

## SUBMISSION

**TO:** The Secretary, Standing Committee on Procedure

**FROM:** Professor G J Lindell

**SUBJECT:** New Inquiry-The Effectiveness of House of Representatives Committees

**DATE:** 30 June 2009

**A. Effectiveness**

1. The terms of reference for the New Inquiry ('Inquiry') emphasise that it is concerned with the effectiveness of House of Representatives Committees.
2. I should like the Committee to treat as part of this submission an unpublished paper which I wrote in December 2004 entitled "How (and whether) to evaluate parliamentary committees – from a lawyer's perspective." It reproduced a talk given by me on 18 November 2004 to a meeting of the *Canberra Evaluation Forum*. The paper was summarized in the House of Representatives magazine, *About the House* Issue 24, August 2005. (A copy of the paper is attached to this submission.)
3. There are three points that I would like to emphasise from that paper.
4. The *first* is that I was, and remain, generally sceptical about the feasibility and utility of seeking to measure the performance of committees on a systematic basis.
5. The *second* is that despite that scepticism, I was, and remain, strongly in favour of monitoring and drawing the attention of the House on a regular basis to the progress (or lack thereof) made regarding the implementation of recommendations made by committee investigations. Committees that are not standing committees should be authorized to remain in existence for monitoring the implementation of their reports. As is indicated in the paper, a suggestion of this kind was made in the United Kingdom by the House of Commons Select Committee on Liaison although I am unaware of the subsequent fate of that suggestion: see n 10. One possible way of implementing the kind of suggestion I have advanced is to compile a running list of recommendations made in the life of each Parliament which would detail the extent to which the recommendations were implemented and would require the Executive to disclose the reasons why, if it was the case, the recommendations were not implemented.
6. The *third* point relates to the importance of ensuring that committees operate efficiently. Reference was made to the possible need for a systematic and regular

collection of information on the cost and time taken up by committee inquiries, the number of staff required to support such inquiries and the number of witnesses interviewed and documents tabled and considered by those inquiries: at p 7.<sup>1</sup>

7. Reference was also made to press reports which indicated that the British government had at that time under active consideration measures that are designed to cut the costs and length of public inquiries including the adoption of legislation designed to further those objectives. The consideration of those measures led to the enactment of sub-s 17 (3) of the *Inquiries Act 2005* (UK) the provisions of which state:

“In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others). “

8. Without wishing to imply that such matters have been ignored in the past, I suggest that the Committee may wish to recommend the adoption of a similar instruction to all inquiries conducted by the committees of the House of Representatives. There would also be merit in researching what, if any, other measures the British government adopted to further the objective of efficiency.

## **B. Type of Work**

9. The terms of reference also refer to the type of work being undertaken by committees: para (b).
10. I have had occasion in the past to make suggestions regarding the kind of constitutional work that could usefully be performed by House of Representatives committees. My views were expressed at a seminar hosted by the current Speaker and held to commemorate the 20<sup>th</sup> anniversary of the House of Representatives committee system on 15 February 2008 at Parliament House in Canberra (Session 3: Future directions and developments). A copy of my speaking notes is attached and I would like those notes to be also treated as part of this submission
11. I suggested in that presentation the importance of parliamentary committees being used to provide advice on policy questions which will help chart the course of the future. The example I gave was the establishment of a standing committee to engage in the continuous and regular systematic review of the operation and

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<sup>1</sup> If such measures have not already been taken, I assume that consideration may have been given to the possibility of reducing expenses incurred by interstate witnesses by the use of modern information technology and communication facilities which would allow such witnesses to give oral evidence without the need for them or the committees having to travel interstate. Likewise the same facilities no doubt open up the possibility of obtaining evidence from international experts without the need for them or the committees to travel from or to overseas.

adequacy of Australia's Constitution: at pp 3 – 7 (“2. Constitutional review and amendment”).

12. I also suggested the need for an existing standing committee, or the establishment of another standing committee, to report on whether any Appropriation Bills comply with guidelines to overcome the problem revealed in the *Combet* case<sup>2</sup> which can be read as allowing, notwithstanding the provisions of ss 81 and 83 of the Constitution, Parliament to approve a category of expenditure which leaves it to government departments to determine in their discretion for what purposes public funds can be expended (ie appropriations “in blank”). The key task would be to check and monitor financial legislation and develop standards to regulate the specificity of the purposes for which public funds are appropriated. I stressed that what I had in mind would *not* enable the review of the policy or merits of such legislation. The obvious purpose of such systematic and regular inquiries would be to hold the government to account: see generally at pp 7- 10 (“3. Parliamentary specification of purposes for which public funds are appropriated”).

### C. Number of Committees

13. Finally, reference is made in the terms of reference to, amongst other things, the number of committees: para (a).
14. In the interests of efficiency and avoiding duplication of effort, I believe the Committee should give very serious consideration to cooperating with the Senate in making the Committees discussed in this submission Joint Committees of the Parliament. This would not preclude the members of those committees being retained as Standing or other Committees of their respective Houses in respect of issues peculiarly affecting those Houses on the same subject matters.



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<sup>2</sup> *Combet v The Commonwealth* (2005) 224 CLR 494.