

**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.