliamentary committee reports are also important in terms of rating the effectiveness of parliamentary committees. The Sydney Morning Herald suggests that parliamentary committees are wasteful and ineffective, particularly in the federal arena, because so few of their inquiries have received a timely government response.<sup>25</sup> The following cartoon is indicative of the position taken by the media:<sup>26</sup>



<sup>24</sup> Senate Debates, 22.6.06, 142-143.

<sup>25</sup> G. Ryle and L. Pryor, op cit (n 2).

<sup>26</sup> Moir, ‘Moir’s cartoon’, *Sydney Morning Herald*, 21 June 2005.

This view is espoused by one Labor MP writing for the Sydney Morning Herald: ‘There is no point to parliamentary committees if they are not listened to by the executive, or if they can’t take people’s concerns to the government.’<sup>27</sup>

Several academics have also used simple statistical information about numbers of committee reports and responses to evaluate the effectiveness of committees. In 2001, Halligan et al devised a simple method for comparing Senate, House of Representatives and joint committee reports using the number and length of committee reports.<sup>28</sup> They concluded that an overall trend was the ‘relatively dominant position occupied by the Senate system’ and the ‘secondary position of the House of Representatives’.<sup>29</sup>

Malcolm Aldons, a former Committee Secretary within the Department of the House of Representatives, presents a more sophisticated methodology for evaluating committees on the basis of government responses. Aldons rates committees as effective if more than half of the recommendations contained in a committee report are accepted and implemented by the government.<sup>30</sup> His methodology has five steps:<sup>31</sup>

1. Count the total number of recommendations, excluding ‘soft recommendations’, that is, recommendations which have no potential to influence government because of the way they are worded, such as ‘the committee recommends that the government continue to ...’.
2. Classify recommendations, and thereby reports, as referring to either ‘policy’ or ‘administration’.
3. Classify government responses as ‘agree’, ‘agree in part’ or ‘disagree’. This may have to be inferred if not explicitly stated in the response.
4. Classify the accepted recommendations as to whether there is any commitment by the government to implement.

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<sup>27</sup> B. O’Connor, ‘PM should practise what he preaches’, *Sydney Morning Herald*, 24 June 2005.

<sup>28</sup> J. Halligan, J. Power and R. Miller, ‘The Three Committee Systems of the Australian Parliament – A Developmental Overview’, *Australasian Parliamentary Review*, Spring 2001, Vol 16(2), pp 163-164.

<sup>29</sup> *Ibid*, p 164.

<sup>30</sup> M. Aldons, ‘Rating the Effectiveness of Parliamentary Committee Reports: The Methodology’, *Legislative Studies*, Spring 2000, Vol 15(1), 22-32.

<sup>31</sup> *Ibid*, pp 25-28.

5. Rate the effectiveness of the report. Aldons' rating system means a report will be one of the following:
- (i) effective, if at least fifty percent of the recommendations are accepted, and at least fifty percent of these accepted recommendations have a commitment to implementation or have been implemented;
  - (ii) *prima facie* effective, if at least fifty percent of the recommendations are accepted, but there is insufficient information to determine whether fifty percent of these accepted recommendations have a commitment to implementation or have been implemented;
  - (iii) doubts about effectiveness, if at least fifty percent of the recommendations are accepted, but less than fifty percent of these accepted recommendations have a commitment to implementation or have been implemented;
  - (iv) ineffective, if less than fifty percent of the recommendations are accepted.

There is also a final step: if one of the recommendations that have been implemented is a key recommendation, then the report can be classified as effective, even if less than fifty percent of recommendations are accepted or implemented.<sup>32</sup>

Aldons emphasises that evidence of the government's intention to implement recommendations, whether by legislative or administrative action, is the most crucial step in his methodology, much more important than the mere acceptance of recommendations by the government in its response: 'Without knowledge of implementation we do not know *what is being done* about recommendations that have been accepted or those with likely positive outcomes ... acceptance does not necessarily mean that the government is going to do something new.'<sup>33</sup>

*Evaluating the effectiveness of parliamentary committees: broader approach*

The 'government response approach' taken by Aldons and others has been questioned, as it fails to measure other benefits and consequences of committees, including:

- public participation

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<sup>32</sup> Ibid, p 27.

<sup>33</sup> Ibid, p 26.

- exposure of issues
- initiation of long-term change.

Indeed, despite his methodology to rate the effectiveness of committees, Aldons himself has commented that it is ‘virtually impossible to measure the impact of committees’ due to the large amount of what he terms ‘non-decisional’ functions of committees.<sup>34</sup> Such functions include ‘taking Parliament to the people’<sup>35</sup> by enabling citizens to put their case on the public record, and exposing committee members to important areas of public policy.<sup>36</sup>

In 2001, the New South Wales Legislative Council applied Aldons’ methodology to draw conclusions about the effectiveness of two reports of the Standing Committee on Law and Justice.<sup>37</sup> The Council made some comment on the appropriateness of Aldons’ methodology for evaluating committees and their reports.

The Council identified several benefits afforded by the use of the methodology in their case study. Firstly, it showed trends in acceptance or rejection of particular types of recommendations or by particular agencies, and secondly, it enabled identification of poorly drafted recommendations, both of which would serve as a useful guide for future drafting of recommendations.<sup>38</sup>

Lastly, and most importantly, the Council found that the methodology focussed attention on ‘the nature of implementation that the government has committed itself to as a response ... it identifies implementation needing follow up, where it is not clear yet whether a recommendation has been effective’.<sup>39</sup>

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<sup>34</sup> Ibid, p 25.

<sup>35</sup> L. Barlin (ed.), *House of Representatives Practice*, AGPS, Canberra 1997, p 583 (cited in M. Aldons, op cit (n 30), p 24).

<sup>36</sup> Aldons, op cit (n 30), p 24.

<sup>37</sup> New South Wales Legislative Council, ‘Evaluating Effectiveness of Committee Reports: Case Study of Law and Justice Committee Reports on the Inquiry into Crime Prevention through Social Support’, *Annual Report*, Volume Two, Appendix 3, December 2001.

<sup>38</sup> Ibid, p 118.

<sup>39</sup> Id.

However, the Council also found major weaknesses in Aldons' methodology, namely that the methodology uses only one indicator of performance to the exclusion of other more *qualitative* measures of effectiveness of committees: 'It assumes that effectiveness of an inquiry is a function of how positively the executive government responds to the recommendations made. This is a very narrow view of the potential contribution of parliamentary inquiries.'<sup>40</sup> By focussing on government responses to recommendations as the measure of effectiveness of committees, 'the value of parliamentary committee work is reduced to only that aspect of it which can be easily quantified'.<sup>41</sup>

The view of the NSW Legislative Council has been echoed by countless other academic commentators on this topic. Hawes has pointed out that 'committee influence is far more subtle a phenomenon than any quantitative count of recommendations would imply'<sup>42</sup>, while Dr Rodney Smith has stated that 'it would be difficult and misleading to evaluate ... committees by focusing solely on government responses to their recommendations'<sup>43</sup>. Further, the Speaker of the House of Representatives has acknowledged that 'the value of a committee inquiry and the report is not simply determined by whether a report receives a timely government response'.<sup>44</sup>

Following are several factors which would need to be assessed when evaluating the effectiveness of parliamentary committees.

### *1. Public participation*

In a paper presented by Mr Paul Pearce MP, a Member of the NSW Joint Parliamentary Committee on the Independent Commission Against Corruption (ICAC), Mr Pearce points out that, although in the past the Committee has made various recommendations relating to

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<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> D. Hawes, *Power on the backbenches? The growth of select committee influence*, School for Advanced Urban Studies (SAUS) Publications, Bristol, 1993, p 182 (cited in M. Aldons, op cit (n 54), p 85).

<sup>43</sup> R. Smith, 'The Place of Oversight Committees in Integrity Systems: Some Evidence from New South Wales, *Report on the 2<sup>nd</sup> National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 22-23 February 2006*, Report No. 7/53, April 2006, page 166.

<sup>44</sup> House of Representatives Debates, 23.6.05, 105 (the Hon David Hawker MP).



the ICAC which produced no reaction from the government, ‘the mere fact of putting these issues into the public arena shows another powerful and advantageous role that our oversight committees perform’.<sup>45</sup>

This has also be recognised by the Speaker of the House of Representatives: ‘Committee inquiries serve a key purpose in allowing the community to participate directly in the parliamentary process, commonly referred to around this place as ‘taking Parliament to the people’. The inquiries help to inform members of the public about issues under consideration in the Parliament and to directly inform parliamentarians of public and community attitudes.’<sup>46</sup>

Clearly, any measure of the effectiveness of a parliamentary committee would need to evaluate the impact of providing public debate on the particular topic.

## *2. Exposure of issues*

Aldons states that ‘not all reports have outcomes that influence or are intended to influence decision-making. There are reports without recommendations and here the inputs, for example the evidence collected, could be important as a way of discharging the informing function of Parliament. Sometimes the input, for example the discussion/issues paper, could become the final committee output – the committee report.’<sup>47</sup>

Some committee reports do not require a government response. The Speaker gives the example of scrutiny of the Reserve Bank, which occurs twice a year, where the public hearing is the critical part of the inquiry.<sup>48</sup>

Hence, in addition to Aldons’ rating of effectiveness using the acceptance and implementation of reports recommendations, the exposure of issues is an important measure which should be

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<sup>45</sup> P. Pearce, ‘Parliamentary Oversight from Parliament’s Perspective: the NSW Parliamentary Committee on ICAC’, *Australian Parliamentary Review*, Autumn 2006, Vol 21(1), 95-101: 100.

<sup>46</sup> House of Representatives Debates, 23.6.05, 105 (the Hon David Hawker MP).

<sup>47</sup> M. Aldons, op cit (n 30), p 25.

<sup>48</sup> House of Representatives Debates, 23.6.05, 105 (the Hon David Hawker MP).

included. Professor Geoffrey Lindell stresses to need to add other factors into the equation, including:

- knowledge of the existence of others reports and information, prepared by committees or other House or alternative and non-parliamentary sources (where appropriate)
- whether the committee brought to light new information and advanced new criticisms.<sup>49</sup>

### *3. Initiation of long-term change: the causal relationship between committee inquiries and government policy*

According to Aldons, ‘a general problem with recommendations and responses, a problem that has bedevilled analysts for a long time, is causality: the relation between the recommendation and the action taken.’<sup>50</sup> This may be extended further to encompass the relation between the inquiry process and the action taken – often government departments pick up on key issues during the course of an inquiry to the extent that they may anticipate possible recommendations and act accordingly prior to the release of the committee report. The following quote was taken from the Sydney Morning Herald is an example of this:

‘Some inquiries take so long to report that the original concerns are no longer an issue. For instance, in October 2002 the Senate began investigating the use of rural water. It finished in August 2004, after 11 public hearings in Canberra, Melbourne, Sydney, Darwin and in rural towns in NSW, Queensland and Western Australia, but by that time other arms of government – state and federal – had set a water reform agenda. This rendered the inquiry largely irrelevant.’<sup>51</sup>

This author disputes the fact that the rural water inquiry was ‘largely irrelevant’, maintaining instead that the inquiry was probably a catalyst for government action in this respect. As noted by the Speaker of the House of Representatives, ‘governments often embrace a position arising from a committee inquiry or report before providing a formal response and many have

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<sup>49</sup> G. Lindell, ‘How (and whether?) to evaluate parliamentary committees – from a lawyer’s perspective’, *Paper presented to an evaluation forum on 18 November 2004*, December 2004, page 3.

<sup>50</sup> M. Aldons, ‘Rating the Effectiveness of Parliamentary Committee Reports: Some Examples’, *Australasian Parliamentary Review*, Autumn 2001, Vol 16(1), 52-60: 56.

<sup>51</sup> G. Ryle and L. Pryor, ‘We were given hope and we got nothing’, *Sydney Morning Herald*, 20 June 2005.

influenced government policy and legislation but have not yet received a formal government response.’<sup>52</sup>

Hence, in any evaluation of the effectiveness of parliamentary committees it would be necessary to examine to what extent government policy has changed as a result of the inquiry, regardless of whether this has been formalised in any official government response.

#### *4. Legal obstacles to committee powers*

Lindell states that any measurement of effectiveness of committees would need to address the extent to which legal obstacles or limitations to committees powers of inquiry frustrate the work of committees. These restrictions include:

- Executive privilege
- Immunity of states and their officials from appearing and answering questions
- Inability of either House to exercise jurisdiction over Ministers in the other House
- Commercial in confidence clauses in public commercial contracts which would prevent scrutiny over the expenditure of public moneys.

#### *5. Other considerations*

Lindell advocates the need to obtain information from committees, the witnesses who appeared before them, and other affected individuals on the extent to which problems have arisen in regards to the rights of individuals, since ‘effectiveness also needs to be measured by reference to the rights of such persons’.<sup>53</sup>

Political partisan considerations, such as ‘the absence of unanimity and voting along party lines’,<sup>54</sup> is another factor which would need to be considered in measuring the effectiveness of a committee.

#### *Can these qualitative factors be measured?*

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<sup>52</sup> House of Representatives Debates, 23.6.05, 105 (the Hon David Hawker MP).

<sup>53</sup> G. Lindell, op cit (n 48), page 5.

<sup>54</sup> Id.

Aldons has stated: ‘Quantitative data analysis measures the success or otherwise of committee reports in influencing government decision-making based on government acceptance of recommendations. It is a method that can be empirically tested. Qualitative data cannot be tested. It is based in part at least on views and opinions of others.’<sup>55</sup> However, this does not pose a problem for Aldons, as he doubts the value of qualitative measures of the effectiveness of committees: ‘I for one fail to see how this subtle influence can exist when the key recommendations of a report are rejected unless there is compelling evidence to the contrary’.<sup>56</sup>

Professor Lindell agrees that it is difficult to viably evaluate the effectiveness of committees on a comprehensive, regular and systematic basis: ‘Statistics may assist and are of course relevant but it is, as others have pointed out, difficult to evaluate the effect of parliamentary control upon the Executive Government. The main problem relates to the making of subjective judgments about the quality of what is achieved especially when the effect of parliamentary control is usually indirect and even then, frequently denied by those affected by it.’<sup>57</sup>

Accordingly, Lindell suggests that the time and effort which would necessarily be involved in a proper evaluation of the effectiveness of a committee indicates it would not really be worthwhile to apply it regularly and systematically to *all* committees. Rather, he suggests it may be useful for *some* committees on an *ad hoc* basis.<sup>58</sup>

The NSW Legislative Council came to a similar conclusion, suggesting that Aldons’ methodology would be best suited to committee reports which produce recommendations to improve aspects of government administration, and noting that the definition of ‘effectiveness’ will be different for each particular committee inquiry or report and as such would effect the choosing of any measures or indicators to measure effectiveness.<sup>59</sup>

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<sup>55</sup> M. Aldons, ‘Problems with Parliamentary Committee Evaluation: Light at the end of the tunnel?’, *Australasian Parliamentary Review*, Autumn 2003, Vol 18(1), 79-94: 92.

<sup>56</sup> *Ibid*, p 85.

<sup>57</sup> G. Lindell, *op cit* (n 48), page 3.

<sup>58</sup> *Ibid*, page 4.

<sup>59</sup> New South Wales Legislative Council, *op cit* (n 36), p 119.

This has been echoed by other commentators. A recent study by Smith took the view that ‘evaluation of parliamentary committees should not impose a single set of pre-ordained outcomes as its measure of success or failure. Parliamentary committees will usually have “multiple audiences” or “stakeholders” with different and sometimes competing interests. Evaluations of committee work should therefore take the views of these stakeholders into account’.<sup>60</sup>

*Ideas for improving government responses to parliamentary committee reports*

Clearly, the effectiveness of a parliamentary committee cannot be measured simply by reference to the rate of government responses. However, improvements to the rate of responses as well as the content of those responses would go some way towards both increasing the effectiveness of committee inquiries and quelling public and media outcries about the denial of democracy.

One suggestion by Aldons to improve the content of government responses is for the government to provide responses in a standardised format: ‘A best practice format is one where the response has a general introduction followed by a section on each recommendation. In each section the recommendation should be repeated and, under the heading ‘response’, the government should indicate its attitude to each recommendation. Government should indicate whether the recommendation is accepted, accepted in-principle, not accepted, whether the recommendation is not relevant or unnecessary and so forth. There should also be a ‘comment’ section that contains additional information on the recommendation. The other heading for each section should be ‘implementation’. Here the government should indicate a strategy for implementing the recommendations it accepts<sup>61</sup> ... The inclusion of an implementation strategy for recommendations accepted should go a long way to remove confusion over the response.’<sup>62</sup>

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<sup>60</sup> R. Smith, op cit (n 42), p 166.

<sup>61</sup> M. Aldons, op cit (n 30), p 29.

<sup>62</sup> Ibid, p 30.

There has been some attempt by the public to improve the rate of government responses to committee reports. For instance, according to the Sydney Morning Herald, a coalition of community groups affected by the inquiry process formed a watchdog group to monitor how the federal government responds. Known as the Parliamentary Action Group, it was to check whether the Howard Government replies within three months, as it promised in 1996, and if not, lobby for action. The group met on 20 June 2005 at the Ashfield Uniting Church, led by the Reverend Bill Crews of the Exodus Foundation.<sup>63</sup> At the time of writing, nothing more had been heard from the group.

Parliamentarians have also sought to improve the rate of government responses to committee inquiries. One Member of the House of Representatives actually asked the Speaker to write to responsible Ministers to seek advice as to when a response would be received and reasons for delay.<sup>64</sup>

However, the Speaker responded: ‘There is no basis of authority for me to write to ministers concerning responses to committee reports that have not been made after three months. My role as the Speaker is to monitor the provision of government responses to committee reports and inform the House of outstanding responses. The schedule I have just presented fulfils this function. If this role is to be expanded it would be a matter for the Procedure Committee to consider and for the House to determine. Finally, I would like to make the point that it is within the authority of individual committees to follow up with relevant ministers and departments with regard to their reports.’<sup>65</sup>

The Speaker mentions perhaps one of the most useful suggestions for increasing government response to reports and thereby the effectiveness of parliamentary inquiries: have parliamentary committees follow up on their own reports. Follow up measures could include:

- having dedicated researchers from the committee secretariat to follow up government responses and action taken. This may include investigating policy developments undertaken by the relevant government department.

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<sup>63</sup> G. Ryle, L. Pryor and M. Metherell, ‘Senate boss blasts PM’s monarchy’, *Sydney Morning Herald*, 21 June 2005.

<sup>64</sup> House of Representatives Debates, 22.6.05, 84 (Mr Daryl Melham MP).

<sup>65</sup> House of Representatives Debates, 23.6.05, 105.

- inviting the relevant portfolio Minister to brief the Committee at the point three months from the date the report was tabled and update the committee on the progress of their recommendations, or if there has been no progress, why not.

According to Aldons, ‘committees rarely follow up to check implementation of recommendations in reports and hardly ever publish this information’.<sup>66</sup> In the absence of a standardised format for government responses to committee reports, he advocates for greater committee follow up of responses, including seeking clarification of responses like ‘accepted in principle’ or ‘accepted in part’.<sup>67</sup> Such follow up should seek to analyse the impact of each recommendation contained in the committee report on government decision-making, if the recommendation is accepted and implemented.<sup>68</sup>

In terms of the follow up procedures of committees to responses to their reports, Aldons suggests that the Presiding Officers of both Houses to ask the government to table an ‘Action Report’ at regular intervals: ‘These reports would include information on implementation of recommendations the government has accepted and the final view on recommendations the government said needed further consideration or those that have referred to others’.<sup>69</sup>

#### *Follow up procedures from the UK Parliament*

According to the House of Commons Select Committee on Liaison, ‘a major factor in a committee’s effectiveness is its willingness to pursue and review its recommendations. Once the publication of the report, the media coverage, and the government reply have conveniently faded away, nothing is easier than for a government department to forget all about what a select committee has recommended.’<sup>70</sup>

The Liaison Committee suggested that select committees within the House of Commons should ‘assess progress on “live” recommendations and criticisms’ and report by reference to

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<sup>66</sup> M. Aldons, op cit (n 30), p 27.

<sup>67</sup> Ibid, p 30.

<sup>68</sup> Id.

<sup>69</sup> M. Aldons, op cit (n 49), p 59.

<sup>70</sup> House of Commons Select Committee on Liaison, First Report on ‘Shifting the Balance: Select Committees and the Executive’, March 2000, para 51.

written evidence, and through additional hearings if necessary.<sup>71</sup> The Liaison Committee said it would be desirable for each committee to produce an annual report before Christmas each year, and in the following January, the Liaison Committee or its successor would:

- draw conclusions about the overall effectiveness of the select committee system; and
- address any problems affecting committees, such as access to documents, attendance of witnesses, or quality of government replies.<sup>72</sup>

As well as scrutiny of government departments, the Liaison Committee commented on the usefulness of the initiative as an audit of committee effectiveness: ‘Mere comparison of reports and government replies produces the “bean counting” so beloved of some academics, which is actually misleading. It does not distinguish between the “soft” recommendation which is already halfway to implementation and the “hard” recommendation which may change thinking - and may even be quietly adopted months or years later. Nor does it give proper weight to situations where analysis and criticism, rather than formal recommendations, have the most influence. Regular follow up reports - which of course may include a committee’s own views upon its work - will give a much truer and fairer assessment of committees’ achievements.’<sup>73</sup>

*Annual Report may provide vehicle for committees to follow up on inquiries*

It is possible for House of Representatives committees to revisit past inquiries. For most committees within the House of Representatives, ‘inquiries are referred by the House, a Minister, or in some cases the Speaker. A matter may also be referred to a committee by legislation ... Although technically the general purpose standing committees cannot initiate their own references, in practice they may either take the initiative and seek a reference or at least be involved in considering and negotiating suitable terms of reference. In addition, the ability to consider annual reports and Auditor-General’s reports enables these committees on

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<sup>71</sup> Ibid, para 52.

<sup>72</sup> Ibid, para 55.

<sup>73</sup> Ibid, para 54.



their own initiative to address matters dealt with in such reports, and this may lead to informal discussions with officials, or to formal hearings”.<sup>74</sup>

As indicated above, a government department’s Annual Report may be used as a vehicle to follow up previous recommendations. This has been utilised by the Joint Standing Committee on Foreign Affairs, Defence and Trade, which follows up responses to recommendations through inquiries based on the Annual Report each year.<sup>75</sup> This approach would enable committees to follow up on recommendations made previously to that government department to track their implementation, or lack thereof.

It has been said that the ‘parliamentary dustbin is littered with the unremembered words of inquiries into important policy options’.<sup>76</sup> Although a government response to a parliamentary committee inquiry is by no means the only factor determinative of the effectiveness of a committee, it remains an important measure, particularly to the public and the media. Government policy may still change as a result of a committee inquiry despite a lack of formal government response. Perhaps, as Aldons and others suggest, the onus then needs to shift back to the committees themselves to follow up on their recommendations: ‘Absence of follow up procedures is a feature of committee operations. But if there is to be change committees must be interested to know the final outcomes of their reports. If they are not interested no one else will be.’<sup>77</sup>

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<sup>74</sup> I. C. Harris (ed.), op cit (n 5), p 649.

<sup>75</sup> The most recent of these was: Joint Standing Committee on Foreign Affairs, Defence and Trade *Review of the Defence Annual Report 2004-05*, Canberra, October 2006.

<sup>76</sup> J. Uhr, ‘Parliamentary measures: Evaluating parliament’s policy role’, in I. Marsh (ed.), *Governing in the 1990s, An agenda for the decade*, CEDA/Longman, Melbourne, 1993, pp 347-75 (cited in M. Aldons, op cit (n 30), p 22).

<sup>77</sup> M. Aldons, op cit (n 49), p 59.



## Beauty is in the eye of the beholder

### *A framework for testing the effectiveness of parliamentary committees*

David Monk<sup>1</sup>

#### *Absrtact*

*This paper argues that it is possible and valuable to quantitatively assess the performance of parliamentary committees. Most efforts to date have focussed on anecdotal reporting, which is unreliable. The few studies that collected quantitative information have been small scale and have not used sampling methods. The suggested approach is to assess the approval of committee reports by different political sectors, or relevant groups. This would include surveying voters and inquiry stakeholders, and analysing government responses. For a committee report or inquiry to be effective, at least one group must rate it as effective. The more groups that rate a report as effective, and the higher their effectiveness ratings, then the greater the effectiveness.*

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<sup>1</sup> A number of people have contributed to this paper in various ways. They include Stephen Boyd, David Clune, Richard Grant, Sonia Palmieri, Ian Thackeray, and Glenn Worthington.

## Introduction

Committees are now a large part of the business of the Parliament of the Commonwealth of Australia. In their 2006-07 annual reports, the Departments of the Senate and House of Representatives report total expenditure on committees of \$8.3 million and \$10.7 million. Of their total expenses, this represents 36.9 per cent and 43.0 per cent respectively.<sup>2</sup> Prior to the prorogation of the Parliament in 2007, the Department of the Senate supported 15 Senate committees and three joint committees. The Department of the House of Representatives supported 18 House committees and nine joint committees.<sup>3</sup> The act alone of spending \$19 million per year of taxpayers' money makes these bodies eligible for evaluation.

In parliamentary terms, this scale of activity is rather recent. A range of standing committees to cover the field of government operations did not exist for much of the twentieth century. The Senate created its suite of standing committees in 1970 and the House did so in 1987.<sup>4</sup> This rate of development is comparable to the House of Commons in the United Kingdom, which is the constitutional reference point for the Senate and House.<sup>5</sup> The House of Commons created a suite of portfolio standing committees in 1979.<sup>6</sup>

The creation of these committees has led to the development of an evaluation literature. There are three branches. One view is to examine the impact that committees have had on public policy, including the attitude of governments and the related public debate. Little or no

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<sup>2</sup> Department of the Senate, *Annual Report 2006-07*, pp. 54, 90, Department of the House of Representatives, *Annual Report 2006-07*, pp. 29, 103.

<sup>3</sup> Department of the Senate, 'Senate and other Senate-based Committees', <http://www.aph.gov.au/Senate/committee/com-list.htm> (accessed 19 November 2007), Department of the House of Representatives, 'House Committees of the 41<sup>st</sup> Parliament', [http://www.aph.gov.au/house/committee/comm\\_list.htm#standing](http://www.aph.gov.au/house/committee/comm_list.htm#standing) (accessed 19 November 2007).

<sup>4</sup> Harry Evans, ed., *Odgers' Australian Senate Practice*, 11<sup>th</sup> edition, Department of the Senate, 2004, p. 347, I.C. Harris, B.C. Wright, & P.E. Fowler, *House of Representatives Practice*, 5<sup>th</sup> edition, Department of the House of Representatives, 2005, p. 627.

<sup>5</sup> Section 49 of the Constitution states that the powers, privileges and immunities of the Senate and the House are the same as the House of Commons at the time of federation (1901).

<sup>6</sup> Geoffrey Lock, 'Resources and Operations of Select Committees: A Survey of the Statistics', in Gavin Drewry, ed., *The New Select Committees: A study of the 1979 reforms*, 2<sup>nd</sup> edition, Clarendon Press, Oxford, 1989, p. 319.

quantitative data is collected. Instead, researchers place reliance on case studies, observation and interviews with key participants, such as committee members. A key feature of this approach is the argument that government implementation of committee recommendations does not constitute an effectiveness indicator.<sup>7</sup>

The second approach is to use both information on the implementation of recommendations and the effect on debate as indicators of effectiveness. The data collected on the acceptance of recommendations tends to be limited to summary data such as averages. The reports studied are usually chosen selectively, focussing on one or two committees, rather than using a sampling methodology. Conclusions on a committee's effect on debate also tend to be based on case studies.<sup>8</sup>

The third, and smallest branch, is the group that argue for more quantitative data. They do not set out a plan for the process, but realise that there can be a significant gap between perceptions and common wisdom on one hand and reality on the other.<sup>9</sup>

This paper is based on the views of the second and third branches of the literature. Attaching numbers to parliamentary committee work may be difficult, given the flexible and unpredictable nature of what they do. However, the exercise is likely to bring additional information and insight to our understanding of committees, even if it does not capture

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<sup>7</sup> For example, see Philip Giddings, 'What Has Been Achieved?', in Gavin Drewry, ed., *The New Select Committees: A study of the 1979 reforms*, 2<sup>nd</sup> ed., Clarendon Press, Oxford, 1989, John Halligan, Robin Miller and John Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, 2007, pp. 217-241, including the view of Senate committee secretaries at p. 223. A general argument against quantifying the effect of parliamentary committees is made in G.S. Reid and Martyn Forrest, *Australia's Commonwealth Parliament 1901-1988*, Melbourne University Press, Carlton, 1989, p. 387.

<sup>8</sup> For example, see Michael Rush, 'Does activity equal success? – The work of the Select Committees on Education and the Social Services', in Dilys M. Hill, ed., *Parliamentary select committees in action: A symposium*, Department of Politics, University of Strathclyde, Glasgow, 1984, Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, F.A. Kunz, *The Modern Senate of Canada, 1925-1963: A re-appraisal*, University of Toronto Press, Toronto, pp. 263-268, New South Wales Legislative Council, *Annual Report 2001*, vol. 2, pp. 114-119.

<sup>9</sup> Malcolm Aldons, 'Problems with Parliamentary Committee Evaluation: Light at the End of the Tunnel?', *Australasian Parliamentary Review*, vol. 18, no. 1, p. 91, Peter O'Keeffe, 'The scope and function of parliamentary committees', *The Parliamentarian*, vol. 73, no. 4, p. 275.

everything that occurs. Further, it appears incongruous that several commentators argue against an analysis of committee recommendations when they are a central part of the process for many committees. The research question may instead be to ask what the data means. These ideas lead to the development of a methodology for assessing committee effectiveness.

### **Is it desirable to quantitatively measure committee performance?**

As discussed earlier, the main argument why it is worth attempting to quantitatively measure committee performance is that generally held perceptions may not match the reality. One way in which this might occur is that one or two particularly successful committee reports could be seen as validating all committee work, when these reports may only be a small minority of the total. A previous Clerk-Assistant (Committees) in the Senate has put this view and noted that a failure to measure performance may be correlated with reduced performance:

Although real and important, all of these examples of performance are anecdotal and hence in some respects unreliable. Parliaments seldom genuinely assess or evaluate themselves and their committees ....

The problem remains, however, that if Parliaments impose no regular or even periodic performance standards on committees, they may function without any real responsibility for their own performance. And without some greater degree of responsibility there may be insufficient interest in even genuinely exerting the full range of influences and pressures which committees can project.<sup>10</sup>

In 2004, the Australian National Audit Office and the Department of Finance and Administration jointly published *Better Practice Guide: Better Practice in Annual Performance Reporting*. This is the authoritative guidance for the Australian public sector on performance reporting. Although it is aimed at government agencies, many of its principles are also applicable to parliamentary committees. For example, the *Better Practice Guide* notes the importance of quantitative data. It states, ‘Without performance reports, planners would

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<sup>10</sup> Peter O’Keeffe, ‘The scope and function of parliamentary committees’, *The Parliamentarian*, vol. 73, no. 4, p. 275.

have to rely on intuition and opinions, which are likely to be less precise and more subjective than carefully designed and balanced reporting'.<sup>11</sup>

The *Better Practice Guide* also makes a number of observations that meet the arguments against collecting quantitative data for assessing the effectiveness of committees. For example, one of the major works on the 1979 reforms in the House of Commons stated:

... it is clear that while the form in which objectives have been set may have varied, the committees have in general focussed on indirect influence, information and accountability. No easy measure of their achievements or effectiveness under such heads is possible, given the imprecise nature of such objectives. We shall, therefore, look not at measures of achievement, recommendations accepted or whatever, but rather at the three directions in which such influence is directed – the House, the government, and public opinion – in order to see what effect it has had.<sup>12</sup>

In essence, this is a 'too hard' argument. Giddings has noted the difficulty of the task and chosen a non-quantitative approach instead. In their recent work on the committees in the Australian Parliament, Halligan, Miller and Power make a similar case:

There is little doubt that the outcome of such a massive evaluative exercise would be ambiguous and inconclusive, if only because there are typically too many players and interactions in most policy processes for the distinctive contributions of individual players, such as a parliamentary committee, to be evaluated in a quantitative sense.<sup>13</sup>

The *Better Practice Guide* puts the response as follows:

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<sup>11</sup> Australian National Audit Office and Department of Finance and Administration, *Better Practice Guide: Better Practice in Annual Performance Reporting*, 2004, p. 4.

<sup>12</sup> Philip Giddings, 'What Has Been Achieved?', in Gavin Drewry, ed., *The New Select Committees: A study of the 1979 reforms*, 2<sup>nd</sup> ed., Clarendon Press, Oxford, 1989, p. 369.

<sup>13</sup> John Halligan, Robin Miller and John Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, 2007, p. 222.

Good performance reporting does not come easily or quickly. It involves focusing everyone in the agency on capturing accurately the essence of what success means for an agency and presenting it in context for all users. It entails review and refinement over time in consultation with both internal and external stakeholders.<sup>14</sup>

This is a ‘try and try again’ argument. It accepts the difficulty of the task and suggests that repeated attempts, combined with learning from each stage, will produce a useful result. The *Better Practice Guide* also states that it may be difficult to find an indicator that exactly matches the conduct in question. In this case, it suggests using an approximate indicator along with an explanation why it was used.<sup>15</sup> The idea is to accept that there may be weaknesses in the data, but it is better to use less than perfect data if the problems are clearly explained. This is a preferable approach because it leads to a better-informed debate. If no-one produces quantitative information, then no-one can determine whether it adds value or not. The arguments against numerical data will be much stronger if there is some data to argue against.

When examining public sector performance, there are a number of indicators available. The first is inputs, which measures the resources used by an agency. This is usually measured through staff hours or money spent. The next measure is outputs. This is what the agency did and its measurement depends on what the agency’s role is. A health department might measure this through the number of surgical operations and the number of patient consultations. A parliamentary committee might list the number of reports produced and the number of submissions authorised for publication. Dividing outputs by inputs gives an efficiency result, which shows how much outputs were produced with a single dollar, or whatever unit of resources is used.

The final measure, and often the most important, is effectiveness. The *Better Practice Guide* defines this as, ‘the essence of what success means for an agency’.<sup>16</sup> For a health department

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<sup>14</sup> Australian National Audit Office and Department of Finance and Administration, *Better Practice Guide: Better Practice in Annual Performance Reporting*, 2004, p 5.

<sup>15</sup> *Id.*, p. 13.

<sup>16</sup> *Id.*, p. 5.



this could be a reduction in disease rates or longer life expectancy. As noted earlier, a number of researchers have defined effectiveness for a parliamentary committee as influencing the government and the general debate.

It is important to differentiate between outputs and effectiveness. As the *Better Practice Guide* states, ‘Better practice performance reporting involves agencies going beyond *what they did* to explain *what happened next*’.<sup>17</sup> For example, in their study of committees in the Parliament of the Commonwealth of Australia, Halligan, Miller and Power establish four categories of committee report (review, legislation, investigation and scrutiny). They then note that Senate committees are involved in all four categories, whereas House and joint committees tend to focus on review and scrutiny inquiries respectively. Their conclusion is that, ‘the Senate performs fairly strongly across all four roles’.<sup>18</sup> In terms of effectiveness, the real question is not what types of report a committee does, but whether they have the appropriate influence on government and the general debate.

## **Committees are political**

In assessing committee effectiveness, many researchers have used the ‘impact test’. This involves assessing a committee’s effect on one or more of the following: the government, the general debate, administration and experts. Committees generally use their status and transparency to either make the case for change or better inform the political and general communities. The impact test is aimed at these results and is a reasonable approach. This is especially so where the people observing the impact are clearly identified and their particular perspective is acknowledged.<sup>19</sup>

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<sup>17</sup> Id., p. 38.

<sup>18</sup> Halligan, op. cit., pp. 70-71.

<sup>19</sup> The best example is Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, pp.143-168. The results of a survey of committee members are presented in John Halligan, Robin Miller and John Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, 2007, p. 223-227.

One way in which the impact test could be improved is to recognise the political dimensions of committees. As a former Clerk-Assistant (Committees) in the Senate stated, 'Parliamentary committees are made up of politicians, behaving politically'.<sup>20</sup> Skene provides more detail on how political considerations affect how members approach committee work:

Bargains can be struck in small groups which would not be considered in open debate; repetitious partisan clashes can be short-circuited by covert committee manoeuvring; as governments see fit [where governments control a chamber], contentious policy proposals can be worked over with interest groups or quietly buried away from the public's gaze; MPs can engage in oversight activity, advertise their concern for constituents, or seek advancement through the astute management of important issues.<sup>21</sup>

Similarly, the participants in committee inquiries such as government departments, peak bodies, businesses and individuals also have political aims. One way of improving the impact test would be for it to better reflect the participants' political self interest and subjectivity.

These elements of subjectivity and diversity of views in the activities of parliamentary committees is recognised in some of the literature. Professor Paul Thomas from University of Manitoba has written:

Effectiveness of parliamentary committees is largely in the eye of the beholder. Various observers will emphasise diverse and often conflicting criteria to appraise the performance of committees.<sup>22</sup>

Senator Bruce Childs has put it more bluntly, stating, 'Everyone in the political process has an angle'.<sup>23</sup> Dr Rodney Smith of the University of Sydney has noted that this diversity and

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<sup>20</sup> Peter O'Keefe, 'The scope and function of parliamentary committees', *The Parliamentarian*, vol. 73, no. 4, p. 271.

<sup>21</sup> Geoff Skene, *New Zealand Parliamentary Committees: An Analysis*, Institute of Policy Studies, Wellington, 1990, p. 2 (unbound).

<sup>22</sup> Paul Thomas, 'Effectiveness of Parliamentary Committees', *Parliamentary Government*, no. 44, p. 10.

subjectivity has some implications for how various groups view committees. Firstly, committees are unlikely to please all stakeholders all the time. Secondly, if they do please all stakeholders at any one point in time, it is likely to be for differing reasons.<sup>24</sup> To date, the impact test has not overtly recognised this subjectivity.

An alternative method would be to accept the political nature of committees and make this the basis for assessment. If individuals and groups are competing to push their political views through committees, then their individual, subjective perceptions of a committee's inquiry or report are the indicators of its effectiveness. In other words, the objective measure of committee effectiveness is the subjective views of participants and stakeholders.

Jaqi Nixon proposed this approach for the evaluation of parliamentary committees in the United Kingdom in 1986:

This approach adopts a pluralistic view and thus takes account of the value positions of multiple audiences on concerns or issues relating to the programme or entity being evaluated i.e. the 'evaluand'. Responsive evaluation, therefore, is not so much concerned with pre-ordained objectives of the evaluand as with its actual effects in relation to the interests of 'relevant publics'.<sup>25</sup>

Who are these relevant publics, or relevant groups? Nixon quoted a book by Guba and Lincoln on evaluation which suggested that anyone who is affected by an education program (the topic of their book) should be consulted. It is reasonable to extend this to all public sector entities. They defined relevant groups as:

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<sup>23</sup> Senator Bruce Childs, 'The Truth About Parliamentary Committees', *Papers on Parliament*, vol. 18, p. 37.

<sup>24</sup> Dr Rodney Smith, 'New South Wales Parliamentary Committees and Integrity Oversight: Comparing Public Sector Agency, News Media and NGO Perspectives', Australasian Study of Parliament Group Conference on Parliament and Accountability in the 21<sup>st</sup> Century: The Role of Parliamentary Oversight Committees, 6-8 October 2005, p. 4.

<sup>25</sup> Jaqi Nixon, 'Evaluating Select Committees and Proposals for an Alternative Perspective', *Policy and Politics*, vol. 14, no. 4, p. 423.

... groups of persons having some common characteristics (e.g. as administrators, clients, professional groups, politicians) that has some stake in the performance (or outcome or impact) of the evaluand, that is, is somehow involved in or affected by the entity being evaluatees. By virtue of holding a stake, an audience has a right to be consulted.<sup>26</sup>

Most committee processes use the format of collecting evidence from stakeholders and government and reporting back to either or both chambers with recommendations directed to the chambers or the government. This suggests that the relevant groups will be the stakeholders, the chambers and the government. Further, any parliamentary process has the potential to affect the general community, so the electorate is another relevant group.<sup>27</sup>

There are a number of observers of the political process who are well placed to comment on committee inquiries and often do so. However, they do not meet the definition of a relevant public. These are the media, academics and parliamentary staff. Individuals in these groups do not have a formal stake in committee work, although they may have their views on policy and how committees should operate. If they were subject to a committee inquiry (for example an inquiry into the media) then their group would become stakeholders. If they participated in an inquiry through making a submission or being a witness, then they would individually become stakeholders. This paper will now examine the perspectives of the four relevant groups and suggest some methods for measuring their satisfaction with committee work.

## **The views of government**

### **Analysing the acceptance of recommendations**

Where report recommendations are aimed at the government, the usual way in which the government gives its view of the report is through a government response tabled in the

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<sup>26</sup> Ibid, quoting Guba F. and Lincoln Y., *Effective evaluation*, Jossey-Bass, San Francisco, 1981, p. 304.

<sup>27</sup> If one were to accept the arguments by some scholars in the United States that the judiciary act politically, then conceivably the judiciary would be a fifth relevant group. For instance, see Terri Jennings Peretti, *In Defense of a Political Court*, Princeton University Press, Princeton, 2001. The High Court occasionally cites committee reports: Professor Geoffrey Lindell, 'Introduction', in G. Lindell and R. Bennett, eds, *Parliament: The Vision in Hindsight*, The Federation Press, Annandale, 2001, p. xxviii.

relevant chambers. The response is the formal government view of the report and states what the government has done, or plans to do, following the report. It generally also gives reasons why the government does not wish to implement a recommendation.

One approach would be to calculate the proportion of recommendations that the government accepts in its response. The advantage of this approach is that the responses are official government statements. Further, a reasonable number of committee reports that require the government to take new action receive a response. A sample of 76 reports tabled between 2001 and 2004 showed that 71.1 per cent of reports received a government response.<sup>28</sup>

The weakness of this approach is that the response (or lack thereof) may not accurately reflect the government's actions. For instance, the government may start responding to an issue while a committee inquiry is under way, before the committee completes its report.<sup>29</sup> Hawes demonstrated this effect of 'bureaucratic anticipation' numerically in the case of the environment committee in the House of Commons and its inquiry into toxic waste. Prior to the inquiry, the government's policy document output averaged one per year. During the inquiry, it average one per month.<sup>30</sup>

Further, the government need not implement its commitments in the response or it may only promise to implement minor recommendations.<sup>31</sup> Alternatively, the government may only accept one recommendation amongst many, but that recommendation may be the most

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<sup>28</sup> David Monk, 'A statistical analysis of government responses to committee reports', in this volume.

<sup>29</sup> See the comments of the Hon. Tony Abbott MP in Gerard Ryle, Lisa Pryor and Mark Metherell, 'Senate boss blasts PM's monarchy', *Sydney Morning Herald*, 21 June 2005, p. 1 and Brenton Holmes, 'Both Bark and Bite: The effectiveness of Senate committees', 36<sup>th</sup> Conference of Presiding Officers and Clerks, Samoa, July 2005, p. 12.

<sup>30</sup> Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, p. 175.

<sup>31</sup> Bob Charles MP, Chair of the Joint Committee on Public Accounts and Audit, quoted in 'Straight Shooter', *About the House*, March 2004, p. 26.

important in the report.<sup>32</sup> Finally, the government can implement a report without acknowledging a committee's influence. This sometimes occurs in the phenomenon known as the 'delayed drop'. A committee report can change the political climate, leading to reform later on.<sup>33</sup> All these nuances are lost in a single statistic such as an acceptance rate.

There are three responses to these criticisms. The first is to acknowledge that the acceptance rate is not a perfect indicator of the government's views of a report, but that it is the closest approximation (or 'proxy') that is available. The *Better Practice Guide* states that this is a reasonable approach provided the weaknesses in the data are explained and acknowledged.<sup>34</sup>

The second response is to have a range of effectiveness indicators and explain how they fit together. The *Better Practice Guide* states that one indicator is not enough. This requirement is met in this analysis because the government is not the only relevant group which would be 'consulted' about a committee report. The views of the chambers, the citizenry and stakeholders must also be considered.

Thirdly, the *Better Practice Guide* states that benchmarks must be researched and realistic.<sup>35</sup> Clearly, a committee can prepare a good report that may not be accepted by the government. The delayed drop is an example of this. Therefore, it would be unreasonable to state that, if the government does not accept the recommendations in a report, then the committee has been ineffective. Further, some committees do not publish reports with recommendations but influence the government through avenues outside the Parliament. An example of this is the Senate Standing Committee on Regulations and Ordinances. This committee ensures that legislative instruments meet basic requirements such as being in accordance with the statute

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<sup>32</sup> Malcolm Aldons, 'Rating the effectiveness of committee reports: some examples', *Australasian Parliamentary Review*, vol. 16, no. 1, p. 52.

<sup>33</sup> Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, p. 170.

<sup>34</sup> Australian National Audit Office and Department of Finance and Administration, *Better Practice Guide: Better Practice in Annual Performance Reporting*, 2004, p. 13.

<sup>35</sup> *Id.*, p. 31.

and not unduly trespassing on rights and liberties.<sup>36</sup> If the committee has concerns about a proposed legislative instrument, it usually resolves this with the minister directly. This committee is very prestigious.<sup>37</sup> It would not make sense to argue that it needs to have government responses tabled in the Senate to be effective.

The other perspective is that, if the government accepts a large number of the recommendations in a report, then it has most likely been effective. If most committee reports include recommendations directed to the government, and they are listed at the front for easy reference, it is illogical to say that the government's acceptance of them is not relevant to committee effectiveness. Committees and committee members themselves agree that implementing recommendations is a valuable outcome. For instance, Senator Murray stated during a Senate debate on one of the reports on children in institutional care:

Whatever our starting point, what we learned and experienced as senators and as the committee secretariat has drawn us to common conclusions and unanimous recommendations. There is a difficult message right there: how are we going to persuade the politicians and bureaucrats who have not been through our experience of the absolute necessity of responding strongly and positively to our reports and recommendations? I do fear that only from confronting the humanity of individuals face to face, of hearing their stories and of being immersed and deeply involved in such inquiries can one really 'get it'.<sup>38</sup>

Other parliamentarians have made similar comments.<sup>39</sup> This is also consistent with the author's experience working for joint and House committees. Committees discuss any

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<sup>36</sup> Senate Standing Committee on Regulations and Ordinances, 'Guidelines on the Committee's application of its Principles', [http://www.aph.gov.au/Senate/committee/regord\\_ctte/guidelines.htm](http://www.aph.gov.au/Senate/committee/regord_ctte/guidelines.htm) (accessed 30 November 2007).

<sup>37</sup> John Uhr, 'Issues Confronting Parliaments', *Australasian Parliamentary Review*, vol. 17, no. 1, p. 126, Harry Evans, ed., Odgers' Australian Senate Practice, 11<sup>th</sup> edition, Department of the Senate, 2004, pp. 336-337, 356-357.

<sup>38</sup> Senator Murray, *Senate: Official Hansard*, 17 March 2005, p. 26.

<sup>39</sup> Senator Bruce Childs, 'The Truth about Parliamentary Committees', *Papers on Parliament*, vol. 18, p. 42, Bob Charles MP in 'Straight Shooter', *About the House*, March 2004, p. 26, various House of Commons committee members in Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, p. 146, the Hon. Bronwyn Bishop MP in 'Beyond the Headlines' *About the House*, March 2007, p. 47.

perceived delay in a government response and then discuss the response once they receive it. Further, the House of Commons Select Committee on Procedure has stated that, although it need not be the main goal of a committee, directly influencing government policy is a sign of effectiveness:

Although, as most witnesses agreed, it would be misguided for the departmentally-related Committees to seek their main achievements in the degree of direct influence they have exerted over policy decisions, they need not, in our view, feel unduly modest on this score ... *At the risk of invidiousness* [emphasis added], we would repeat the examples of the Home Affairs Committee in relation to the abolition of the 'Sus' laws ... ; the Foreign Affairs Committee's Report on the future of Hong Kong; and the Treasury and Civil Service's Committee's recommendations on the publication of annual departmental reports.<sup>40</sup>

This extract is consistent with the earlier discussion. There is a concern that using acceptance rates as the only measure of committee effectiveness will underestimate committee performance. Hence, that House of Commons committee was not prepared to argue that committees should aim to directly influence government decisions, but recognised such influence as a sign of envied success. This confirms that a government response that accepts some recommendations is a sufficient condition for demonstrating effectiveness, but a not a necessary one.

### **Setting a benchmark**

The next question is whether there should be a particular minimum acceptance rate to show that a committee is effective. As noted earlier, benchmarks should be researched and realistic. The data on government responses for committee reports in the companion article to this paper provides some guidance. For a sample of 76 reports, each recommendation was classified by whether or not it was accepted by the government. From this, an 'acceptance rate' for each report was generated. The data also enabled the calculation of how many reports had at least one recommendation accepted. The results are summarised in table one.

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<sup>40</sup> House of Commons Select Committee on Procedure, *The Working of the Select Committee System*, Second Report, HC 19 (1990), Session 1989-90, vol. 1, p. lxxix.



**Table one: Acceptance of recommendations in selected committee reports, 2001-2004**

Committee type	Average acceptance rate (%)	Reports with at least one acceptance (%)
Joint	54.0	84.8
Senate References	13.6	40.0
Senate Legislation <sup>41</sup>	30.5	38.5
House	22.4	70.0
Total	35.2	64.0

Source: David Monk, ‘A statistical analysis of government responses to committee reports’, in this volume.

Malcolm Aldons has argued that the benchmark for the acceptance of committee reports should either be 50 per cent or the acceptance of a major recommendation.<sup>42</sup> Compared with table one, 50 per cent is too high. Only joint committees would meet this benchmark on a regular basis. An alternative would be a lower rate, such as 25 per cent. However, the problem with this is that it appears arbitrary. For instance, why would 25 per cent be chosen over 10 per cent, 20 per cent, or 30 per cent? A more clear-cut approach would be to accept that a committee demonstrates a minimum level of effectiveness by having the government accept at least one recommendation. This is realistic but will also differentiate between reports. While this benchmark is a good starting point, it is probably still a matter for further debate.

**The literature on acceptance rates**

There is a range of views in the literature over whether an analysis of government responses is useful. The analysis above, however, is consistent with many observations in the literature

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<sup>41</sup> For bills inquiries the government does not table a response. The decision rule here is that the government indicates its acceptance of a recommendation by a minister acknowledging a committee’s contribution to an amendment to a bill in Hansard.

<sup>42</sup> Malcolm Aldons, ‘Rating the effectiveness of committee reports: Some examples’, *Legislative Studies*, vol. 16, no. 1, p. 52.

and meets the arguments of the critics. For example, Professor Kunz reviewed the work of Canadian Senate committees in 1965. He concluded that committees could be effective in two ways, namely when the government implemented their recommendations or when they informed and influenced debate.<sup>43</sup> Nixon described analysing government responses as, ‘a useful starting point for any evaluation of select committee work’.<sup>44</sup> Rush stated that analysing government responses gives, ‘a partial and somewhat simplistic picture’, of committee effectiveness.<sup>45</sup> While at first glance this may be a criticism of analysing government responses, it is in fact consistent with this paper. The analysis agrees that a government acceptance rate should not be the only measure of committee effectiveness. Other relevant groups also need to be considered. The picture that an acceptance rate paints is simplistic, but it is currently the best proxy for the government view of a report.

Halligan, Miller and Power have argued against analysing government responses and state that it is ‘not a fruitful exercise’.<sup>46</sup> They list a number of arguments in favour of their conclusion. The first is bureaucratic anticipation, discussed earlier. Another is that soft recommendations, to which the government can easily agree, inflate the effectiveness of some committees. One way of avoiding this is to set a higher benchmark for a committee recommendation to qualify as being accepted. In the study of government responses to reports tabled between 2001 and 2004, a recommendation is only accepted if the government promises to take new action or is still examining a recommendation. Soft recommendations, for example where the government states that it agrees with a committee and then lists what it is already doing, are considered rejected.

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<sup>43</sup> F.A. Kunz, *The Modern Senate of Canada, 1925-1963: A re-appraisal*, University of Toronto Press, Toronto, p. 263.

<sup>44</sup> Jaqi Nixon, ‘Evaluating Select Committees and Proposals for an Alternative Perspective’, *Policy and Politics*, vol. 14, no. 4, p. 421.

<sup>45</sup> Michael Rush, ‘Does activity equal success? – The work of the Select Committees on Education and the Social Services’, in Dilys M. Hill, ed., *Parliamentary select committees in action: A symposium*, Department of Politics, University of Strathclyde, Glasgow, 1984, p. 164.

<sup>46</sup> John Halligan, Robin Miller and John Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, 2007, p. 223.

Halligan, Miller and Power make a number of other arguments. For example, they suggest that there are too many players and interactions in the political system to be able to extract the effect of parliamentary committees. They also state that there are a very low number of cases where committees have unambiguously had major policy impacts. The counter argument to this is that the government response is only one of four possible indicators of effectiveness, and not a necessary one. Further, as Rush argues:

A cynic might argue that at best the committee must have been pushing at an open door or at worst the government had already made up its mind, but wished the committee to think it had had some influence. Such may be the case in some instances, but it is just as much an assumption to assume that it is always thus. The development of policy and the decision-making process can be labyrinthine and governments are under no obligation to acknowledge who influenced them over what or disclose how a particular decision was reached. Nonetheless, if only because they publish evidence and issue reports, at very least committees can normally claim to be part of the policy input.<sup>47</sup>

In other words, for the government to state that it will do something new as a result of a committee's report is a significant statement. A committee can consider that it has done valuable work under these circumstances.

Halligan, Miller and Power's penultimate comment is that it is difficult to determine if implementing a committee recommendation 'improves' the policies in question. However, committees and governments operate in a political environment and the main criterion for policy success is political, that is general support in the community for the policy. Policies that have an objective, technical basis, and which might be considered improvements in some parts of the community, will only be adopted if they have significant political support. Therefore, this paper argues that the main criterion for committee effectiveness should be the political views of the four relevant groups. Raising doubts over whether a committee-induced policy change is an improvement could also be done for any other policy change.

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<sup>47</sup> Michael Rush, 'Does activity equal success? – The work of the Select Committees on Education and the Social Services', in Dilys M. Hill, ed., *Parliamentary select committees in action: A symposium*, Department of Politics, University of Strathclyde, Glasgow, 1984, p. 164.

The final point raised by Halligan, Miller and Power is related to their survey of committee members. They asked parliamentarians what were their more important inquiries, why they were important, and why they were successful. The authors noted that committee members tended to note the successful reports by their impact on the relevant policy community and experts.<sup>48</sup> By implication, this is another argument in favour of their conclusion that government responses should not be analysed. However, in their questionnaire, Halligan, Miller and Power did not expressly ask committee members for their observations about government responses.<sup>49</sup> This raises doubt about whether this is a robust argument against examining government responses. If asked directly, committee members in Australia might respond in a similar way to their counterparts in the House of Commons. That is, an overall positive response from government on a report is a sign of success, but there are other ways in which a committee can be successful as well. Professor Kunz stated as much in 1965.<sup>50</sup>

## **The views of the legislature**

The legislature is an important relevant group in committee work because the chambers establish the committees and give them terms of reference.<sup>51</sup> This occurs through the standing orders, by separate resolution, or through legislation. Legislatures occasionally examine ways in which their committees might be more effective and often conclude that their committees are effective.<sup>52</sup> What these inquiries do less often is to seriously debate the rationale for

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<sup>48</sup> John Halligan, Robin Miller and John Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, 2007, pp. 226-227.

<sup>49</sup> *Id.*, pp. 265-266.

<sup>50</sup> F.A. Kunz, *The Modern Senate of Canada, 1925-1963: A re-appraisal*, University of Toronto Press, Toronto, p.263.

<sup>51</sup> References for House committees often come from ministers. Senate committees almost exclusively receive their references from the chamber.

<sup>52</sup> For example, House of Representatives Standing Committee on Procedure, *Ten years on: A review of the House of Representatives Committee System*, 1998 and House of Commons Select Committee on the Modernisation of the House of Commons, *Select Committees*, First Report, HC 224 (2002), Session 2001-02.

committee work and, by extension, the ways in which they demonstrate effectiveness.<sup>53</sup> None of these inquiries set quantitative performance benchmarks.<sup>54</sup>

In discussing committee effectiveness, the unique feature of the legislature is that committee members are drawn from the legislature. Therefore, views expressed by the legislature about a committee may well overlap with the views of the committee itself about its work. Research conducted by the Hon. Ken Coghill (previously a Speaker in the Victorian Parliament) and Professor Colleen Lewis demonstrates that committee members generally find their committee work very satisfying.<sup>55</sup> Therefore, any performance information that drew on the opinions of committee members in relation to their own work may be biased upwards. The *Better Practice Guide* recognises this and states that the most credible performance information comes from outside the agency in question.<sup>56</sup> The testing of opinions within the Parliament about a committee report would need to exclude the opinions of the committee members themselves.

In determining the views of the legislature about committee reports, the most robust approach would be to give a sample of Senators and Members a list of a sample of recent committee reports. They would then rate the reports on a numerical scale. Any who sat on a particular committee would be excluded from commenting on their own reports. This questionnaire approach, however, is not always practical and a proxy may be required. Such a proxy could be to check Hansard to determine whether any parliamentarians positively referred to a committee report in debate. Once again, any one who was a committee member for a

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<sup>53</sup> Two inquiries that considered how committees demonstrate effectiveness are: House of Commons Select Committee on Procedure, *The Working of the Select Committee System*, Second Report, HC 19 (1990), Session 1989-90, vol. 1, and Liaison Committee, 'Report of the Liaison Committee on Committee Effectiveness: Summary of Conclusions and Recommendations', *Parliamentary Government*, no. 43, pp. 3-27.

<sup>54</sup> In an annual report, the Legislative Council in New South Wales assessed but did not adopt the benchmark of the government acceptance of committee recommendations: New South Wales Legislative Council, *Annual Report 2001*, vol. 2, pp. 114-119.

<sup>55</sup> Dr the Hon. Ken Coghill, Prof. Colleen Lewis, 'Reforms to protect Parliament's reputation', *The Parliamentarian*, vol. 85, no. 4, p. 354.

<sup>56</sup> Australian National Audit Office and Department of Finance and Administration, *Better Practice Guide: Better Practice in Annual Performance Reporting*, 2004, p. 31.

particular report would be excluded from this analysis. Indeed, it is routine for members of House committees to support their reports in ‘take note’ debates in the House. What sets a report apart from the rest is when parliamentarians outside the committee use the report in their speeches.

In setting the benchmarks, one approach could be to state that the legislature has found a report or inquiry to demonstrate a minimum level of effectiveness once a member of the legislature has positively referred to it in Hansard. Similar to the approach with government responses, a lack of a positive indication does not mean that the committee has been ineffective. Other relevant groups may have found the report effective. If members of the legislature criticise a report, then it may be prudent to take this into account. A simple system of cancelling each positive reference for each negative reference may address this. Therefore, if the number of parliamentarians making negative references to a report outweighs the number making positive references, then the committee will not have demonstrated effectiveness from the perspective of the legislature. However, these benchmarks are preliminary. They will depend on the data and further debate.

### **The views of stakeholders**

Stakeholders comprise the various interest groups, businesses and individuals who lobby for political outcomes favourable to them or their views. In the context of committee effectiveness, they are possibly the most important group. They are well versed in the issues in an inquiry. Further, many of them are detached from the party political conflicts that may influence effectiveness measures involving the government and the legislature. Of the four groups, they are probably closest to the ideal of an impartial, informed observer.

The value of obtaining the views of stakeholders is reflected in the literature. In their survey of committee members, Halligan, Miller and Power found that parliamentarians judged a

committee inquiry to be successful through its impact on the policy community and experts.<sup>57</sup> In 2001, the New South Wales Legislative Council analysed committee performance through examining the government acceptance of committee recommendations. Following this analysis, the Legislative Council suggested that surveying stakeholders was, ‘Perhaps a more important measure of effectiveness’.<sup>58</sup>

There has been some research into stakeholder perceptions of committee inquiries, but this has not included sampling and quantitative techniques. In his book on committees in the United Kingdom, Hawes interviewed stakeholders about their views on committee effectiveness. The responses ranged from positive to negative.<sup>59</sup> Marsh conducted quantitative surveys of participants in Senate committees about their experiences with inquiries generally, rather than focussing on effectiveness. Overall, they were positive about the process and how it affected them.<sup>60</sup>

One approach to determining stakeholder views of committee reports would be to select a sample of reports and then send surveys to each individual or group who made a submission to the inquiry or gave evidence. The survey could have quantitative values assigned to various responses. It would be necessary to construct a different sample for committee work that does not use a normal submission process, such as Senate Estimates and the Senate Standing Committee on Regulations and Ordinances. Once again, it would be necessary to adjust the benchmarks taking into account the data. As previously, a lack of support from this group would not, of itself, render a committee report ineffective.

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<sup>57</sup> John Halligan, Robin Miller and John Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, 2007, pp. 226-227.

<sup>58</sup> New South Wales Legislative Council, *Annual Report 2001*, vol. 2, p. 119.

<sup>59</sup> Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, pp. 161-167.

<sup>60</sup> Ian Marsh, ‘Can Senate Committees Contribute to “Social Learning”?’ *Papers on Parliament*, no. 45, pp. 61-68.

### The views of voters

The electorate is a significant group because voters make the ultimate judgment about the legislature and the government through the ballot box. They are the final authority in the political system. Unfortunately, much committee work goes unreported in the media. Table two gives information on newspaper coverage for committee reports tabled between the 2001 and 2004 elections.

**Table two: Average bipartisanship and newspaper scores for committee reports, 2001-2004**

Committee type	Newspaper coverage (zero to 10)	Bipartisanship (%)
Joint	0.83	93.1
Senate References	3.09	68.3
Senate Legislation	0.55	73.1
House	0.96	99.0
Total	1.39	83.9

Source: David Monk, 'A statistical analysis of government responses to committee reports', in this volume. Bipartisanship score represents the number of committee members who agree with the majority report. Newspaper coverage ranges from zero (none) to 10 (a page one article in all papers).

To illustrate the index, House committees average a score of one, which is equivalent to an article in 20 per cent of newspapers towards the end of the news section (for example, page 10). Senate References committees averaged a score of three, which is equivalent to an article in 60 per cent of newspapers towards the end of the news section. Judi Moylan MP has suggested that the media concentrates on conflict, leading to low coverage of much committee work. The data corroborates this view. In terms of media, Senate References committees score highly, but they have the lowest rates of bipartisanship, which is a proxy for conflict.



Bob Charles MP expressed concern in 2004 that the public is generally unaware of constructive, bipartisan committee work.<sup>61</sup>

With low levels of media coverage, it is unlikely that committee work generally is going to be perceived as effective by voters. This view is reflected in one of the few surveys conducted about voter perceptions of parliamentary committees.<sup>62</sup> In 2005, Coghill and Lewis published an overview of research undertaken on behalf of the Victorian Parliament of community perceptions of their state legislature. The general reaction to committees was ‘dismissive’.<sup>63</sup> Nixon notes that some commentators in the United Kingdom argue that being in the news is equivalent to success for parliamentary committees.<sup>64</sup> It is difficult to accept this view. Being in the media is only a prerequisite for community support. Voters still have to make a judgment on whether they approve of the committee work that the media presents to them.

Similar to the approach with stakeholders, it should be possible to survey a structured sample of voters to determine their views on committee work.<sup>65</sup> Because most individuals are unlikely to have a general knowledge about committees, the survey would need to help them. For instance, instead of asking them whether they thought a committee report was effective, it may be more productive to ask whether they knew about a particular issue, whether they knew that a committee was involved, and then finally whether the committee was effective. The format could include excerpts of committee hearings on a portable DVD player, such as Senate Estimates and Reserve Bank hearings. Interviewers could then ask respondents whether they have seen something like this before and whether they approve. The same

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<sup>61</sup> ‘Straight Shooter’, *About the House*, March 2004, p. 27.

<sup>62</sup> There is little knowledge of voters’ perceptions of parliaments as significant public institutions. See John Uhr, ‘Issues Confronting Parliaments’, *Australasian Parliamentary Review*, vol. 17, no. 1, p. 124.

<sup>63</sup> Dr the Hon. Ken Coghill, Prof. Colleen Lewis, ‘Reforms to protect Parliament’s reputation’, *The Parliamentarian*, vol. 85, no. 4, p. 354.

<sup>64</sup> Jaqi Nixon, ‘Evaluating Select Committees and Proposals for an Alternative Perspective’, *Policy and Politics*, vol. 14, no. 4, pp. 422-423.

<sup>65</sup> For example, a sample of 100 people that matches the census in terms of age, gender, employment, the proportion of the population in regional and city electorates, and in government and opposition electorates.

comments on setting benchmarks and indicators of effectiveness for other relevant groups would apply here as well.

## Conclusion

This paper has set out a framework for evaluating committee effectiveness. Recognising that committees are political bodies, the framework seeks to collect the subjective responses to committee work of the four relevant political groups. If one of these groups states that a piece of committee work is effective, then the committee in question can argue that it has demonstrated a minimum level of effectiveness. The more groups that find a committee to have been effective, and the higher these individual scores, then the committee can claim a higher level of effectiveness. The process becomes objective through sampling methods and using proxies to measure subjective, political responses to reports and inquiries. The political nature of committees means this is a valid approach.

The study of each relevant group is a research project in its own right. However, it would also be valuable to construct a combined project where the same committee reports and inquiries were analysed for each relevant group. This would then permit a comparison across relevant groups to see whether there are patterns of committee effectiveness. It may be possible to elaborate on the current theory that committees are effective through either implementing recommendations or informing the debate. Alternatively, one relevant group may become a 'litmus test' in that no other group is likely to find a committee report effective unless the 'litmus test' group does.

Quantitative work in political science is uncommon in Australia. It is more popular in the United States.<sup>66</sup> The best way to determine whether quantitative work adds to our

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<sup>66</sup> For an overview of statistical work on the decisions of Supreme Court justices in the United States, see chapter four in Terri Jennings Peretti, *In Defense of a Political Court*, Princeton University Press, Princeton, 2001. There is a statistical analysis of the factors involved in the creation and dissolution of independent government bodies in the United States in David E. Lewis, *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997*, Stanford University Press, Stanford, California, 2003. For an overview of how statistics are supplementing traditional expertise more generally, see Ian Ayres, *Super Crunchers: How Anything Can be Predicted*, John Murray, London, 2007.

understanding of our political institutions is to conduct this work, interpret it and evaluate it. Even if the projects proposed in this paper do not become reliable indicators of committee effectiveness, they are likely to give us some information about the behaviour of these political agents and enhance our understanding of the political system. Of itself, this will be a valuable outcome.



## **A statistical analysis of government responses to committee reports**

### ***Reports tabled between the 2001 and 2004 elections***

**David Monk<sup>1</sup>**

#### *Abstract*

*This paper measures the government acceptance of recommendations of parliamentary committees. Such information is one way in which a committee can demonstrate its effectiveness. Out of all committee reports where the majority report requested the government take new action, the sample shows that 63.2 per cent of committee reports demonstrated a minimum level of effectiveness (at least one recommendation in a report accepted). The factors that show the strongest statistical correlation with this minimum level of effectiveness are the type of committee, bipartisanship, the number recommendations, press coverage and whether it was a terrorism inquiry.*

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<sup>1</sup> A number of people have contributed to this paper in various ways. They include Robyn McClelland and Russell Chafer.

## Introduction

The requirement for governments to respond to committee reports has existed since the 1970s. In 1973, the Senate passed a resolution requiring the government to respond to Senate committee recommendations within three months.<sup>2</sup> This followed the Senate creating its extended committee system in 1970. In 1978, the government made a declaration that it would respond to committee reports within six months, effectively extending the Senate system to House and joint committees. The then government reduced this period in 1983 to three months.<sup>3</sup>

The government response, if it occurs, is a significant milestone in the life of an inquiry. In it, the government usually lists what action it plans or has done in respect of each recommendation. Where the government rejects a recommendation, this usually includes the reasons why. The House of Representatives Standing Committee on Procedure noted the importance of the government response. This committee stated that, without some indication that the government had at least seriously considered the recommendations in a report, then, ‘The value of the activity becomes questionable’.<sup>4</sup>

In a related paper in this volume, this author suggests a possible interpretation of the acceptance of recommendations. Because committees are political entities operating in a political environment, it is fair to evaluate them by how various groups subjectively react to their reports. One way of measuring how the government perceives a report is to calculate the number of recommendations it agrees to implement. This is not a perfect measure. For example, the government may not meet its commitments. However, as an approximation, or ‘proxy’, of the government’s perception, it is the best we have available that covers policy, legislation and administration.

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<sup>2</sup> The Senate, *Standing Orders and other orders of the Senate*, September 2006, Resolution expressing opinion of the Senate no. 37.

<sup>3</sup> M.E. Aldons, ‘Promise and Performance: An Analysis of Time Taken for Commonwealth Governments to Respond to Reports from Parliamentary Committees’, *Legislative Studies*, vol. 1, no. 2, p. 20.

<sup>4</sup> House of Representatives Standing Committee on Procedure, *It’s your House: Community Involvement in the procedures and practices of the House of Representatives and its committees*, 1999, p. 66.

Committee reports have various aims and there are a number of diverse groups in the political system. Therefore, it would be fairer on committees to view the government response as one way among many for committees to demonstrate their effectiveness. If other groups such as stakeholders, voters or the legislature favourably perceive a committee report, then the lack of a government response should not prevent that report from being rated effective. In other words, a positive government response is a sufficient, but not necessary way for committees to demonstrate effectiveness.

### **Collecting the data**

Notwithstanding the three month requirement, the government can take over three years to draft and table its response to a committee report. Therefore, the period from which to collect data needed to be at least three years prior to the project, which commenced in September 2007. This led to the selection of the period between the 2001 and 2004 elections. The Senate and House registers of committee reports were copied and combined into one master list of 512 reports. A list of random numbers was generated and paired with this master list, giving a random ordering of reports. The one complication was that joint committees administered in the Senate are included in both chambers' registers. Therefore, any House listings of these reports were skipped; only Senate listings were used. The master list in effect comprised 496 reports.

The reports were assessed in the order of the random list. To be included in the sample, each report needed to make a recommendation to the government requiring it to take new action. Previous studies have noted that committees can word recommendations in a particular way, making it easy for the government to accept them and inflating the acceptance rate.<sup>5</sup> Requiring new action prevents the distorting effect of these recommendations. Therefore, reports which had no recommendation were excluded from the sample. This meant Senate estimates reports and the regular Senate inquiries into annual reports were not included. Nor

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<sup>5</sup> Malcolm Aldons, 'Rating the Effectiveness of Parliamentary Committee Reports: The Methodology', *Legislative Studies*, vol. 15, no. 1, p. 26.

were the activities of the Senate Standing Committee on Regulations and Ordinances, which rarely tables reports. It also meant that reports containing single recommendations supporting proposed government action, such as many reports by the Parliamentary Standing Committee on Public Works and by Senate legislation committees, were also excluded. In total, 196 reports were examined to generate a sample of 76. The sample comprised 33 joint committee reports, 20 Senate references and select committee reports, 13 Senate legislation committee reports and 10 House committee reports. All the reports and government responses were collected from the Internet.<sup>6</sup>

## **Describing and defining the data**

Attaching numbers to a flexible, subjective process such as committee reports and the government response requires a number of decision rules and definitions to ensure that the data is prepared in a systematic, uniform way. These definitions are listed below, along with some summary data for the sample. Further information is in the appendix.

### **Government response**

Generally, this was simple to resolve. The government tables in one or both chambers a document entitled, 'the government response'. However, this does not occur where a committee enquires into a bill. In this case, the government's response is made orally in the chamber debates. The government was considered to have responded to a report where either a minister or parliamentary secretary made a statement in *Hansard* about the government's attitude to one or more identifiable recommendations. Out of the 76 reports in the sample, 54 (71.1 per cent) received a government response.

### **Acceptance of a recommendation**

Often, recognising the acceptance of a recommendation or otherwise by the government is straightforward. There are some situations, however, where it can be unclear. For instance, the

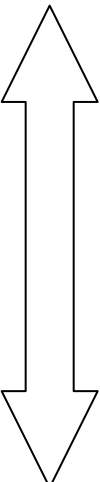
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<sup>6</sup> The Parliament's website is at <http://www.aph.gov.au>.



government might state that it agrees with a recommendation in-principle, but then state it does not have the resources to implement it. Each individual response to a recommendation was graded according to the degree of conformity with the committee’s proposal. The categories are shown in figure one.

**Figure 1: Grading of government responses to individual recommendations**



Agreed		
Partially agreed		Acceptance
Still under examination		
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Already being done		
Agreed in principle		Rejection
Rejected		

‘Agreed’ and ‘rejected’ are self-explanatory. ‘Partially agreed’ occurs where a recommendation has several parts and the government agrees to implement at least one but not all of them. It can also occur when the government agrees with the idea behind a recommendation but uses a different method to achieve a similar result. ‘Under examination’ occurs where the government is still considering a recommendation. Given that the government can take up to several years to respond to a report, it appears fair to count this as an acceptance. If the government wished to reject such a recommendation, it could do so

quickly. The principle behind making these types of responses acceptances is that the government has promised new action or at least left open the possibility of it.<sup>7</sup>

The other three categories are considered rejections because they preclude the government taking new action. As noted earlier, the category of ‘agreed in-principle’ implies that the government will not be taking new action in relation to a recommendation. Sometimes, the government stated in a response what programs and procedures were already in place. Where these were implemented before the report was tabled, this counted as a rejection. If it occurred after tabling, this became an acceptance. The disadvantage of this decision rule is it is arbitrary. It does not allow for instances of ‘bureaucratic anticipation’ where the government and the bureaucracy start addressing issues due to committee pressure before a report is tabled. The advantage of this rule is that it is clear and allows for consistent decision-making within current limits of information.

These categories are similar to some of those used as headings in government responses. However, the headings did not always correlate with the content of the response. Therefore, the categories used here are based on the content of the response, rather than the heading.<sup>8</sup>

After deciding which recommendations were accepted, an ‘acceptance rate’ was calculated, which was the percentage of ‘eligible recommendations’ that had been accepted. Eligible recommendations were defined as those recommendations that were the government’s responsibility and required new action. Therefore, recommendations directed at the private sector or independent entities such as the Australian Securities and Investment Commission were not included. Recommendations for the government to maintain current arrangements, usually indicated by the word ‘continue’, were also excluded.<sup>9</sup> In the sample, the government

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<sup>7</sup> Previously supported in Malcolm Aldons, ‘Rating the effectiveness of committee reports: some examples’, *Australasian Parliamentary Review*, vol. 16, no. 1, p. 55.

<sup>8</sup> The variability of headings in government responses has already been noted: Malcolm Aldons, ‘Rating the Effectiveness of Parliamentary Committee Reports: The Methodology’, *Legislative Studies*, vol. 15, no. 1, p. 30.

<sup>9</sup> *Id.*, p. 26 and Malcolm Aldons, ‘Rating the effectiveness of committee reports: some examples’, *Australasian Parliamentary Review*, vol. 16, no. 1, p. 55.

accepted at least one recommendation for 48 reports (63.2 per cent). Combining the acceptance rate across all reports gives an average acceptance rate of 35.2 per cent.

**Committee type**

Over time, the chambers have changed their committee systems to suit their demands. During the sample period of 2001-2004, there were four main types of committee: joint, Senate references and select,<sup>10</sup> Senate legislation and House. The Senate introduced the arrangement of two types of committee in 1994. The convention was for the government to have a majority on the legislation committees and the opposition to have a majority on the references committees. A comparison of committees’ source of inquiries and composition during the sample period is in table one.

**Table 1: Comparison of different committee types, 2001-2004**

Committee type	External referral	Self-referral	Majority
Joint	House, Senate and ministers	Sometimes self-referral within terms of reference	Government
Senate references and select	Senate	Select committees may have self-referral within terms of reference	Opposition
Senate legislation	Senate	Estimates and annual reports	Government
House	House and ministers	Annual reports and Auditor-General reports	Government

Source: Harry Evans, ed., *Odgers’ Australian Senate Practice*, 11<sup>th</sup> edition, Department of the Senate, 2004, p. 382. I.C Harris, B.C. Wright, & P.E. Fowler, *House of Representatives Practice*, 5<sup>th</sup> edition, Department of the House of Representatives, 2005, pp. 624, 628.

The main point of difference between these committees is that Senate references committees are the only ones where the opposition has a majority. Since 1972, governments have rarely

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<sup>10</sup> Select committees are technically different to standing committees because they are appointed for the duration of an inquiry, rather than the duration of the Parliament. Otherwise they operate in much the same way because they have the same majority structure and the same sources of referrals. From this point, the text only refers to references committees.

held the balance of power in the Senate.<sup>11</sup> Within Australia's institutions of state, there are few bodies which oppositions can control. Achieving a majority on the floor of the House delivers that chamber and the whole of the executive to that political party. The one institution that oppositions have had some measure of control, along with its prestige and resources, is the Senate. Over time, oppositions have come to use this chamber as a means of promoting their values and challenging the government. The Senate has become a 'second bite of the policy cherry' for parties that lose the election, or at least are not involved in a majority of seats in the House.<sup>12</sup> Due to the 'invisible hand' of competition, the opposition's use of the Senate to challenge the government brings about democratic outcomes in transparency and a widened debate. The electorate supports this role in general.<sup>13</sup> It also suggests that, on average, Senate references committees are likely to have lower acceptance rates than other types of committees due to their lack of cooperation with the government. Figure two demonstrates this.

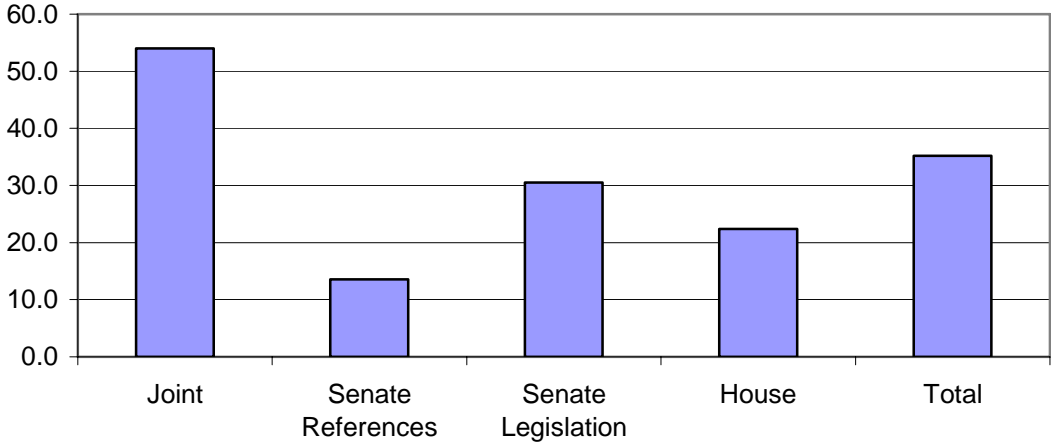
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<sup>11</sup> Senator George Brandis, 'The Australian Senate and Responsible Government', The University of New South Wales Law School and Gilbert and Tobin Centre of Public Law, 2005 Constitutional Law Conference, pp. 10,16 of 23, [http://www.gtcentre.unsw.edu.au/publications/papers/docs/2005/5\\_GeorgeBrandis.pdf](http://www.gtcentre.unsw.edu.au/publications/papers/docs/2005/5_GeorgeBrandis.pdf) (accessed 9 November 2007).

<sup>12</sup> This idea raised in the context of judicial review by Martin Shapiro, 'Judicial Delegation Doctrines: The US, Britain, and France', *West European Politics*, vol. 25, no. 1, p. 179.

<sup>13</sup> Senator George Brandis, 'The Australian Senate and Responsible Government', The University of New South Wales Law School and Gilbert and Tobin Centre of Public Law, 2005 Constitutional Law Conference, p. 6 of 23, [http://www.gtcentre.unsw.edu.au/publications/papers/docs/2005/5\\_GeorgeBrandis.pdf](http://www.gtcentre.unsw.edu.au/publications/papers/docs/2005/5_GeorgeBrandis.pdf) (accessed 9 November 2007).

**Figure 2: Average acceptance rates of recommendations by committee type, 2001-2004 (%)**

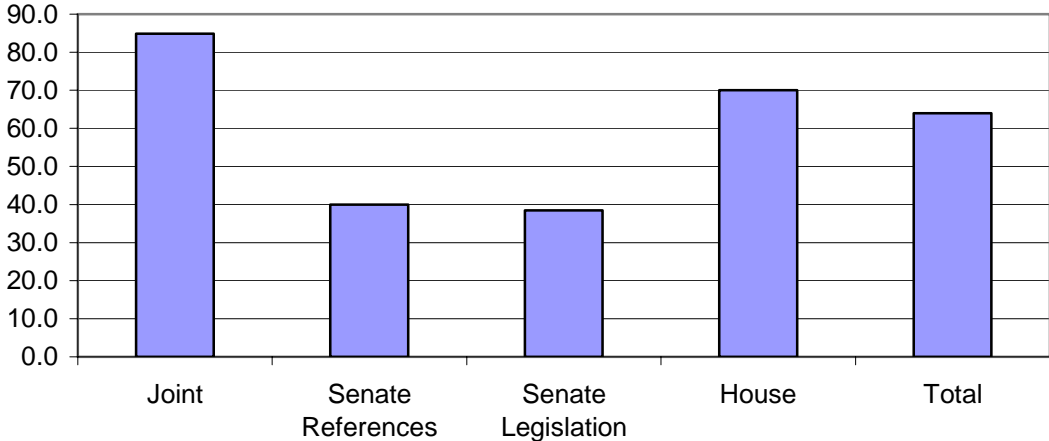


Source: A sample of 76 committee reports.

The average acceptance rate for Senate references committees was the lowest at 13.6 per cent. This suggests that governments have the least use for Senate references committees of all committee types. It also supports the theory that, on average, oppositions use Senate references committees for overtly political ends. Governments respond the most favourably to joint committee reports, which had an average acceptance rate of 54.0 per cent. The most likely reason for this is the degree of consensus and authority behind these committees. Firstly, both chambers have agreed to establish joint committees. This means that they have an innate consensus that no other committee can have. Secondly, they have a great deal of authority because their membership comprises both Senators and Members.

In a related paper, this author suggests that a benchmark for committees to demonstrate effectiveness from the perspective of government is where the government accepts at least one recommendation in a report. Figure three presents these statistics for the various committee types.

**Figure 3: Proportion of reports with a positive acceptance rate, 2001-2004 (%)**



Source: A sample of 76 committee reports.

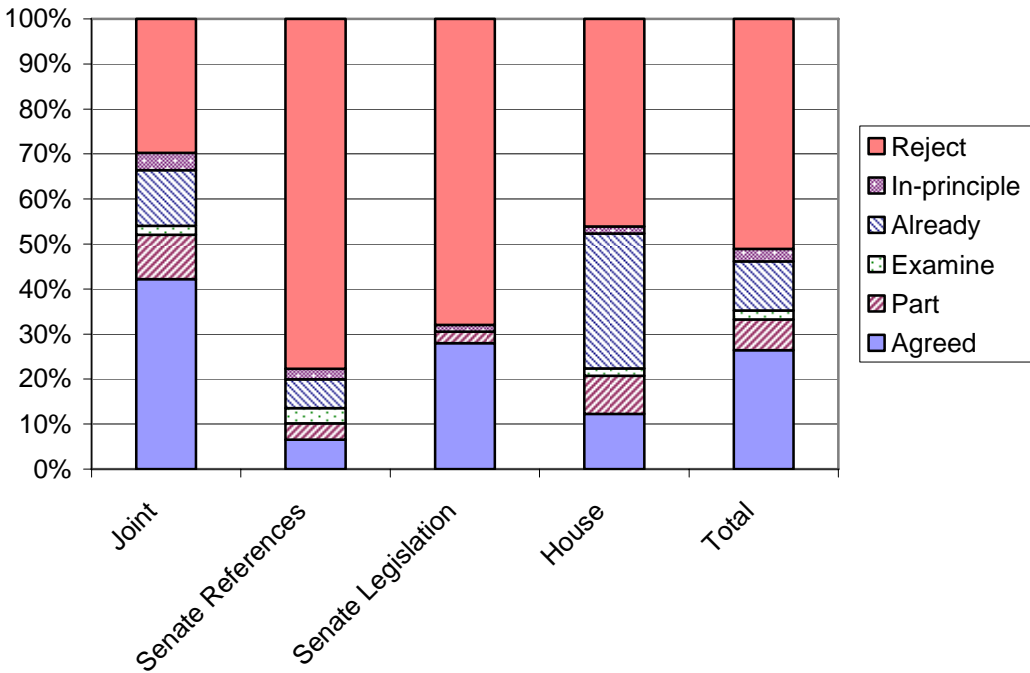
In relation to joint committees, the pattern in figure one is repeated. They have the highest proportion of reports that, viewed from the perspective of government, demonstrate a minimum level of effectiveness. However, the pattern in figure one is not repeated in relation to the other committees. For instance, House committees have a high level of reports (70 per cent) where at least one recommendation is accepted, but a low overall acceptance rate (22.4 per cent). This means they tend to have a large proportion of reports with a small number of accepted recommendations. Another example is Senate legislation committees. They are rated second in figure one (30.5 per cent), but last in figure two (38.5 per cent). This suggests that governments do not often acknowledge or agree to implement the recommendations of these committees, but when they do, they accept a high proportion of the recommendations. This raises the question of whether bills inquiries work differently to other types of inquiries. The paper uses regressions to test this issue later.

Another way of differentiating committees is that some joint committees are established by an act of Parliament, rather than by a resolution of both chambers. Examples are the Joint Committee of Public Accounts and Audit and the Joint Committee on Corporations and Financial Services. This extra prestige could increase the acceptance rates for these committees' reports. Of the 33 reports from joint committees in the sample, 21 come from

committees established by legislation. The regression at the end of the paper tests whether a legislated function affects the acceptance rate.

It is also possible to check whether the way in which the government accepts or rejects a recommendation differs across committee type. Figure four presents the data.

**Figure 4: Breakdown of type of government response to recommendations, 2001-2004 (%)**



Source: A sample of 76 committee reports

This diagram is a more complicated version of figure two. The shaded areas corresponding to ‘examine’, ‘part-agreed’ and ‘agreed’ responses are acceptances and add up to the same amounts presented in figure two. There are a number of observations to make from the chart. Firstly, House committees have the highest number of ‘already’ responses. In general, these responses relate to the recommendations where the government lists a number of actions that it is already taking. House committees are the only type where the government has exclusive control of both the reference and the majority. Therefore, there is some evidence that House

committees are conducting low risk inquiries from the government's perspective. This may explain why House committees have low acceptance rates but a large number of reports where the government accepts at least one recommendation.

There are further observations. The short deadline for bills inquiries and the fact that ministers responded to them during debate in the chamber means that there is little scope for the government to make 'already' or 'examine' responses. Therefore, these do not appear for Senate legislation committees. The number of times in total when the government made an 'examine' response is low, which suggests that it was not a routine method of avoiding responding to a report. Therefore, reading an 'examine' response as an acceptance appears appropriate.

### **Type of inquiry**

In his analysis of committee effectiveness, Derek Hawes suggests that the type of inquiry can affect how the government responds to the report.<sup>14</sup> Here, the type of inquiry was demonstrated in two ways. The first was to select reports that had a contentious subject matter. During the 40<sup>th</sup> Parliament, probably the two most contentious issues were terrorism and immigration. In the sample, there were nine terrorism reports and five immigration reports. The regressions at the end of the paper tested whether these categories affected the government response. The expectation would be that their contentious nature would reduce their acceptance rate.

The second way of viewing the type of inquiry was by what or whom was subject to scrutiny. The categories were ministerial conduct (three reports),<sup>15</sup> administrative (13 reports), bill (20 reports) and policy (40 reports). One theory to be tested is Hawes' observation that

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<sup>14</sup> Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, pp. 119-123.

<sup>15</sup> Senate Select Committee on Ministerial Discretion in Migration Matters, *Report*, 2004, Joint Committee on ASIO, ASIS and DSD, *Intelligence on Iraq's weapons of mass destruction*, 2003, and Senate Select Committee on a Certain Maritime Incident, *Report*, 2002.



administrative inquiries are less contentious and have higher acceptance rates.<sup>16</sup> Further, the earlier discussion has suggested that, once the government decides to accept some recommendations in a bill inquiry, the acceptance rate for that report tends to be high.

In differentiating between administrative and policy reports, one criterion was that administrative reports tended to focus on how agencies managed themselves. Recommendations involving new programs, legislation or significant funding were classified as policy. Where reports had a blend of administrative and policy recommendations, the classification was based on which sort of recommendations were the most numerous.

### **Bipartisanship**

The literature includes significant discussion about the value or otherwise of bipartisanship in committee work. Bipartisanship is a matter of balance. If committees conduct 'safe' inquiries that are sure to result in bipartisan reports, there is doubt about their relevance. However, if they conduct very contentious inquiries, they may not be able to agree on the report, giving it less authority. Some commentators suggest that committees conduct inquiries into areas where political parties are yet to form their position. This gives committee members more flexibility in negotiating and increases the chances of a bipartisan report.<sup>17</sup>

Bipartisan reports are attractive to government. One way of viewing government is as a seeker of ideas to develop new policy and satisfy the simultaneous demands of those who fund and support their party and those who allocate power between the political parties (voters). Governments have close links to their power bases and are well informed about these

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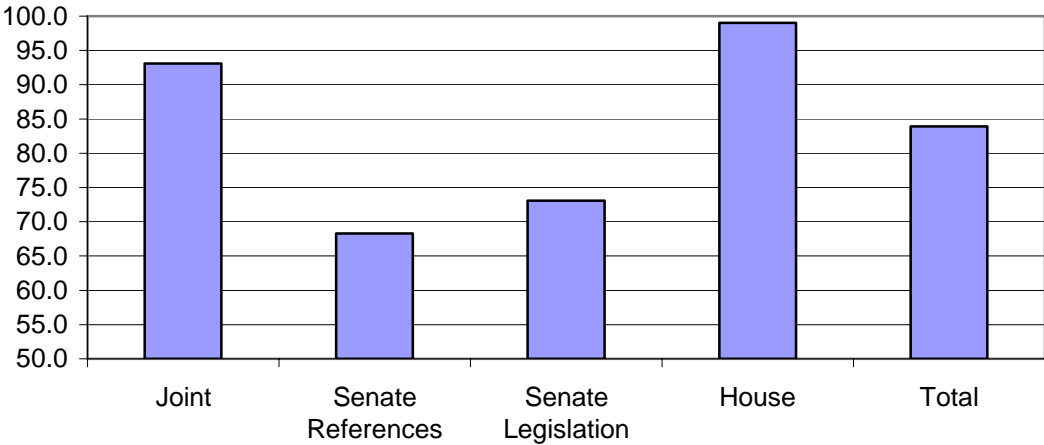
<sup>16</sup> Derek Hawes, *Power on the Back Benches? The growth of select committee influence*, School for Advanced Urban Studies, Bristol, 1993, pp. 119-123.

<sup>17</sup> Nevil Johnson, 'Departmental Select Committees', in Michael Ryle and Peter G Richards, eds, *The Commons under Scrutiny*, Routledge, London, 1988, pp. 169-170, Senator Bruce Childs, 'The Truth About Parliamentary Committees', *Papers on Parliament*, vol. 18, p. 48, Gavin Drewry, 'Scenes from Committee Life – The New Committees in Action', in Gavin Drewry, ed., *The New Select Committees: A study of the 1979 reforms*, 2<sup>nd</sup> ed., Clarendon Press, Oxford, 1989, pp. 362-364.

demands and interests. However, there is more uncertainty about what policies have support across the electorate. One source of mainstream policies is bipartisan committee reports.

A bipartisanship index was created to measure rates of bipartisanship. The basis for calculation is the percentage of the committee members that support the majority report and do not attach their own additional comments. Where there is no majority report, the index is the largest percentage of committee members that support an individual report. If some committee members support the majority report but attach additional comments, this is still categorised as a ‘dissent’ because the majority report did not meet their needs. If the whole committee supports the majority report and no member adds their own comments, then the bipartisanship index for that report is 100. If two members in a six person committee dissent, then the index will be 66.7. Figure five shows the level of bipartisanship in the sampled reports.

**Figure 5: Average bipartisanship index of committee reports tabled in 2001-2004 (%)**



Source: A sample of 76 committee reports.

The first observation from the chart is the very high level of bipartisanship in House committee reports. Only one member dissented once in the 10 House reports in the sample. With 10 members on each committee, the average bipartisanship index for these committees

is 99. Joint committees also had high levels of bipartisanship with an average score of 92.9. While it may be correct to value bipartisanship, the very high levels in House committees, combined with the low acceptance rates, add support to the argument that they conducted 'safe' inquiries. Joint committees had lower levels of bipartisanship but had much higher acceptance rates. One interpretation would be that, on average, joint committees conducted more inquiries relevant to the government.

Finally, Senate committees often split along party lines. During the sample period, Senate committees usually had six members including two minority members. Splitting along party lines would indicate a bipartisanship index of 66.7, which is close to the average indices for Senate references and Senate legislation committees. Of the 33 Senate committee reports in the sample, only seven had a bipartisanship index of 100.

These comments have a clear implication for committee effectiveness. Governments will probably be less likely to accept recommendations where committee members cannot agree on a report. Dissent reduces committee effectiveness from the perspective of government. This may have been a reason for the lower acceptance rates of Senate references committees, which had the lowest rates of bipartisanship in the sample.

### **Media coverage**

Committees work in a political environment. Therefore, one way of comparing reports is whether they receive media coverage or not. To measure this coverage, an index was prepared based on the parliamentary library's databases. The library maintains comprehensive coverage of five newspapers: the *Sydney Morning Herald*, the *Age*, the *Australian*, the *Australian Financial Review* and the *Canberra Times*.<sup>18</sup> These papers were searched electronically for any mention of the reports in the sample for two days after tabling. Focussing on the period shortly after tabling was more manageable than developing a profile

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<sup>18</sup> It would have been preferable to use the newspapers with the highest circulations, but the library does not keep comprehensive records of them. These papers are the *Herald Sun*, the *Daily Telegraph*, the *Courier Mail* and the *West Australian*. The *Sydney Morning Herald* comes fifth.

across the life of an inquiry, which could last over a year. Two days were chosen because some Senate reports were tabled later in the day and missed the deadline for publication in the next day's paper.

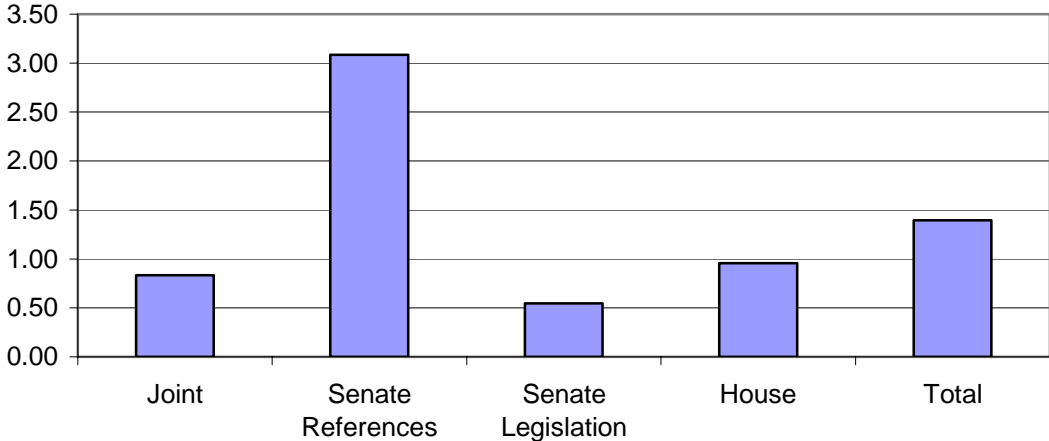
The index had two components. The first was whether a report was mentioned in a particular paper. For each paper, the report received one point. The second component involved how close to the front page the article was located in each paper, and therefore how newsworthy it was. The inverse of the page number was calculated for this, so if an article was on page one the report received one extra point. Page two resulted in half a point, page three one third of a point and so on. Each paper had a potential score of two per committee report, and combining the result of the five papers gave a potential score between zero and 10. Zero equated to no mention in any of the five papers and 10 equated to being on page one in all of the papers. Figure six has the results for each committee type.

There are two main observations from the graph. Firstly, committee reports overall do not receive a great deal of media. The average index for the whole sample is 1.39, which roughly equates to an article on page three in one of the five sampled newspapers. The second observation is that Senate references committees received the most coverage by a clear margin. Their score was 3.09, which equates to mentions in three of the five papers at the end of the news section. Eight reports in the sample received media scores greater than five, and all but one related to inquiries by Senate references committees. The three highest scoring reports in the sample covered the intelligence on Iraq's weapons of mass destruction (10), the Bali bombing (7.98), and a certain maritime incident (7.83).<sup>19</sup> Predictably, they were also the three reports inquiring into ministerial conduct.

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<sup>19</sup> Joint Committee on ASIO, ASIS and DSD, *Intelligence on Iraq's weapons of mass destruction*, 2003, Senate Foreign Affairs, Defence and Trade References Committee, *Bali 2002: Security Threats to Australians in South East Asia*, 2004, Senate Select Committee on a Certain Maritime Incident, *Report*, 2002.

**Figure 6: Average press coverage index for committee reports tabled in 2001-2004**



Source: A sample of 76 committee reports.

The expectation would be that higher press coverage would make a government more likely to respond positively to a committee report. As John Uhr once stated, ‘just think of which types of parliamentary committees generate the most media publicity and you probably have a committee that has already got the attention of the Government’.<sup>20</sup> This will be tested at the end of the paper.

**Number of recommendations**

The final descriptor of a committee report used in this study is the number of eligible recommendations in a report. In 2004, Bob Charles was the retiring Chair of the Joint Committee of Public Accounts and Audit. He stated in an interview that he believed committees should try to agree on bipartisan reports and not have too many recommendations in them. He stated, ‘If you have 50 recommendations, the three or four that are really important tend to get lost in the flood’.<sup>21</sup> Staff who worked for this committee have told this author that Mr Charles would express concern about any draft committee report that had more than 12 recommendations.

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<sup>20</sup> John Uhr, ‘Marketing Parliamentary Committees’, *Australasian Parliamentary Review*, vol. 16, no. 2, p. 103.

In the sample, the number of eligible recommendations in reports ranged from one to 89. Three reports had 50 or more recommendations and they were all by Senate references committees. The average number of recommendations was 11. Although this paper makes the simplifying assumption that all recommendations in reports are equally important, Mr Charles' economical philosophy can be tested. The statistical study that follows checks whether the number of recommendations affects the likelihood of the government accepting at least one recommendation in a report (whether the committee is effective) and if it affects the overall acceptance rate (how a committee can be more effective).

## **Modelling government responses<sup>22</sup>**

### **Minimum effectiveness**

This part of the study involved running a regression of a number of characteristics of committee reports (for example, type of committee) against whether the government accepted at least one recommendation in a report.<sup>23</sup> The aim was to extract the effect of each individual characteristic to create an equation that generated the probability that the government would accept at least one recommendation in a report. For example, while Senate reference committees tended to have low rates of bipartisanship, the model can provide an estimate, on average, of what would happen to the probability of effectiveness if one of those committees increased its bipartisanship measure but left everything else the same. The model also checks whether any characteristics are not statistically significant. That is, their effect in the sample may vary so much that it is not possible to reliably predict what their effect is. If any characteristic varied this much, it was removed from the model. After removing characteristics with low reliability, a model with seven characteristics was created. The results are in table two. A more thorough discussion of these processes is in the appendix.

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<sup>21</sup> 'Straight Shooter', *About the House*, March 2004, p. 26.

<sup>22</sup> The EasyReg package was used for the regressions. See Bierens, H. J. (2007), 'EasyReg International', Department of Economics, Pennsylvania State University, University Park, PA 16802, USA (<http://econ.la.psu.edu/~hbierens/EASYREG.HTM>).

<sup>23</sup> A logit model. An acceptance rate of zero equated to a negative result and an acceptance rate greater than zero equated to a positive result.

**Table 2: Effect of different report characteristics on the probability whether the government accepted at least one recommendation, reports tabled 2001-2004**

Characteristic	P-value	Base case	New value	Effect (%)
Senate references	0.00477	Joint or Senate legislation	Senate references	-62.0
House	0.01532	Joint or Senate legislation	House	-59.0
Terrorism inquiry	0.04763	No	Yes	-49.4
Ministerial inquiry	0.20497	No	Yes	-75.1
Bipartisanship	0.00061	83.3	100	+16.9
			66.7	-33.0
Number of reccs	0.00199	4	8	+14.1
			2	-12.2
Press coverage	0.03480	1.33	5	19.8
			0	-2.9

Source: A sample of 76 committee reports. The characteristic for the number of recommendations appears twice in the mathematical model. The lower p-value has been reported for this characteristic.

The p-value gives a measure of how reliable (or statistically significant) the characteristic is in predicting whether the government will find a committee report effective or not. A p-value of 0.01 (or one per cent) means that there is a one per cent chance of deciding that the characteristic is statistically significant when it actually is not. In other words, a p-value less than this means it is very safe to conclude that this is a relevant characteristic. Therefore, the table states that the chance the government will accept at least one recommendation in a report of a Senate references committee compared with a joint committee is most likely to be less, all else being equal. The number of recommendations and the bipartisanship measure also have a p-value less than 0.01. Changes in these are very likely to change the chance of the government finding a report effective.

A p-value less than 0.05 (or five per cent) is regarded as the statistical minimum to conclude that a characteristic is statistically significant. The model indicates that House inquiries, terrorism inquiries, and changes in the press coverage for an inquiry all fall into this category. A p-value of 0.1 is the maximum permitted to declare some measure of reliability. However, no characteristics are in this group. The characteristic of a ministerial inquiry is not statistically significant, but it has sufficient explanatory power to be included in the model. All the other characteristics are of low significance and have been excluded.

Tested against the 76 reports in the sample, the model predicts the correct result 81.6 per cent of the time. This compares against 50 per cent for flipping a coin or 63.2 per cent for automatically predicting a positive result in all cases. Therefore, the model has reasonable predicting power.

The table adopts a hypothetical base case of a joint committee tabling a report with four recommendations on a topic other than terrorism. The bipartisanship score is 83.3 per cent, equivalent to 10 members out of 12 agreeing on the report. This is close to the sample average of 83.9 per cent. With these characteristics, the model predicts a 76.3 per cent chance that the government would accept at least one recommendation in the report. If, however, a report with these characteristics was tabled by a Senate references committee, then the chance for effectiveness would drop by 62 per cent to 14.3 per cent.<sup>24</sup> This does not mean that exactly the same report would have a reduced chance simply because a different type of committee wrote it, although this type of effect may be involved. What it most likely means is that the different approaches taken by a Senate references committee in terms of topic and tone reduces the chance that the government will be prepared to accept some of its recommendations, compared with a joint committee.

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<sup>24</sup> The two models in the paper are non-linear. Therefore, the 62 per cent reduction only applies to the specific circumstances in the base case. Variations in the base case will lead to changes in the effect of a Senate references inquiry and for all other characteristics as well.



Another comment to make from the table is that the largest movements in the chance of effectiveness tend to be due to the type of committee running an inquiry, rather than the characteristics of the report itself. A change in the type of committee for this base case leads to changes in the order of 60 per cent. For the other statistically significant characteristics, the largest changes occur with bipartisanship and terrorism inquiries. Both of these effects are in the order of 50 per cent.

These results confirm some of the observations made earlier in the paper. The exception is Bob Charles' comment about limiting the number of recommendations. What appears to be happening instead is that having more recommendations in a report increases the chances that there will be something that the government finds useful in it. This is similar to a lottery effect. The more tickets one buys in a lottery, the greater the chance of winning a prize. The impact of this characteristic is a result of setting a non-zero acceptance rate as the benchmark, rather than a particular proportion, such as 50 per cent.

The importance of the number of recommendations particularly affects the performance of Senate legislation committees. These committees tended to have a low number of majority recommendations. The majority comprised government members and they generally only made a small number of recommendations – the average was two. This was because the bills were referred by opposition parties in the Senate and it appears that government Senators were only interested in suggesting changes to legislation if they saw a strong case for doing so. Therefore, the explanation for the similarity between joint committees and Senate legislation committees in the model and the difference in their acceptance rates is because the majority on Senate legislation committees tended to make few recommendations.

The criticism of this model is that committees can inflate their effectiveness by tabling long reports with a large number of recommendations. There are a number of responses to this concern. Firstly, it is not the only measure of effectiveness under the framework. For instance, the acceptance rate can be considered to be a supplementary performance indicator to this initial measure of effectiveness. The views of the legislature, stakeholders and the public must also be considered in assessing overall effectiveness. Inflating one effectiveness measure is

likely to adversely affect the perspectives of the other three groups. Further, it is advisable to compare any effectiveness measure with an efficiency measure as well. For instance, it should be possible to publish the cost of a committee report, which Canadian committees have done in the past and the Audit Office of New South Wales does for its performance audits.<sup>25</sup> Including the cost of an inquiry in the report should moderate any such behaviour.

**Increasing the acceptance rate**

The next step in the analysis was to run a regression of what factors would increase the acceptance rate, assuming the government accepts at least one recommendation in the report.<sup>26</sup> In this case, a sub sample of the 48 effective committee reports was used. The research question was to determine which characteristics made an effective report more so from the perspective of the government. The results for the ‘predicted acceptance rate’ are in table three.

**Table 3: Effect of different report characteristics on government acceptance rate, assuming at least one recommendation is accepted, reports tabled 2001-2004**

Characteristic	P-value	Base case	New value	Effect (%)
Senate References	0.00019	Joint or Senate legislation	Senate references	-49.8
House	0.00024	Joint or Senate legislation	House	-22.9
Administration inquiry	0.00000	Policy inquiry	Administration	+22.4
Bills inquiry	0.01457	Policy inquiry	Bill	+29.1
Press coverage	0.00383	1.33	5.0	+21.5

<sup>25</sup> Brian O’Neal, ‘Senate Committees: Role and Effectiveness’, Canadian Parliamentary Information and Research Service, June 1994, <http://www.parl.gc.ca/information/library/PRBpubs/bp361-e.htm>, (accessed 17 October 2007). New South Wales performance audit reports available at [http://www.audit.nsw.gov.au/publications/reports/performance/performance\\_reports.htm](http://www.audit.nsw.gov.au/publications/reports/performance/performance_reports.htm) (accessed 21 December 2007).

<sup>26</sup> An ordinary least squares regression on the natural log of the ratio between the acceptance rate and 100 minus the acceptance rate. Algebraically, this is  $\ln(AR/(100-AR))$ . Where the acceptance rate was 100, it was transformed to 99 for the purposes of this calculation.

			0	-10.6
Number of recs (House)	0.00024	4	8	-3.2
			2	+0.8
Number of recs (Admin)	0.00003	4	8	-33.7
			2	11.3

Source: A sub-sample of 48 committee reports. The characteristics for House inquiries, administrative inquiries and the number of recommendations each appear more than once in the mathematical model. The lowest p-values have been reported for these characteristics.

There are a number of similarities in these results with those in table two. The effects of Senate references committees, House committees and press coverage are all statistically significant and the same sign as before. The differences are the new characteristics of an administration inquiry and bills inquiry, both of which increase the acceptance rate. The categories of terrorism and ministerial inquiry do not have sufficient explanatory power to be included in the model. Overall, the model performs reasonably well. It explains 63.1 per cent of the variation in the regression, which is similar to stating that it explains 63.1 per cent of the variation in the positive acceptance rates.<sup>27</sup>

An interesting change from table two is that, while the number of recommendations is still statistically significant, it has changed sign. In other words, while a larger report is more likely to achieve a minimum level of effectiveness, it is also more likely to have a lower acceptance rate. This may reflect the law of diminishing marginal returns. When deliberating on a report, a committee is likely to make the most important and best recommendations its priority. Less important recommendations become subsequent additions ‘on the margin’. A larger report will have, on average, more marginal recommendations, which will reduce the likely acceptance rate. However, this effect only applied to House and administrative inquiries, which comprised 30.3 per cent of the sample (23 reports).<sup>28</sup>

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<sup>27</sup> The independent variable is the log of the acceptance ratio, not the acceptance rate.

Similar to before, the effect of each characteristic is demonstrated against a hypothetical case of a joint committee report with four recommendations, a bipartisanship index of 83.3, and a press coverage index of 1.33. The exception is the entries for the number of recommendations. Because the effect of the number of recommendations is limited to House and administrative inquiries, the values in the effect column in the last four rows are based on assuming a House and administrative (joint) committee respectively.

The type of committee conducting the inquiry again has a large effect. Changing from a joint committee to either a Senate references or House committee reduces the acceptance rate by up to 50 per cent. However, a Senate legislation committee is not statistically different to a joint committee. Another large-scale effect is if the committee in question examined a bill. Where the government decided to accept some of the recommendations for a bill inquiry, this increased the acceptance rate by almost 30 per cent. In other words, the government tended to respond to bill inquiries on an ‘all or nothing’ basis. The government also responded to press coverage when it decided to accept some recommendations in a report. A large increase in press coverage to five on the index (equivalent to page four in four of the five surveyed papers) increased the acceptance rate by over 20 per cent.

These results confirm some of the initial discussion and are probably more in line with expectations than the results for the first model. For instance, it provides some support for Bob Charles’ views that adding more recommendations to a report will not necessarily make it more effective, at least in relation to House and administrative inquiries. It is also in line with Derek Hawes’ observation that governments are more likely to be receptive to reports on administrative issues, rather than policy reports.

The sub-sample of 48 reports is different to the full sample of 76. For example, the sub-sample has a smaller proportion of reports that involved high levels of political dispute. This is demonstrated by differing bipartisanship rates. In the sub sample, the average is 90.5 and in

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<sup>28</sup> No House committee conducted an administrative inquiry in the sample.

the rest of the sample (the remaining 28 reports) it is 72.6. To a large extent, the reports excluded from the sub-sample comprise those highly controversial reports that the government did not respond to because their political opponents took the opportunity to take a combative approach, rather than a cooperative one.

## **Applications**

While this analysis assists in explaining the government's responses to reports tabled between the 2001 and 2004 elections, committee members can also use it to assist in their decision making about reports. In order for these applications to be valid, they must meet a number of assumptions. For example, the analysis assumes that all recommendations in a report are equally important. In the real world, this is rarely the case. Further, there has been a change of government since the sample period. Although there are similarities between governments, there are also differences. To apply the results of the regression to future governments implies that the differences between governments in relation to committee reports are negligible. We also know that the models leave a large proportion of the government response unexplained. Therefore, using the regression results in this way might best be regarded as indicative of the tradeoffs that committees now face, rather than authoritative.

## **Maintaining bipartisanship**

Let us assume a joint committee is deliberating on a report with nine recommendations on a non-terrorism policy matter. The expected press coverage is 1.33 and all 20 committee members are expected to agree on the report. Let us also assume that, due to external factors, the opposition members then inform the committee that there is a number of recommendations that they cannot support. How should the government members approach the negotiations?

If we assume that the government members wish to maximise the chance that at least some recommendations will be implemented, then they should try to secure full bipartisanship. For example, if the opposition members only support five recommendations and the government members agree to this reduction in the report, then the chance of the government accepting at

least one recommendation is 94.8 per cent. If the committee adopts nine recommendations and the eight opposition members dissent, then the chance of the government accepting at least one recommendation drops to 71.9 per cent. This calculation assumes that there is a small increase in press coverage due to the dispute (to 2.67).

The other scenario is that the 12 government members are not risk averse and they instead wish to maximise the number of recommendations that the government will probably accept. This figure is calculated by multiplying the number of recommendations by the probability the government will accept at least one recommendation (first model) by the predicted acceptance rate (second model). If the committee adopts nine recommendations with eight opposition members dissenting, the likely number of recommendations that the government will accept is 4.78. What will be the effect of government members trading off some recommendations to secure full bipartisanship? While 100 per cent bipartisanship will maximise the likely acceptance rate, trading off recommendations will reduce the number of recommendations available for the government's consideration. If we assume that the government members only need to drop one recommendation to secure the agreement of the opposition members, then the likely number of accepted recommendations will be 5.03. In this case, negotiating to secure bipartisanship is worthwhile.

If the opposition members require two recommendations to be dropped from the report to achieve consensus, leaving seven recommendations in the report, then the likely number that the government will accept is 4.37. Therefore, the government members know that dropping one recommendation to secure consensus will make them better off, but it is not worth trading off any more. If the opposition members require more than this, then the government members should keep all nine recommendations and accept the consequences of a minority report. Of course, opposition members can make these calculations as well.

This case study suggests that a majority's approach to bipartisanship will depend on how risk averse it is. The more risk averse a committee majority, the more likely it is to seek consensus. However, bipartisanship is still relevant to committee majorities that are less risk averse. Where committees are seeking to maximise the likely number of accepted

recommendations, then negotiating to achieve an agreed report is worthwhile, provided the majority does not give up too many recommendations. Bipartisanship has value in this case, but it is possible to pay too high a price to secure it.

### **Choice of committee**

Tables two and three show there is a clear difference between the effects of an inquiry being conducted by either a joint or Senate legislation committee on the one hand, and a Senate references or House committee on the other. For example, the chance that the government would accept at least one recommendation drops by over 50 per cent. Assume that a parliamentarian wanted a committee to investigate a policy issue and they wanted the government to commit to new action on it. Let us further assume that they did not mind which type of committee conducted the inquiry. These figures suggest that the Senator or Member in question should lobby to have the inquiry conducted by a joint committee, rather than a Senate references or House committee.

Some areas of government activity are specifically covered by joint committees with reasonably wide terms of reference. These include foreign affairs, defence, trade, financial services, security, crime and migration. For activities outside these areas there is the option of lobbying to have the inquiry conducted by the Joint Committee on Public Accounts and Audit. This committee has wide terms of reference, including the receipt and expenditure of funds by the Commonwealth and any circumstances connected with them.<sup>29</sup> It can inquire into almost any area of Commonwealth activity. During its history, it has almost always delivered bipartisan reports, which increases the chances of the government accepting its recommendations. Therefore, there is theoretically a joint committee available for every type of inquiry.

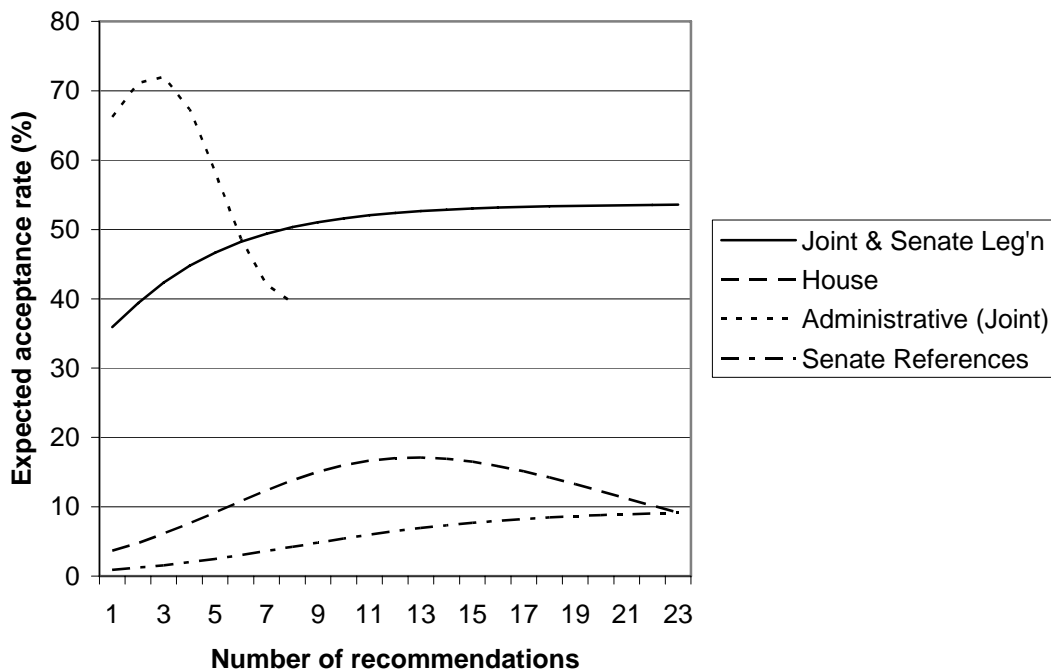
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<sup>29</sup> See sub-section 8(1) of the *Public Accounts and Audit Committee Act 1951*.

### More or less recommendations?

The final topic in this area concerns whether the size of the report has a large impact on the acceptance rate. After combining the two models, figure seven shows the effect of increasing the number of recommendations in a report on the expected acceptance rate. The base case in this example assumes a joint committee policy inquiry with 90 per cent bipartisanship and no press coverage.

**Figure 7: Impact of recommendations on committee effectiveness, reports tabled in 2001-2004**



Source: A sample of 76 committee reports. The line for administrative inquiries stops short to be consistent with the low number of recommendations for these inquiries in the sub-sample of 48. Projections beyond the sample range are not valid.

In terms of maximising the expected acceptance rate, the optimal number of recommendations depends on the committee and the inquiry. For House committees, the maximum expected acceptance rate occurs at 13 recommendations. For joint committees conducting administrative inquiries, it occurs at three recommendations. There is no particular maximum point for joint committees, Senate legislation committees or Senate references committees. However, the value of added recommendations tapers off for joint and Senate



legislation committees after 10 recommendations. This result supports the views of Bob Charles. In terms of the proportion of recommendations accepted, large reports tend to be inefficient. Limiting reports to a dozen recommendations in most cases appears to be a good compromise between properly covering a topic and being efficient. The exceptions are administrative inquiries and Senate references inquiries. For the former, a limit of five or six recommendations is probably a good benchmark. For Senate references inquiries, there does not appear to be any suitable report size. However, it should be noted that these inquiries were often a platform for opposition parties to engage in political debate with the government. The government response may not have been relevant to their effectiveness.

## **Conclusion**

In the sample of 76 reports, the government accepted at least one recommendation in 48 cases. In other words, where a committee report suggested new action to the government, the government found these suggestions useful 63.2 per cent of the time. While different observers may have different views about appropriate benchmarks, it seems fair to judge this a reasonable level of performance.

From the perspective of governments, the most effective committees, on average, are joint committees. The average acceptance rate for joint committee reports during the sample period was over 50 per cent, which exceeded the average acceptance rate for all other committee types by at least 20 per cent. Two regressions were used to extract the individual effects of report characteristics. The first stage focussed on what makes a committee report effective, and the second on what makes effective reports more so. The regressions found a clear difference between joint committee reports compared with Senate references and House committee reports. Interestingly, the size of the effect was similar for Senate references and House committees in both regressions. This suggests that they are fundamentally similar types of committees, despite the former being the only committees where the opposition had a majority. Perhaps the main reason is that they are both single-chamber committees with non-specific roles. From the government's perspective, House committees tended to be more effective due to their higher levels of bipartisanship.

Senate legislation committees were the ‘dark horses’ of the study. In terms of acceptance rates, they do not appear to perform particularly well. However, once the various report characteristics are taken into account, including bill reports, they are statistically no different to joint committees. This suggests that there is something inherently valuable to government about their work. It also corroborates John Uhr’s comments that, on average, committees are better at refining government proposals, rather than conducting larger scale policy work.<sup>30</sup>

Aside from the type of committee, the most important factors were the number of recommendations, bipartisanship, press coverage, and the inquiry topic. With these results, the study reinforces some prior observations of committees. Gavin Drewry stated that committees are at their most effective when they conduct contentious inquiries but deliver bipartisan reports. Bob Charles set a limit of a dozen recommendations per report. From the perspective of government, these are a prescription for committee effectiveness.

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<sup>30</sup> John Uhr, *Parliamentary Committees: What Are Appropriate Performance Standards?* Discussion Paper prepared for Constitutional Centenary Foundation, 1993, p. 16.

## Statistical appendix

### Summary data

The text provides a detailed examination of the summary data. For completeness, summary data tables for the two regressions are below. The independent variable for each regression is listed on the first row of each table.

**Table 4: Summary data for the logit model of minimum committee effectiveness**

Variable	Minimum	Maximum	Average	Standard Error
Effectiveness dummy	0	1	0.63	0.49
Senate references dummy	0	1	0.26	0.44
Senate legislation dummy	0	1	0.17	0.38
House dummy	0	1	0.13	0.34
Terrorism dummy	0	1	0.13	0.34
Immigration dummy	0	1	0.07	0.25
Administration dummy	0	1	0.17	0.38
Bills dummy	0	1	0.26	0.44
Ministerial dummy	0	1	0.04	0.20
Legislated functions dummy	0	1	0.28	0.45
Number of recommendations	1	89	10.84	14.38
Bipartisanship index	25	100	83.92	20.59
Press coverage index	0	10	1.39	2.31

Source: A sample of 76 committee reports.

One observation from table four is that there are only three inquiries into ministerial conduct in the sample. This means that this dummy variable has reduced chances of being found to be statistically significant. Another observation is that the three continuous variables on the last rows are skewed. For example, the mean number of recommendations is 11, but the maximum is 89. A linear specification implies that a change from 1 recommendation to 11 will be the same as that from 40 to 50. Practically, however, any report having over 20 recommendations would be considered a large report. In theory, the impact of changing the number of recommendations from 1 to 11 would be much greater than a change from 40 to 50. This suggests that the squared term of this variable could be added to the model to adjust for non-linear effects. A similar argument could be made for the other continuous variables.

**Table 5: Summary data for the OLS model of improved committee effectiveness**

Variable	Minimum	Maximum	Average	Standard Error
Acceptance rate	7.1	100	55.72	29.01
Senate references dummy	0	1	0.17	0.38
Senate legislation dummy	0	1	0.10	0.31
House dummy	0	1	0.15	0.36
Terrorism dummy	0	1	0.13	0.34
Immigration dummy	0	1	0.04	0.20
Administration dummy	0	1	0.21	0.41
Bills dummy	0	1	0.19	0.39
Ministerial dummy	1	1	0.02	0.14
Legislated functions dummy	0	1	0.35	0.48
Number of recommendations	1	55	11.23	11.43
Bipartisanship index	42.9	100	90.53	16.21
Press coverage index	0	10	1.24	2.17

Source: A sub-sample of 48 committee reports.

Table five gives the summary data for the smaller sample. It comprises only those reports where the government accepted at least one recommendation. Therefore, the values in the table have been shaped by this criterion. There is only one observation which includes a positive ministerial conduct dummy variable. Therefore, it cannot be found significant in this regression. The averages of the dummies for committee type have shrunk overall. This reflects the increased proportion of joint committees in this sub-sample. As noted in the text, the reports in the sub-sample have a higher average bipartisanship rating, representing almost a halving of the proportion of dissenting committee members in reports. This is due to the government's preference for bipartisan reports in the first model.

### **Minimum effectiveness regression results**

Table six shows the regression results for the logit model. In this case, government acceptance of at least one recommendation in a report counted as a positive response. A zero acceptance rate counted as a negative response. The regression procedure was as follows:

1. Run the regression using the nine dummy variables, the three continuous variables and the three continuous variables squared.
2. Note which variables had a t-value less than one. Drop these from the regression and run it again, culling variables each time that have a t-value less than one. The result from this process is model A.
3. Run an artificial regression for heteroskedasticity on the error terms and include cross products and squares as independent variables. Note which ones are statistically significant.
4. Add these candidates to model A and repeat the regression, dropping variables with a t-value less than one. The result is model B.
5. Compare models A and B for goodness of fit and select the preferred model.

The following cross products showed a relationship with the error term and were added to model A: house x press<sup>2</sup>, recommendations x bipartisanship, recommendations<sup>3</sup>, bipartisanship x press<sup>2</sup>, bipartisanship x recommendations<sup>2</sup>, and recommendations<sup>4</sup>.

**Table 6: Regression results for the logit model of minimum committee effectiveness**

Variable	Model A			Model B		
	Coefficient	t-value		Coefficient	t-value	
Senate references dummy	-2.963	-2.82	***	-2.539	-2.34	**
House dummy	-2.739	-2.42	**	-3.373	-2.30	**
Terrorism dummy	-2.173	-1.98	**	-1.207	-1.22	
Ministerial dummy	-5.612	-1.27				
Recommendations	0.323	3.09	***	-1.156	-2.50	**
Recommendations <sup>2</sup>	-0.00453	-2.45	**	0.0496	2.33	**
Bipartisanship	0.0868	3.43	***			
Press <sup>2</sup>	0.0876	2.11	**			
Recommendations x Bipartisanship				0.0213	2.95	***
Recommendations <sup>2</sup> x Bipartisanship				-0.000798	-2.46	**
Intercept	-7.434	-3.28	***	-0.729	-1.36	
Loglikelihood	-28.967			-30.396		
Akaike Information Criterion	0.999			1.010		
Schwarz Information Criterion	1.275			1.256		

Source: A sample of 76 committee reports. \* indicates significant at the 10 per cent level of significance, \*\* indicates significant at the five per cent level of significance and \*\*\* indicates significant at the one per cent level of significance.

In examining table six, the first task is to select the preferred model. Model A has better scores for the loglikelihood and the Akaike Information Criterion. Model B has a better score for the Schwarz Information Criterion, which places a greater penalty on adding extra variables to the model. Model A also has the advantage of being simpler to interpret and was

the first model generated in the process. Although the differences are not great, model A was selected because the advantages offered by model B are less than in model A.

There are two main additional comments to those made in the text about the effect of the variables. The first is that it is possible to calculate the number of recommendations that would maximise the chances of the government accepting at least one recommendation in a report. This is because the coefficient for recommendations<sup>2</sup> has a negative sign, which means the second derivative will as well. Differentiating the regression equation by recommendations and solving gives a global maximum of 36 recommendations. In other words, there is a limit to the lottery effect discussed in the text. If the government did not find anything worth accepting in a report with 36 recommendations, then adding more recommendations would not, on average, improve the report's chances of being deemed effective by the government.

The second comment is that press coverage appears as a squared term. The effect of this is to give greater weight to higher amounts of media coverage. For example, an increase in press from zero to five would increase the log of the probability ratio by 2.19, but an increase from five to 10 would increase it by an extra 6.57, or three times again. The interpretation of this is that it was possible to use the media to push the government into accepting some recommendations in a report, but the media coverage had to be intense, such as being on the front page of as many newspapers as possible. Interestingly, the press coverage index included a bonus for front page coverage and the model took this further by adopting the index's squared term.

In logit models, the diagnostic issues are specification and heteroskedasticity. Davidson and MacKinnon's ordinary least squares (OLS) artificial regression was used to conduct these diagnostic tests.<sup>31</sup> The specification test was:

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<sup>31</sup> Russell Davidson and James G. MacKinnon, *Estimation and Inference in Econometrics*, Oxford University Press, New York, 1993, p. 527.

$$V_t^{-1/2}(y_t - F_t) = V_t^{-1/2}f_t\mathbf{X}_t\mathbf{b} + aV_t^{-1/2}(\mathbf{X}_t\boldsymbol{\beta})^2f_t + \text{residual}$$

$V_t$  = the variance of the error term =  $P_t - P_t^2$

$P_t$  = the predicted probability =  $F_t$

$y_t$  = the observed dependent variable

$f_t$  = the derivative of  $F_t = V_t$  (logit model only)

$\mathbf{X}_t\boldsymbol{\beta} = \ln(P_t/(1-P_t))$

Where  $P_t$ ,  $V_t$ ,  $F_t$  and  $f_t$  are calculated using the estimates in the model. The intuition behind the test is that, if the model is correctly specified,  $\mathbf{X}_t\mathbf{b}$  should not be related to the variation in the left hand side (which is a transformed error term) and the square of the fitted value,  $\mathbf{X}_t\boldsymbol{\beta}$ , should not have much explanatory power. It is similar to a RESET test. The test statistic is the explained sum of squares from the regression. It has a chi-square distribution with one degree of freedom. Table 7 shows that the test statistic of 0.82 is well below the 10 per cent critical value. Therefore, we do not reject the hypothesis that the model is correctly specified.

**Table 7: Diagnostic tests for the logit model for minimum committee effectiveness**

Test	Test statistic	Distribution	Critical values	
			10%	5%
Coefficients jointly non-significant (LR test)	42.10	Chi <sup>2</sup> (8)	13.36	15.51
Specification (Davidson-MacKinnon)	0.82	Chi <sup>2</sup> (1)	2.71	3.84
Heteroskedasticity (Davidson-MacKinnon)	26.40	Chi <sup>2</sup> (24)	33.20	36.42

Source: A sample of 76 committee reports.



The heteroskedasticity test is related to the specification test. The formula is as follows:

$$V_t^{-1/2}(y_t - F_t) = V_t^{-1/2}f_t\mathbf{X}_t\mathbf{b} + V_t^{-1/2}f_t\mathbf{Z}_t(-\mathbf{X}_t\boldsymbol{\beta})c + \text{residual}$$

The new term is the vector  $\mathbf{Z}_t$ , which comprises a number of variables drawn from those used in the regression. Once again the test statistic is the explained sum of squares from the OLS regression. Its chi-square distribution has the same number of degrees of freedom as there are variables in  $\mathbf{Z}_t$ . Here, the vector comprised cross products and squares of the variables in the model. As table seven shows, the test statistic of 26.4 is below the relevant critical values and we do not reject the hypothesis that the errors are homoskedastic.

There are a number of ways of assessing the explanatory power of the model. The first is to test the hypothesis that the slope coefficients are jointly equal to zero. Table seven shows the results for the likelihood ratio test, which was calculated against the null likelihood of -50.02. The test statistic of 42.1 clearly rejects the null hypothesis. It is also possible to summarise the model’s performance against both positive and negative predictions. Table eight gives a breakdown of whether the model correctly predicted the outcome for each of the 76 reports in the sample.

**Table 8: Performance of the logit model for minimum committee effectiveness, allocation of observations**

Model’s prediction	Outcome	
	Not effective	Effective
Not effective	20 (n <sub>00</sub> )	6 (n <sub>01</sub> )
Effective	8 (n <sub>10</sub> )	42 (n <sub>11</sub> )

Source: A sample of 76 committee reports.

One way of summarising table eight is to calculate the proportion of correct ‘not effective’ predictions and correct ‘effective’ predictions and add them. In mathematical terms:

$$\text{Model performance} = n_{11}/(n_{11} + n_{10}) + n_{00}/(n_{00} + n_{01})$$

If each proportion ranges between zero and one, then adding them will give a statistic between zero and two. Flipping a coin would, on average, give a statistic of one. Always predicting an effective response would give a statistic of one as well. The model will, therefore, demonstrate value if its performance statistic is over one. In this case, the statistic is 1.61, which demonstrates that the model clearly adds value. This statistic is preferable over a percentage of correct predictions because it gives equal weight to both positive and negative predictions.

### **Improved effectiveness regression results**

Table nine gives the results for the model. The dependent variable was transformed by the following equation, with acceptance rates equal to 100 being adjusted to 99 to allow a defined result for these values.

$$\text{Dependent variable} = \ln [\text{AR}/(100 - \text{AR})]$$

Where AR is the acceptance rate. The transformation was used because the acceptance rate is bounded between zero and 100. An OLS model regressed on the untransformed acceptance rate would result in some predictions outside this range. The transformation ensures that the model’s predictions will stay within these bounds.

The iterative process used for the logit model was also used here, with the White heteroskedasticity test being used to generate candidate cross-products and squares. Those

that showed a relationship with the squared residuals were: Senate references x press, House x recommendations, House x recommendations<sup>2</sup>, administration x recommendations, administration x recommendations<sup>2</sup>, recommendations x press, and recommendations<sup>2</sup> x press. While model A performs reasonably well and has an R<sup>2</sup> in excess of 0.5, model B does represent an appreciable improvement on all four goodness of fit measures in the table. Therefore, model B is preferred. The change means that number of recommendations does not always affect the acceptance rate for effective committee reports. Rather, the effect of the number of recommendations is limited to House committee reports and reports on administrative matters. No House committees conducted administrative inquiries in the sample.

Table 10 shows diagnostic tests conducted for model B. The tests for the slope coefficients, for normal distribution of the errors and for specification give the preferred results. The Breusch-Pagan and truncated White tests both confirm heteroskedasticity, so the White standard errors should be used for model B. The truncated White test is similar to the general test, but only an intercept, the fitted values and the fitted values squared are regressed on the squared residuals.<sup>32</sup>

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<sup>32</sup> The values for heteroskedasticity tests for model A were: truncated White = 13.67, general White = 38.32, compared with the five per cent critical value of 38.89, and Breusch-Pagan = 10, below the 10 per cent critical value of 12.02. One explanation would be that there might be specification issues with the model, but the RESET test statistic was low at 0.8. These results suggest that the White standard errors could be used for model A.

**Table 9: Regression results for the OLS model of improved committee effectiveness**

Variable	Model A					Model B				
	Coefficient	OLS t-value		White t-value		Coefficient	OLS t-value		White t-value	
Senate references dummy	-1.698	-2.36	**	-3.61	***	-2.358	-3.79	***	-3.74	***
House dummy	-1.102	-1.52		-2.59	***	-0.891	-0.95		-1.80	*
Administration dummy	1.021	1.58		1.47		6.199	4.09	***	8.69	***
Bills dummy	1.812	2.84	***	2.27	**	2.068	3.60	***	2.44	**
Recommendations	-0.148	-2.46	**	-2.74	***					
Recommendations <sup>2</sup>	0.00212	1.78	*	2.26	**					
Press	0.331	2.87	***	4.09	***	0.331	3.12	***	2.89	***
House x recommendations <sup>2</sup>						-0.0028	-0.83		-3.68	***
Administration x recommendations						-1.619	-2.29	**	-4.14	***
Administration x recommendations <sup>2</sup>						0.0982	1.46		2.52	**
Intercept	1.282	2.31	**	2.17	**	0.153	0.43		0.40	

R <sup>2</sup>	0.546					0.631				
Adjusted R <sup>2</sup>	0.467					0.555				
Akaike Information Criterion	1.047					0.883				
Schwarz Information Criterion	1.359					1.234				

Source: A sub-sample of 48 committee reports. \* indicates significant at the 10 per cent level of significance, \*\* indicates significant at the five per cent level of significance and \*\*\* indicates significant at the one per cent level of significance.

**Table 10: Diagnostic tests for the OLS model of improved committee effectiveness**

Test	Test statistic	Distribution	Critical values	
			10%	5%
Coefficients jointly non-significant (F-test)	8.33	F (8, 39)	1.83	2.19
Heteroskedasticity (Breusch-Pagan)	16.02	Chi <sup>2</sup> (8)	13.36	15.51
Heteroskedasticity (truncated White)	6.21	Chi <sup>2</sup> (2)	4.61	5.99
Errors normally distributed (Jarque-Bera)	1.46	Chi <sup>2</sup> (2)	4.61	5.99
Specification (RESET – $\hat{Y}^2$ and $\hat{Y}^3$ )	0.66	F (2, 37)	2.44	3.23
Structural stability (Wald)	1.42	Chi <sup>2</sup> (9)	14.68	16.92

Source: A sub-sample of 48 committee reports.

Testing for structural stability for model B was difficult due to the large number of dummy variables. Ordering the observations by the independent variables and splitting the 48 observations invariably resulted in collinear independent variables, preventing any regressions. Therefore, the observations were ordered by acceptance rate. Further, the changing variance across the 48 observations meant the Chow test was inappropriate. The following Wald test was used instead:

$$W = (\beta_1 - \beta_2)'(V_1 + V_2)^{-1}(\beta_1 - \beta_2)$$

Where  $V_1$  and  $V_2$  are the covariance matrices from each sub-regression and  $\beta_1$  and  $\beta_2$  are the estimated coefficient vectors in each case. Although it is a favourable result, the test statistic is very small and is equivalent to a p-value of approximately 0.995.

This suggests there may be a problem with the test. As an alternative, sub-regression results are presented in table 11. The first observation from the table is that the regression of the lower half of the 48 observations has very few significant coefficients. The F-test statistic for this regression is 1.5, below the 10 per cent critical value of 2.12. The negative Akaike Information Criterion corroborates this result. This may account for the very low Wald test statistic.

Table 11 shows that there were no cases where a coefficient had the opposite sign in the two regressions and was statistically significant in both cases. Although there were two cases where coefficients had opposite signs and one was significant (weak disagreement), there were four cases where coefficients had the same signs and one was significant (weak agreement). There were three cases where a coefficient was not significant in both regressions (neutral). Although this comparison is intuitive, it appears that these sub-regressions do not offer any evidence to reject an assumption of structural stability in the model.

**Table 11: Regression results for the high and low halves of the OLS model of improved committee effectiveness**

Variable	Low half			High half			Agreement
	Coefficient	t-value		Coefficient	t-value		
Senate refs dummy	-0.770	-1.68	*	-1.752	-1.02		Weak agr
House dummy	-0.125	-0.23		0.302	0.07		Neutral
Admin dummy	0.09407	0.01		5.490	3.11	***	Weak agr
Bills dummy	0.394	0.625		2.141	2.65	***	Weak agr
Press	0.0867	0.77		0.356	2.29	**	Weak agr
House x recs <sup>2</sup>	-0.00277	-1.48		-0.00783	-0.45		Neutral
Admin x recs	0.435	0.14		-1.538	-1.70	*	Weak disagr
Admin x recs <sup>2</sup>	-0.0443	-0.18		0.0904	1.00		Neutral
Intercept	-0.741	-2.87	***	0.805	1.31		Weak disagr
R <sup>2</sup>	0.445			0.615			
Adjusted R <sup>2</sup>	0.148			0.409			
Akaike IC	-0.255			1.129			
Schwarz IC	0.187			1.571			

Source: A sub-sample of 48 committee reports. \* indicates significant at the 10 per cent level of significance, \*\* indicates significant at the five per cent level of significance and \*\*\* indicates significant at the one per cent level of significance.



## Parliamentary inquiries as a form of policy evaluation

Mark Rodrigues<sup>1</sup>

### *Abstract*

*The literature on Australian parliamentary committees tends to focus on Senate committees and their function of attempting to hold the executive accountable to the parliament along with their function of 'bringing parliament to the people'. This paper examines the method of inquiry practised by House of Representatives general purpose standing committees as a form of policy evaluation and assesses its contribution to the policy making process. The paper observes that the method of inquiry employed by these committees is consistent with what may be described as 'proactive evaluation' which values evidence-based practice and promotes reflexive policy learning. This inquiry approach provides an important but often neglected contribution to public policy. The paper also makes some observations on the use and nature of evidence in the inquiry process with reference to the law of evidence and evidence-based policy.*

*The year 2007 marks the twentieth anniversary of the committee system in the House of Representatives. In February 2008, the House will hold a seminar on the committee system to commemorate that anniversary. It is anticipated that a future version of this paper will form part of a research project to support the twentieth anniversary seminar.*

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## Introduction

The development of the modern committee systems in the House of Representatives and Senate have been identified as the most important reform to Australian parliamentary practice since federation. It is a key component of what the Secretary of the Department of the Prime Minister and Cabinet has called the ‘network of integrity’ that has developed as part of the evolution of the Westminster tradition over the past thirty years.<sup>2</sup> While Parliament has made use of committees since 1901, it was not until the 1970s that a comprehensive system of committees was established. On 11 June 1970 the Senate resolved to broaden the use of its standing committees – a decision described by Reid and Forrest as one ‘that revolutionised the Parliament as a whole’.<sup>3</sup> In 1987 the House of Representatives adopted its own comprehensive committee system by establishing eight general purpose standing committees. While the volume of output, and breadth and function, of House committees does not match that of the Senate, House committees have made their own contribution to the committee work of the Parliament.

The development of the House and Senate committee systems has been seen as a major reform counteracting a decline in parliamentary standards caused by the rise of the party system and the ascendancy of the executive.<sup>4</sup> It can be argued that the advent of the modern committee system has reinvigorated the aspiration of parliamentary control over the executive. Between 1970 and 1999, parliamentary committees produced 3,220 reports, more than half of which were produced by Senate committees.<sup>5</sup>

The literature on parliamentary committees tends to focus on Senate committees due to the long-standing Senate committee system and its reputation as the key instrument of accountability within the Australian Parliament. Senate committees tend to be more

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<sup>2</sup> Shergold, P. (2006) Address to the National Press Club, 15 February, Canberra.

<sup>3</sup> Reid, G. S. & Forrest, M. (1989) *Australia's Commonwealth Parliament 1901-1988: Ten Perspectives*, Melbourne University Press, Melbourne, p. 375.

<sup>4</sup> Halligan et al (2007) *Parliament in the Twenty-first Century*, pp. 2-5; Marsh, I. (1995) *Beyond the two party system: Political representation, economic competitiveness and Australian politics*, Cambridge University Press, p. 242.

<sup>5</sup> Halligan, J., Miller, R. & Power, J. (2007) *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Melbourne, p. 276.

critical of the government and conduct more controversial inquiries than Joint or House committees, thereby attracting greater academic and media attention. The literature on committees also focuses on the role of committees in ‘taking parliament to the people’ and enabling the participation of otherwise marginalised groups,<sup>6</sup> on fostering social learning among policy practitioners,<sup>7</sup> and on the role of community and interest group participation in the committee process.<sup>8</sup> There has also been some work on measuring the effectiveness of committees.<sup>9</sup>

The aim of this paper is to examine the method of inquiry practiced by House of Representatives general-purpose standing committees as a form of policy evaluation and to consider the contribution of this method to the policy making process. In doing so, the paper situates the committee method of inquiry in the broader literature on policy evaluation and makes some observations on how parliamentary inquiries can work in evaluating policy. The paper also reflects on the use and nature of evidence in the inquiry process with reference to evidence-based policy and the law of evidence.

### **House of Representatives general purpose standing committees**

The functions of parliamentary committees are varied and include:

- Conducting investigations of issues of public importance
- Gathering evidence and making recommendations
- Facilitating the participation of the public in the legislative process
- Promoting public debate
- Reviewing policy and scrutinising the activities of the executive

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<sup>6</sup> For example, Marsh, I. (2004) ‘Australia’s Representation Gap: A Role for Parliamentary Committees?’ Department of the Senate Occasional Lecture Series, Parliament House, 26 November 2006; Dermody, K. Holland, I. & Humphery, E. (2006) Parliamentary Committees and Neglected Voices in Society’, *The Table*, pp.-

<sup>7</sup> For example, Marsh, I. (2006) ‘Can Senate Committees Contribute to ‘Social Learning’? *A Light of Reason: Transcript and supporting papers of a seminar on The Work of the Senate Select Committee on Superannuation*, Senate, p. 53.

<sup>8</sup> For example, Marsh, I. (1995) *Beyond the two party system*, Marinac, A. (2004) ‘The Usual Suspects? ‘Civil Society’ and Senate Committees’, *The Distinctive Foundations of Australian Democracy: Lectures in the Senate Occasional Lecture Series 2003-2004*, Papers on Parliament No. 42, Department of the Senate, pp. 129-139; Webber, R. (2001) ‘Increasing Public Participation in the Work of Parliamentary Committees’, *Australasian Parliamentary Review*, Vol. 16 (2), pp. 110-120.

<sup>9</sup> For example, Aldons, M. (2000) ‘Rating the Effectiveness of Parliamentary Committee Reports: The Methodology’, in *Legislative Studies*, Vol. 15 (1) Spring, pp. 22-32. Halligan, J., Miller, R. & Power, J. (2007) *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*

- Enabling parliamentarians to learn about policy issues in a mostly non-partisan environment
- Generally performing functions that the House of Representatives or Senate themselves are ‘not well fitted to perform’.<sup>10</sup>

In performing these functions, committees can have an impact on each stage of the policy cycle including agenda-setting, developing policy, decision making (indirectly), implementation of decisions, evaluation, and consultation.<sup>11</sup>

The House of Representatives committee system currently consists of thirteen general-purpose standing committees appointed for the duration of a parliament, a number of domestic or internal committees concerning matters such as procedure and publications, and occasional select committees that examine single issues in short and sharp inquiries.<sup>12</sup> There are currently twelve Joint committees consisting of members of both Houses. Joint committees are established by a resolution or legislation passed by both Houses of Parliament. Secretariats for most of the Joint committees are based in the House of Representatives. The Constitutional basis for the appointment of committees is derived from s. 49 of the Australian Constitution, which refers to ‘the powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees’, and s. 50, which refers to the power of each House to ‘make rules and orders with respect to ... its powers, privileges, and immunities ... [and] the order and conduct of its business and proceedings’.

General-purpose standing committees are the primary investigatory committees of the House and are established under Standing Order 215. The thirteen general purpose committees are:

- Aboriginal and Torres Strait Islander Affairs
- Agriculture, Fisheries and Forestry
- Communications, Information Technology and the Arts
- Economics, Finance and Public Administration
- Education and Vocational Training

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<sup>10</sup> Harris, I (ed.) (2005) *House of Representatives Practice*, 5<sup>th</sup> Edition, Department of the House of Representatives, Canberra, p. 621.

<sup>11</sup> Halligan et al. (2007) *Parliament in the Twenty-first Century*, p. 220.

<sup>12</sup> Harris, I (ed.) (2005) *House of Representatives Practice*, p. 622.

- Employment and Workplace Relations and Workforce Participation
- Environment and Heritage
- Family and Human Services
- Health and Ageing
- Industry and Resources
- Legal and Constitutional Affairs
- Science and Innovation
- Transport and Regional Services.

The inquiry process generally involves an initial phase where a committee receives a reference from the House or a relevant Minister<sup>13</sup> and advertises the inquiry, an evidence-gathering phase where submissions are received and witnesses are examined, and a reporting phase where the evidence is considered and the committee prepares a report which is then presented to the Parliament. After the conclusion of the inquiry process the report is distributed and the government prepares its response to the committee's recommendations.<sup>14</sup>

Standing Orders outline the formal rules for some of the main areas of committee activity including the appointment of members to committees, the election of Chairs and deputy Chairs, quorum requirements, the power to call for witnesses and documents, the publication of evidence, and report consideration and presentation to the House. Sources of guidance on committee practice and procedure include *House of Representatives Practice*, which provides comprehensive coverage of conventions, and unpublished guides for committee members and parliamentary staff. In June 2007 a number of roles previously governed by convention were clarified concerning the responsibilities of Chairs, Deputy Chairs and Secretaries.<sup>15</sup> It is the responsibility of a committee to manage its inquiry work according to the Standing Orders.

Most general purpose standing committees undertake investigative inquiries within their area of responsibility and conform to the inquiry process outlined above. These

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<sup>13</sup> Standing Order 2159(c) also provides for committees to make inquiries into annual reports of government departments and reports of the Auditor-General presented to the House with some qualifications.

<sup>14</sup> The government has made an undertaking to respond to reports within three months of tabling.

<sup>15</sup> Liaison Committee of Chairs and Deputy Chairs (2007) *General principles for the administration of parliamentary committees*.

investigative inquiries typically focus on matters of national application - a focus which often necessitates consideration of matters at the state level as well such as state legislative regimes. In conducting their inquiries committees may seek to review existing policy and programs, develop new areas of policy, identify policy gaps, or consider legislation.<sup>16</sup> The Legal and Constitutional Affairs inquiry into older people and the law is an example of an investigatory inquiry. The Attorney-General has asked the Committee to 'investigate and report on the adequacy of current legislative regimes in addressing the legal needs of older Australians' in the areas of fraud, financial abuse, general and enduring 'power of attorney' provisions, family agreements, barriers to older Australians accessing legal services and discrimination. This inquiry involved the consideration of Commonwealth and state legislation as well as elements of policy review.<sup>17</sup>

Committees are supported by secretariats staffed by parliamentary officers employed under the *Parliamentary Service Act 1999*. Secretariat staff are required to provide 'professional advice and support for the Parliament independently of the Executive Government of the Commonwealth'.<sup>18</sup> In contrast, Commonwealth public servants are employed under the *Australian Public Service Act 1999* and are required to be responsive to the government of the day and to work 'within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public'.<sup>19</sup> Committee Secretaries usually have responsibility for two or three standing committees, and each committee has a staff allocation nominally consisting of the Secretary, an inquiry secretary, a research officer, and administrative support. While secretariat staff may not necessarily have broad-ranging policy evaluation expertise, they often have policy experience in government departments and skills in project management, research, analysis and relationship building – skills that are nonetheless necessary for policy evaluation. Secretariats may not be experts in the particular subject matter under review, and some inquiries into particularly complex or specialist topics have involved the services of secondees who possess the necessary expertise (often from the departments whose activities are under review). A recent Legal and

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<sup>16</sup> Halligan et al. (2007) *Parliament in the Twenty-first Century*, pp. 62-63.

<sup>17</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs (2007) *Inquiry into older people and the law*.

<sup>18</sup> *Parliamentary Service Act 1999*, s. 10 (1) (a)

<sup>19</sup> *Australian Public Service Act 1999*, s. 10 (e)

Constitutional Affairs Committee review of copyright legislation in relation to the Australia-United States Free Trade Agreement, for example, benefited from the input of a seconded advisor from the Commonwealth Attorney-General's Department.<sup>20</sup>

### **Policy evaluation**

A minimal working definition of policy evaluation is the 'careful assessment of the merit, worth and value of content, administration, output and effects of ongoing or finished government interventions, which is intended to play a role in future, practical action situations'.<sup>21</sup> Conventional understandings of policy evaluation usually focus on assessing the effectiveness of a particular program in delivering outcomes and determining the worth or value of the initiative according to the initial policy objective. Such outcome or impact evaluations involve custom purpose research designs, the collection and analysis of quantitative data, and are best applied after the full implementation of the program in question.<sup>22</sup> All new policies at the Commonwealth Government level are now required to include an evaluation strategy.<sup>23</sup> Investigative inquiries of general purpose standing committees are *evaluative* inquiries in that they are about the 'production of knowledge based on systematic inquiry to assist decision making'.<sup>24</sup> These inquiries, however, take a much broader approach than assessing the relationship between program outcomes and policy objectives. While committee inquiries can contribute to the various stages of the policy cycle, they do not neatly fit into the program evaluation paradigm of the conventional policy cycle.

The model of evaluative inquiry that best matches the objectives and processes of general purpose standing committees is that of proactive evaluation. The epistemological basis for proactive evaluation is the assumption that 'what is already known should influence action'.<sup>25</sup> Evaluators, according to this approach, have the

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<sup>20</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs (2006) *Review of technological protection measures exceptions*, p. xi.

<sup>21</sup> Vedung, E. (2006) 'Evaluation Research', in Peters, B. G. & Pierre, J. (eds.) *Handbook of Public Policy*, Sage, London, p. 397.

<sup>22</sup> Owen, J.M. (2006) *Program evaluation: forms and approaches*, Allen & Unwin, Crows Nest, p. 254.

<sup>23</sup> Stewart, J. & Ayres, R. (2001) 'The public policy process', in Aulich, C., Halligan, J. & Nutley, S. *Australian Handbook of Public Sector management*, Allen & Unwin, Crows Nest, p. 28.

<sup>24</sup> Owen *Program evaluation: forms and approaches*, p. 18.

<sup>25</sup> Owen *Program evaluation: forms and approaches*, p. 61.

task of harnessing the existing knowledge and research from a range of stakeholders including academics, administrators, program staff and end-users. The approach particularly values the perspectives of practitioners in relation to how they understand the matters under review. The consideration of the evaluation material involves a synthesis of the mainly qualitative information that is gathered.<sup>26</sup>

Different evaluation techniques are required for different programs and policy areas and for different evaluation objectives (for example, whether the evaluation aims to clarify program design and purposes, refine monitoring and accountability mechanisms, or learn about what works and why). Possible limitations on the effectiveness of committees as evaluators include:

- Differing levels of interest in an inquiry topic within a committee
- The potential for disagreement within a committee regarding evidence, conclusions or recommendations
- A lesser degree of knowledge, technical expertise or independence compared to professional practitioners
- A lack of access to relevant data or an incapacity to perform particular types of data analysis
- Obedience to political imperatives and allegiances.<sup>27</sup>

Any of these factors can mean that committee reports may not always reach the potential of work performed by skilled team policy evaluators. Committee inquiries also face an additional problem by lending themselves to the dominant paradigm of policy. This 'paradigm presents government as a process of authoritative problem solving: there are actors called governments, they confront problems and make choices, which are then enforced with the coercive power of the state'.<sup>28</sup> With broad terms of reference and the authority of the Australian Parliament, committee inquiries can raise the expectations of the public for policy change, when in fact they only have a somewhat limited power to make recommendations to the government.

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<sup>26</sup> Owen *Program evaluation: forms and approaches*, p. 169.

<sup>27</sup> Cash, G. (2007) 'Committees: Investigations, Privilege and related matters', Australia and New Zealand Association of Clerks-at-the-Table Professional Development Seminar Perth, Western Australia, 23 January.

<sup>28</sup> Colebatch, H. K. (2005) 'Policy analysis, policy practice and political science', *Australian Journal of Public Administration*, Vol. 64 (3), p. 14.



Despite its potential limitations, however, the parliamentary committee approach to evaluation has a number of advantages, including that the evaluation takes a broad perspective of the policy landscape by undertaking wide consultation through a public submission process and public hearings. Some committees have encouraged the participation of members of the public through the use of ‘community statements’ sessions and ‘public forums’ at public hearings. Such public forums enable the public to have their say on the inquiry topic as ‘interested’ end users of policy. Public forums are often structured in a format that is less formal than the official public hearing proceedings. By using public forums, committees can hear personal stories and anecdotes from people who have not made a submission but have considered comments to make.<sup>29</sup> Witnesses are afforded the protection of parliamentary privilege, and submissions and transcripts of hearings are normally authorised for publication by committees.<sup>30</sup>

The protections and the transparency of parliamentary committee work is one of its strengths. Agencies whose activities are under review have access to committee evidence, and, in the case of public hearings, that access is concurrent with the access of the committee. Agencies need not wait until a report is tabled to respond to matters raised in an inquiry and can take immediate action where the evidence before the committee indicates that such intervention is warranted (the ‘rule of anticipated reactions’). The recent Joint Standing Committee on Migration report on arrangements for overseas skills recognition provides some examples of a government department responding to issues raised in the inquiry evidence prior to the production of the Committee’s report.<sup>31</sup>

The evaluative inquiry model utilised by committees is also used by a number of other agencies conducting investigations including the Productivity Commission, Royal Commissions, Law Reform Commissions and policy reviews by government departments. For example, the Review of Settlement Services for Migrants and

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<sup>29</sup> For example, 40 people made statements in the ‘community statements’ sessions for a recent inquiry into breastfeeding, House of Representatives Standing Committee on Health and Ageing (2007) *The best Start: Report into the inquiry into the health benefits of breastfeeding*.

<sup>30</sup> Committees have the ability however to receive submissions and oral evidence on a confidential basis where publication would be inappropriate.

<sup>31</sup> Joint Standing Committee on Migration (2006) *Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing*, p. xxxiv.

Humanitarian Entrants undertaken by the (then) Department of Immigration and Multicultural and Indigenous Affairs adopted the committee model of evaluation. Guided by an interdepartmental steering committee, the department received input by way of public consultations, attended by over 1000 people, and also from more than 140 written submissions.<sup>32</sup> The review made 61 recommendations and attracted a government response of a \$100.9 million package of measures to support the implementation of settlement initiatives. While recognised as a success, the review was also criticised for not being undertaken by a disinterested external evaluator, and for not providing an opportunity for refugees to contribute without the fear of the possible adverse consequences of speaking out.<sup>33</sup> Had a parliamentary committee conducted the inquiry, the interests of witnesses giving evidence would have been protected under the *Parliamentary Privileges Act 1987*.<sup>34</sup> The treatment of evidence and parliamentary privilege is discussed further below.

### **Reflections on evidence**

One of the special characteristics of parliamentary committees and their treatment of evidence is parliamentary privilege. Section 49 of the Australian Constitution provides that the ‘powers, privileges, and immunities’ of each House, Members and committees ‘shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom’. At the time of federation, the powers, privileges, and immunities of the House of Commons were based on Article 9 of the British Bill of Rights 1688 which provides that ‘the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament’. Following a Joint select committee inquiry on parliamentary privilege, the *Parliamentary Privileges Act 1987* was passed to formalise past practice and clarify the law in this area. Section 16 (2) of that Act defines committee activity as legal proceedings in Parliament:

**“proceedings in Parliament”** means all words spoken and acts done in the

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<sup>32</sup> Department of Immigration and Multicultural and Indigenous Affairs (2003) *Review of Settlement Services for Migrants and Humanitarian Entrants*.

<sup>33</sup> Phillips, M. (2005) ‘Refugee Settlement Services: Beyond the Settlement Services Review’, *Migration Action*, Vol. 27 (1), p. 23.

<sup>34</sup> Standing order 256 also states ‘Any witness giving evidence to the House or one of its committees is entitled to the protection of the House in relation to his or her evidence’.

course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee ...

The *Parliamentary Privileges Act 1987* also covers the protection of witnesses, unauthorised disclosure of evidence, immunities from arrest and attendance before courts, and parliamentary privilege in court proceedings. The Act further delineates the role of the parliament and courts in dealing with matters of parliamentary privilege while leaving some related issues to be resolved.<sup>35</sup> The Act clarifies the power of each House to resolve and impose penalties (imprisonment and fines) in relation to breaches of privilege - the only remaining judicial-type power of the Australian Parliament.<sup>36</sup> The UK House of Commons itself has not undertaken judicial work since 1399 (aside from its power to punish for contempt of Parliament),<sup>37</sup> and in 2008 the House of Lords will relinquish its judicial role with the establishment of the new United Kingdom Supreme Court.<sup>38</sup>

The nomenclature common to both the Parliament and the courts - evidence, witnesses, hearings, privilege, contempt and so on - stems from many centuries of Westminster experience as documented by Erskine May in the nineteenth century.<sup>39</sup> Parliamentary committees however, are not obliged to follow the formal law of evidence that applies to the courts and can use evidence that would be inadmissible in court proceedings. Committees can also compel answers from witnesses that could

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<sup>35</sup> Griffith, G. (2007) *Parliamentary Privilege: Major Developments and Current Issues*, NSW Parliamentary Library research Service, Background Paper No. 1/07.

<sup>36</sup> Exclusive cognisance or the right of each House to control matters arising within it free from outside interference, has evolved over centuries of parliamentary practice. See Gönye, L. (2007) 'Exclusive Cognisance - Selected Recent Developments in New South Wales', Australasian Study of Parliament Group 2007 Annual Conference, Adelaide, 25 August 2007.

<sup>37</sup> Lock, G. (1998) 'Statute law and case law applicable to parliament', in Oliver, D. & Drewry, G. (eds.) *The Law and Parliament*, Butterworths, London, p. 65.

<sup>38</sup> House of Lords (2005) 'The Judicial Work of the House of Lords' Briefing paper

<sup>39</sup> May, T. E. (1893) *A treatise on the law, privileges, proceedings and usage of Parliament*, 10<sup>th</sup> edition, Butterworths, London; Reid. & Forrest *Australia's Commonwealth Parliament 1901-1988*

not be compelled in court.<sup>40</sup> Committees are also not bound to the principles of natural justice to the same extent as the House.<sup>41</sup>

The treatment of evidence by parliamentary committees provides an interesting contrast to the use of evidence in the courts and in government policy formulation. In court proceedings, the law of evidence prescribes tight restrictions on the use of evidence in relation to the principles of relevance, admissibility and probative value. Evidence is assessed according to the legal principles of the treatment of evidence, the most fundamental principle being that ‘legal fact finders should reason rationally’.<sup>42</sup> Some have called for a greater use of legal counsel in public hearings.<sup>43</sup> While the use of the law of evidence in certain circumstance may benefit committee work, in relation to the work of general purpose standing committees of the House, such legal formality would likely be a disincentive for the public to participate in inquiries and become a barrier between parliament and the people. In 1972 the then Commonwealth Attorney-General and Solicitor General considered the application of the law of evidence in parliamentary committee practice and came to the following conclusion:

Our view is that to do this would unduly hamper the investigation of facts by committees. To require it, would, we think, over-legalise committee proceedings and lead to endless objections prompted by counsel.<sup>44</sup>

In the context of government policy, evidence in policy making gained prominence in the 1990s with the adoption of ‘evidence based policy’ as part of New Labour’s pragmatic Third Way approach in the UK.<sup>45</sup> The Blair Government’s *Modernising Government* White Paper emphasised learning from experience and ‘policy making as continuous learning processes, with improved use of evidence and research, pilot

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<sup>40</sup> Campbell, E. (2003) *Parliamentary Privilege*, The Federation Press, Leichardt, p. 157.

<sup>41</sup> In 1997 the House resolved to establish procedures for individuals seeking right of reply in response to statements made about them during parliamentary debate. Those procedures do not necessarily apply to individuals adversely named in committee evidence. See, House of Representatives, ‘Citizen’s right of reply’, Infosheet No. 17, December 2004, p. 2.

<sup>42</sup> Gans, J. & Palmer, A. (2004) *Australian Principles of Evidence*, 2<sup>nd</sup> edition, Cavendish Australia, London, p. 2.

<sup>43</sup> MacPherson, K. ‘Keynote Address’, Australasian Study of Parliament Group 2007 Annual Conference, Adelaide, 25 August 2007.

<sup>44</sup> Greenwood, I. J. & Ellicott, R. J. (1972) *Powers over and Protection Afforded to Witnesses Before Parliamentary Committees*, Commonwealth of Australia, Canberra, p. 178.

<sup>45</sup> Sanderson, I. (2002) ‘Making Sense of ‘What Works’: Evidence Based Policy Making as Instrumental Rationality?’ *Public Policy and Administration*, Vol. 17 (3) Autumn, pp. 63.

schemes, evaluation and feedback'.<sup>46</sup> Evidence based policy is in fact a key approach within proactive evaluation that values systematic inquiry and qualitative interpretation of evaluation material.<sup>47</sup> Evidence based policy originally emerged from evidence based medicine in the UK, which attempts to use scientific standards of evidence to appraise research findings for employment in clinical practice. Evidence based policy is the application of the same scientific principles to policy making and evaluation in the social world.

Marston and Watt have identified a number of policy areas where evidence based policy has been adopted in Australian government practice including health, family services and education policy.<sup>48</sup> In Australia, evidence based policy is part of the broad framework of 'new public management' reforms which also include an increasing focus on enhancing managerial effectiveness and efficiency, whole-of-government coordination, contractualisation, budget outputs and outcomes and performance accountability.<sup>49</sup> Evidence tends to be viewed in the evidence based policy process as unproblematic, neutral and objective. Critics of evidence based policy warn that not all policy making can be reduced to the 'technical calculation of effectiveness'.<sup>50</sup> As agencies collect more evidence on 'what works and why' and refine policy approaches it is arguable that there has been a corresponding increase in what Uhr and Mulgan describe as the 'quantity of government accountability' in terms of the performance and operations of government.<sup>51</sup> However, the 'quality of government accountability' resulting from the proliferation of 'evidence' is questionable. Parliamentary committees have voiced concern about the usefulness of such performance accountability measures of the new public management budget reforms.<sup>52</sup>

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<sup>46</sup> Cabinet Office (1999) *Modernising Government*, Cm 4310, The Stationary Office, London.

<sup>47</sup> Owen *Program evaluation: forms and approaches*, p. 175-177.

<sup>48</sup> Marston & Watts, 'Just the facts Ma'am': A critical appraisal of evidence based policy'

<sup>49</sup> Gregory, R. & Painter, M. (2003) 'Parliamentary Select Committees and Public Management Reform in Australasia: New Games or Variations on an Old Theme?' *Canberra Bulletin of Public Administration*, No. 106, p. 63.

<sup>50</sup> Marston & Watts, 'Just the facts Ma'am': A critical appraisal of evidence based policy', p. 44.

<sup>51</sup> Uhr, J. & Mulgan, R. (2006) 'Reframing the debate of accountability under the Howard government', draft paper prepared for the conference on 'John Howard's Decade' ANU Canberra, 3-4 March 2006, p. 4-5.

<sup>52</sup> Gregory, R. & Painter, M. (2003) 'Parliamentary Select Committees and Public Management Reform in Australasia', p. 69.

The House of Representatives Standing Orders refer to evidence as:

...the information (whether or not confidential) provided by witnesses (whether or not under oath or affirmation) and inquiry contributors, to the House or a committee. It includes:

- (i) oral or written information provided by a witness in response to questions of the House or a committee, as relevant; and
- (ii) written submissions from inquiry contributors which address the terms of reference of a committee's inquiry and which have been formally accepted by the committee.<sup>53</sup>

In the case of written submissions it is up to a committee to determine what should be received as evidence in reference to its inquiry terms of reference. A committee may authorise evidence for publication in full, in part or retain the whole or part of the evidence as confidential. Under Standing Order 242 all evidence, committee documents including proceedings and reports must remain confidential until they are reported to the House or authorised for publication by a committee. What is defined and accepted as evidence by a committee can potentially be very broad, ranging from documents to photographs to electronic media.

The treatment of evidence, once it has been received as such by a committee, is subject to the will of the committee. Committees generally recognise that a rational treatment of evidence will produce the most reasoned and credible conclusions (the conventions of evidence based policy). The most useful evidence is that which is relevant to the terms of reference of the inquiry provided by disinterested and authoritative sources. The evidence of interested parties is also very useful although it is important for interested parties to disclose their interests. It is up to the secretariat to advise the committee on the best range of potential witnesses to an inquiry; a good sampling of witnesses typically includes academics with different views, service provision agencies, government departments, clients, industry lobby groups and recognised experts. Committee Members who do not have expertise in the subject area under review often assess the evidence before them on its 'face validity'.

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<sup>53</sup> House of Representatives (2006) *Standing and Sessional Orders as at 29 March 2006*, House of Representatives, Canberra, p. 6.

There is a general lack of guidance on the issue of relevance from the committee practice publications (noted above). House of Representatives *Practice* refers to relevance in its opening section on committees by stating that it is part of the principal purpose of committees to draw up ‘reasoned conclusions’.<sup>54</sup> Generally evidence should be relevant to the terms of reference. Questions should be relevant to the terms of reference in order to compel an answer where an answer is not forthcoming. Committee findings and recommendations should be relevant to evidence to maintain the credibility of a report. Under the direction of committee Chairs, secretariats produce draft reports through a ‘logical-synthesis’ treatment of evidence consistent with the evidence based policy approach of proactive evaluation.

### **Contribution to public policy**

Following an analysis of the 3,220 committee reports produced by the Parliament between 1970 – 1999, Halligan, Miller and Power contend that an attempt to quantify, disaggregate and evaluate the impact of the work of parliamentary committees would produce ‘ambiguous and inconclusive’ findings.<sup>55</sup> This is due to the political environment in which committees form conclusions, the scope and range of recommendations (from the broad to the technical), the ‘rule of anticipated reactions’ and the more intangible influence of reports on experts and policy debates. Aside from the question of the impact on government policy, committees perform a function in engaging the community in the policy process, particularly in terms of agenda setting, policy administration and performance review.

The investigative function of general purpose standing committees dominates the committee work of the House. Of the 307 reports produced by House committees between 1970 - 1999, 288 have been investigative, whereas scrutiny and legislative appraisal have characterised the majority of Senate committee reports. House committees generally appear to have a stronger record of consensus than Senate committees, although there is debate about the advantages and disadvantages of disagreement in committees. The Senate scrutiny and legislative appraisal reports tend

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<sup>54</sup> Harris, I (ed.) (2005) *House of Representatives Practice*, p. 621.

<sup>55</sup> Halligan et al. (2007) *Parliament in the Twenty-first Century*, p. 222.

have a higher rate of dissent. The investigative inquiries of Senate committees tend to be overshadowed by their scrutiny and legislative appraisal work.<sup>56</sup>

House standing committees typically receive references from the relevant Minister. References from Ministers are more likely to be on non-controversial policy or administrative areas.<sup>57</sup> These references can make it easier for members to take a more non-partisan approach and focus on improving the status quo. In undertaking inquiries referred by Ministers, general purpose standing committees of the House have the basis for a 'committee ethos' of complementing the work of the executive by refining and adding value to existing policy. Such an ethos is the first criteria of what Marsh describes as a 'strong' committee system.<sup>58</sup>

A recent example of a major House committee inquiry was the Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation, the report of which, *Every picture tells a story*, was tabled in December 2003. Referred by the Attorney-General and Minister for Youth Affairs, the inquiry built on a previous report by the Family Law Pathways Advisory Group and was tasked with investigating post-separation parenting, contact with other persons and the existing child support formula. The committee undertook inspection visits, received 1,716 submissions to the inquiry - one of the highest volumes of submissions ever recorded for a House committee - and questioned 166 witnesses at public hearings in major regional and metropolitan centres across Australia. A further 188 people contributed to the inquiry in 'community statements' sessions. The *Every picture tells a story* report made a total of 29 recommendations.<sup>59</sup> In its response to the report, the government announced the most significant range of family law reform measures in 30 years. Subsequent to this inquiry the government referred an exposure draft of the resulting family law legislation to the House Standing

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<sup>56</sup> As Halligan et al. (2007) observe, 'significant reports' listed on the Senate's website does not include a standing committee report post 1987. See:

<http://www.aph.gov.au/Senate/committee/history/index.htm> (accessed 7 August 2007).

<sup>57</sup> 'Innocuous' inquiries are also more likely to be undertaken by Senate committees now that the government has the majority in the Senate. See Evans, H. (2006) 'The government majority in the Senate: A nail in the coffin of responsible government?' Australasian Study of Parliament Group Victorian Chapter General Meeting 3 October 2006, p. 3.

<sup>58</sup> Marsh, I. (1995) *Beyond the two party system*, p. 262.

<sup>59</sup> House of Representatives Standing Committee on Family and Community Services (2003) *Every picture tells a story*, Canberra.



Committee on Legal and Constitutional Affairs. The legislation was also referred to a Senate committee prior to its passage. Overall, the process led to the establishment of the new Family Relationship Centres and a range of other law reform measures in a \$397 million government commitment.

## **Conclusion**

Twenty years on from the establishment of a comprehensive committee system in the House of Representatives, general purpose standing committees of the House have made a contribution in their approach to review and strategic investigations and in adding value to the work of the executive. The evaluation methodology of these committees also has the potential to provide a sound broad-based assessment of the policy landscape. Possible areas for further investigation include:

- The treatment of evidence once it has been received by committees and whether there should be stronger guidance regarding the use of evidence in formulating conclusions
- The value of evidence from ‘interested’ witnesses such as members of the public who contribute ‘community statements’ and participate in ‘public forums’
- Whether House of Representatives committees have particular strengths in investigating/understanding policy and legislative outcomes at the practical day to day level in the community
- Whether the three phase inquiry process can predispose committees to certain types of findings
- What is the value of the more intuitive approach to the assessment of evidence which Members of Parliament might employ
- Whether there is a stronger case for using the rules of evidence in committee proceedings given the longstanding establishment of the committee system and the potential for the politicisation of committee work
- Whether the current Standing Orders provide sufficient coverage for the informal activities of committees and enough flexibility for committees to move away from the conventional inquiry process and employ other methodologies.

