

## **The Usual Suspects? 'Civil society' and Senate committees\***

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The Australian Senate's legislative and general purpose standing committees, established in 1970 and significantly restructured in 1994, are the means by which the Senate can deal with its massive workload without sacrificing the detailed scrutiny which is the *raison d'être* of a house of review.

The committees cover eight areas of policy:<sup>1</sup>

- community affairs;
- economics;
- employment, workplace relations and education;
- environment, communications, information technology and the arts;
- finance and public administration; and
- foreign affairs, defence and trade.

Within their policy areas, each committee has a number of responsibilities: the detailed scrutiny of legislation, scrutiny of the annual reports of relevant agencies, the

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<sup>1</sup> In addition to these, there are 'domestic' committees and joint committees (which include members from the House of Representatives).

examination of budget estimates, and inquiry into general policy issues referred to the committee by the Senate.

However, the usefulness of committees extends well beyond an observation of the workload they can shoulder. A key feature of the Senate from the early 1980s until the present<sup>2</sup> has been that the government has lacked a controlling majority. As a result, in order to pass resolutions and legislation through the Senate, the government has had to negotiate and compromise with other parties. This process takes time, and is perhaps better conducted discreetly and away from the public glare of the chamber.<sup>3</sup> There is some evidence to suggest that senators, in the smaller and more collegiate atmosphere of Senate committees, do find opportunities to set aside their partisan differences and work together:

The characteristic multi-partisan composition and approach of committees can also produce unexpected benefits by providing an opportunity for proponents of divergent views to find common ground. The orderly gathering of evidence by committees and the provision of a forum for all views can often result in the dissipation of political heat, consideration of issues on their merits and the development of recommendations that are acceptable to all sides.<sup>4</sup>

While this statement has a slightly rosy emphasis, the central point is probably sound, and is borne out by the considerable number of Senate Committee reports which are either unanimously agreed, or which contain dissenting reports which focus on small areas of the report, leaving the rest as common ground.

The co-operative nature of Senate committees is not an accident. Rather, it is built into the structure of the committees. Each of the eight areas of policy is in fact served by 'twin' committees—a legislation committee, which inquires into the provisions of bills, conducts estimates hearings, and examines annual reports; and a references committee, which inquires into matters referred to the committee by the Senate. Membership of the twin committees often overlaps, but there are two important differences: the Legislation Committee has a government majority and a government chair, and the References Committee has a non-government majority and a non-government chair. These arrangements provide the non-government parties, in particular, with considerable influence in the committees. Partisan games are not usually played in committees because the likely consequences may not reflect well on the parties which play them. A more co-operative approach suits all sides best.

Finally, and most importantly for this paper, Senate committees 'provide a means of access for citizens to participate in law making and policy review. Anyone may make a submission to a committee inquiry and committees will normally take oral evidence

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<sup>2</sup> The Liberal/National Party coalition government will have a controlling majority after 1 July 2005. The impact of this change on the committee system remains to be seen.

<sup>3</sup> In order to refrain from stretching this point too far, it should be noted that government Senate Committee members do not have ministerial rank. As a result, while senators in committees can expose public views on a piece of legislation, and consider its provisions in detail, any compromise on a bill's terms would have to come from the relevant minister, not from the committee.

<sup>4</sup> Harry Evans (ed.) *Odgers' Australian Senate Practice*, 10th ed., Canberra, Department of the Senate, 2001: 366.

from a selection of witnesses who have made written submissions.’<sup>5</sup> This form of participation in the processes of Parliament is not available to citizens outside the committee system.<sup>6</sup>

This participation is, of course, somewhat limited. Not all groups choose to participate in inquiries which may be relevant to them, and some of those who endeavour to participate may find barriers to their participation.<sup>7</sup> In this regard Paxman notes:

A criticism sometimes levelled at the process, however, is that bills inquiries regularly attract submissions and witnesses from the same organisations, and ‘witness cliques’ develop around certain issues, such as immigration and industrial relations. Governments and opposition parties alike are accused of ‘rounding up the usual suspects’ to support their positions. An implication of this criticism is a cynicism that the same old paths are being trodden as particular issues regularly arise, with predictable outcomes.<sup>8</sup>

Paxman then goes on to note that ‘it is difficult to determine whether this criticism is valid.’<sup>9</sup> The purpose of this paper is to grapple with this difficulty by focusing upon one particular Senate committee, the Employment, Workplace Relations and Education Committee (EWRE Committee), in order to throw light on whether participation in committee hearings has been undertaken by a wide or narrow range of organisations, and in particular whether the committee risks being captured by a narrow range of articulate and professional organisations which come to form the ‘usual suspects,’ appearing before the committee during virtually every inquiry.

In this context, a secondary question might be to ask whether the committee and its ‘usual suspects’ form what Marsh and Rhodes<sup>10</sup> describes as a *policy community* where:

within distinct [policy] segments, limited numbers of pressure groups and government actors are involved in making policy. They tend to create high barriers to entry, making it difficult for other groups to take part in the policy process ... there is a continuum of policy networks from very open issue networks to closed policy communities.<sup>11</sup>

Adopting this model, it should be possible to place the EWRE Committee at some location within this continuum, by determining whether its inquiries are conducted

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<sup>5</sup> *ibid.*, p. 365.

<sup>6</sup> A caveat here: it is possible, but altogether unusual, for a stranger to be called before a parliamentary chamber to give evidence. It has not happened since 1975.

<sup>7</sup> For an extended discussion see Kate Burton, *Community Participation in Parliamentary Committees: Opportunities and Barriers*, Department of the Parliamentary Library, Research Paper 10, 1999–2000.

<sup>8</sup> Kelly Paxman, ‘Referral of bills to Senate committees: an evaluation’, *Papers on Parliament* no. 31, June 1998: 83–84.

<sup>9</sup> *ibid.*: 85.

<sup>10</sup> David Marsh and R.A.W Rhodes (eds), *Policy Networks in British Government*, Oxford University Press, 1992, quoted in M. Smith, *Pressure Politics*, Manchester, Baseline Books, 1995.

<sup>11</sup> Smith, *ibid.*: 27.

among a relatively closed group of inside organisations, or a relatively open community of interests with low barriers to participation.

### **Work of the Committee**

During the period relevant to this paper (The entire 39th Parliament, and the 40th Parliament until March 2003), the EWRE Committee<sup>12</sup> undertook 27 inquiries which required public hearings.<sup>13</sup> Of these, nineteen were conducted by the Legislation Committee, and eight were conducted by the References Committee.

The membership of the committee, like most Senate committees, has varied widely during this period. While each Senate committee has its usual set of full members, each committee also has a much broader circle of 'participating' members, who lack voting rights but who can participate in the committee's hearings and deliberations. Furthermore, most committees (including the EWRE committee) have 'substitute' members who take the place of one of their party colleagues for an inquiry which touches on their particular areas of responsibility. This device is used very commonly by the Australian Democrats, who have relatively few senators, each of whom shoulders a broad number of portfolio responsibilities.

Despite this variation, there have been some constants. Senator John Tierney (LP, NSW) has been the chair of the Legislation Committee for the entire period. Senator Kim Carr (ALP, Vic.) has also been a constant member, serving as Deputy Chair of the Legislation Committee for the 39th Parliament, and remaining very active during the committee's work in the 40th Parliament. Senator Jacinta Collins (ALP, Vic.) was Chair of the References Committee during the 39th Parliament, before handing this role to Senator George Campbell (ALP, NSW) for the 40th Parliament. As noted above, the Australian Democrats' membership in the Committee has varied considerably, with three of the Democrats senators becoming involved in one inquiry or another. Senator Andrew Murray (AD, WA) has been a particularly active member of the Legislation Committee in its consideration of workplace relations legislation. Senator Lyn Allison (AD, Vic.) has also been an active member of the Committee. It is appropriate to note that, as a party, the Democrats have remained constantly involved in the Committee's work.

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<sup>12</sup> During the 39th Parliament, the Committee was known as the Employment, Workplace Relations, Small Business and Education Committee.

<sup>13</sup> In addition, the Committee tabled reports on estimates hearings, reports on annual reports, and a handful of reports which were written from submissions without calling witnesses (the report into the Research Agencies Legislation Amendment Bill 2002 is an example). The Committee's full body of work for the 39th Parliament is available online at: <http://www.aph.gov.au/Senate/committee/history/index.htm#Employment> and for the 40th Parliament at: [http://www.aph.gov.au/Senate/committee/eet\\_ctte/reports/index.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/reports/index.htm).

## Overview of appearances before the Committee

During the period at hand, the Committee took oral evidence from no less than 503 separate organisations,<sup>14</sup> who between them made a total of 719 appearances before the Committee (see Table 1). It should be apparent from these numbers that few of the organisations appeared more than once, and this is borne out by the analysis: of the 503 organisations to appear, 408 (or 81.11 per cent) appeared before the committee only once. Just seventeen (or 3.38 per cent) appeared five times or more, and only three (or 0.06 per cent) appeared ten times or more.

**Table 1: Appearances before the Committee**

1 organisation appeared 11 times
2 organisations appeared 10 times
1 organisation appeared 9 times
1 organisation appeared 8 times
2 organisations appeared 7 times
4 organisations appeared 6 times

These numbers are impressive, and seem to suggest that the committee is likely to be placed towards the more open end of the policy community continuum, with relatively low barriers to entry and a relatively large membership. At the very least, it is clear that a large number of organisations have had the opportunity to present their views in the forum of the committee. An impressionistic examination of the list of organisations shows an extremely varied set of organisations, from the largest and most highly organised (such as the ACTU) to the smallest (such as the Tiny Tots Childcare Centre). There are unions, employer groups, church organisations, schools, universities, many local area consultative committees, companies, parents' groups, and more.

Of course, it is likely that these organisations were not equal in their capacity to influence the committee's views, or to influence the outcomes of the inquiries. This paper does not posit—and indeed would oppose—the view that equal appearance before the Committee equates to equal influence. Some witnesses would no doubt have given compelling and convincing evidence, while other evidence may have been less so. But despite this caveat, a vast array of organisations took an opportunity to address the Parliament directly through one of its committees.

It is also useful to recall that this is just one of eight Senate committees. While there would no doubt be overlap between the committees' constituencies, if the other committees match the EWRE Committee's numbers, then a back-of-the-envelope

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<sup>14</sup> This number does not include public service policy departments, who are called before the committee as a matter of course, or individuals who appeared in a private capacity. Further, it does not include organisations whose interactions with the Committee were less formal—such as the organisations visited in site visits for *Katu Kalpa*—the inquiry into the effectiveness of education and training programs for Indigenous Australian, and the organisations who participated in small business roundtable meetings for the inquiry into small business employment.

approximation suggests that the number of organisations appearing before Senate committees in this period was in the thousands.

### **The top performers**

Table 2 lists the eleven organisations which appeared before the committee most during the period. Most of the names should come as little surprise, given the areas of policy covered by the committee. The Australian Council of Trade Unions (ACTU) and Australian Manufacturing Workers Union (AMWU) are both large, well-resourced and professional union organisations which are well placed to engage the committee’s ‘employment and workplace relations’ brief. The Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AIG), as employer and business groups, represent the opposite team to the ACTU and AMWU, and are equally placed to provide evidence on employment and workplace relations issues.

<i>Organisation</i>	<i>No. of Appearances</i>
Australian Council of Trade Unions	11
Australian Chamber of Commerce and Industry	10
National Tertiary Education Union	10
Australian Industry Group	9
Australian Education Union	8
Australian Manufacturing Workers Union	7
Council of Australian Postgraduate Associations	7
Australian Vice-Chancellors Committee	6
Independent Education Union	6
National Union of Students	6
University of Sydney	6

The National Tertiary Education Union (NTEU), Australian Education Union (AEU), and the Independent Education Union (IEU) are uniquely positioned because they have clear interests in both the committee’s ‘education’ and ‘employment and workplace relations’ briefs.

Three organisations—the Council of Australian Postgraduate Associations (CAPA), the Australian Vice-Chancellor’s Committee (AVCC), and the National Union of Students (NUS), have a strong focus on education policy, and the final organisation, Sydney University, has obvious interests in education policy, but has also provided expert advice to the panel on a number of occasions.<sup>15</sup>

Even within this list there is considerable evidence of balance: the list contains union groups and employer groups, student groups (both undergraduate and postgraduate), academic staff unions, and the representatives of education institutions (the AVCC).

<sup>15</sup> Sydney University is, of course, not the only academic institution to have done so, but it is the only one to qualify for the ‘top performers’ list.

This evidence supports the view that the committee has avoided capture by a single organisation or perspective, and further tends to support the notion, contained in the earlier quotation from *Odgers*, that the committees can provide ‘a forum for all.’<sup>16</sup>

### The ‘Oncers’

I have indicated that 81 per cent of organisations which appeared before the Committee did so only once. This figure can be analysed to provide interesting clues as to the operations of the committee. Of the 408 organisations who appeared once, 352 (or 86.27 per cent) appeared before the References Committee, and just 56 (13.73 per cent) appeared before the Legislation Committee. This leads to an inference that the References Committee provides more opportunities for organisations which appear infrequently before the EWRE Committee.

<i>No of Appearances</i>	<i>References</i>	<i>Legislation</i>
1	352 (82.05%)	56 (49.56%)
2–5	66 (15.38%)	46 (40.71%)
More than 6	11 (2.56%)	11 (9.73%)

This is borne out by further analysis. While 82.05 per cent of all organisations appearing before the References Committee were making their only appearance before the EWRE Committee, just under half, or 49.56 per cent of organisations appearing before the Legislation Committee appeared only once. The Legislation Committee relied, for just over half of its witnesses, upon organisations that made more than one appearance before the Committee.

This is a stark and interesting disparity, leading to questions as to why References Committee inquiries provide so many more opportunities for diverse organisations to make their single appearance before the EWRE Committee.

### More Time, More Witnesses?

The first reason which may explain the greater reliance on ‘oncers’ by the References Committee is that it simply has more time. During the period examined, the average length of a References Committee Inquiry was 364 days,<sup>17</sup> almost exactly a year. The shortest of these, the inquiry into the GST and new tax system, lasted 126 days, and the longest, the inquiry into the effectiveness of education and training programs for Indigenous Australians, took just over two years (738 days). The story is quite

<sup>16</sup> Evans, op. cit.

<sup>17</sup> These numbers, and the equivalent number for the Legislation Committee, represent calendar days between the referral of the inquiry by the Senate, and the date the report was tabled (either in session, or out of session by presenting the report to the President of the Senate). The length of time for the References Committee is overstated slightly because two inquiries were referred before the 1998 election, but tabled after the election. While Senate Committees continue to operate despite the prorogation of Parliament, senators are obviously occupied with campaigning matters.

different for the Legislation Committee. Its average over the period was just 71.1 days, with the longest three inquiries taking 106 days each, and the shortest taking just 22 days.

Legislation committees have a shorter period in which to table reports, dictated by the government's legislative timetable. Legislation committees, as a result, usually only have one day of hearings for each bill, often in Canberra. Reference inquiries usually take the Committee to all states.

It is no surprise, then, to see that the average number of witnesses for each inquiry also shows a marked difference. Reference inquiries, on average, took evidence from 62.63 organisations, while Legislation inquiries took evidence from, on average, 11.47.

Can this difference be explained away simply on the basis of the time available to the committees? To correct for the length of time available to each committee, the number of organisations appearing before each inquiry was divided by the number of days consumed by the inquiry. The result of this (admittedly crude) calculation was remarkable: Reference Committee inquiries took evidence from an average of 0.213 organisations per day, and Legislation Committee inquiries took evidence from an average of 0.208.<sup>18</sup> In other words, the rate at which inquiries took evidence from organisations was virtually identical, favouring the Reference Committee by a slight margin. It does appear, then—slight margins notwithstanding—that the time available to each of the twin committees was the chief factor regulating the number of organisations each could see.

### **Proportion of 'oners'**

The conclusion that reference committees and legislation committees take evidence at the same rate, but have different timeframes, still does not explain the disparity in the proportion of 'oners' between the committees. Why, for instance, did the smaller number of Legislation Committee timeslots not result in a reduction across the board? There is no inherent reason why a reduction in the number of opportunities to appear before the committee should be felt disproportionately by those organisations with less contact before the committee.

Kate Burton explored some of the reasons why this may be so:

Most [submissions] are from groups and individuals who are already aware of the existence of the bill or who are contacted by politicians, their staff, or the committee secretariat. Groups and individuals who are known to have an interest in a particular matter are often invited to make a submission ... Reliance on these methods, however, contributes to the problem of attracting 'the usual suspects'.<sup>19</sup>

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<sup>18</sup> It is interesting to note that had these figures been reported to two decimal places, they would have been identical at 0.21.

<sup>19</sup> Burton, op. cit.

Burton identifies narrow advertising as the principal reason why inquiries have failed to attract a more widespread audience. While advertising no doubt has an impact, advertising is another factor which is usually consistent between legislation and references inquiries. References inquiries do not necessarily obtain additional advertising by virtue of their longer timeframes, so there is no immediate reason to conclude that advertising should be the factor differentiating between the two types of inquiry.

Having made this observation, it may be that while advertising penetration rates are similar for references and legislation inquiries, the ability of organisations to *respond* to those advertisements is somewhat less in the tighter timeframes of a legislation inquiry. Constructing a strong submission in a short timeframe would require the dedication of considerable resources, and smaller, less well funded organisations may simply not be able to respond within the required timeframe. Senator Lyn Allison noted that:

Legislative hearings are very focused and the organisations geared up to make a submission and appear in a very short time frame will usually be professional and well-resourced.<sup>20</sup>

### **An hypothesis: the usual suspects first?**

Another possibility to explain the greater proportion of ‘oncercs’ who appear before the References Committee emerges from the data. It is evident from Table 2 above that there are indeed ‘usual suspects’ who appear before the Committee regularly on issues where they can provide expertise. It seems reasonable to hypothesise that these organisations are the ones called upon first to appear before the committee. In this way, the Committee can be confident that the hearing is likely to solicit well-informed views from stakeholders who have an understanding of the Senate Committee process, and an understanding of the interests and requirements of the members of the committee.

To continue to hypothesise, one might suggest that once an appropriate number of these organisations have been slated to appear, the balance of the positions are taken by organisations who are either directly affected by the matter at hand, followed by organisations somewhat less affected, who nevertheless make useful and informed written submissions. This suggestion would explain why the References Committee took evidence from so many more ‘oncercs’—it simply has more available hearing places once the initial places had been taken by the ‘usual suspects’.

The data presented in this paper can be interpreted against this hypothesis to suggest that for the Legislation Committee, the available invitations are split almost exactly evenly between ‘oncercs’ and organisations who have an existing relationship with the committee, while in the case of the References Committee, just under a fifth of the invitations were taken up by ‘regular’ witnesses, with the balance taken up by ‘oncercs’.

Another comment from Senator Allison is instructive:

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<sup>20</sup> Personal communication, 20 June 2003.

Peak bodies, consumer groups and state governments are usually invited as a matter of course. After that it is important to get witnesses who represent a cross section. Some of the most compelling evidence comes from 'ordinary people' and we probably don't have them appear as often as we should.<sup>21</sup>

An indicative test of this hypothesis can be made by looking at the available data. If the hypothesis holds, then one would expect to see 'usual suspects' appearing in every inquiry. They would not, for instance, be clustered together in some inquiries, leaving others open to the 'oncercs.' This does appear to be the case. Of the 27 inquiries considered in this research, no less than 26 included as a witness an organisation which appeared (overall) five times or more. Perhaps even more starkly, at least one of the five most frequent witnesses (ACTU, ACCI, NTEU, AIG and the AEU) appeared in 23 of the 27 inquiries. So, at its first test, this hypothesis appears to have some merit.

At this point, I am beset with a researcher's inevitable impulse to stretch the data too far. While this paper has presented sufficient evidence to allow the above hypotheses to be established and to provide some cautious confidence in its plausibility, there is not yet sufficient data to prove the hypothesis correct. The pattern of appearances before the EWRE Committee, in both its Legislation and References Committee form, is consistent with a process of selecting known, trusted, 'usual suspects' first, then filling the hearing schedule out with other parties who are either directly affected by the matter at hand, or who have provided the committee with an impressive submission. More research, both across other committees and with more direct contact with senators than has proven possible in this case, would provide a more convincing test of the hypothesis advanced in this paper.

## Conclusions

A number of key conclusions emerge from this paper. First, it is evident that there *are* 'usual suspects', that is, organisations who regularly appear before the committee, and whose invitation becomes, in Senator Allison's words, 'a matter of course'. However, the second conclusion is that the relationship between these usual suspects and the Committee is far from exclusive, particularly in the case of References Committee inquiries. Paxman's suggestion, noted earlier, that 'the same old paths are being trodden as particular issues regularly arise, with predictable outcomes'<sup>22</sup> does not seem to be supported by this research. The barriers to participation in the inquiry process are not unreasonably high, and any organisation which submits an impressive submission and/or is directly affected by the subject of the inquiry, has a fair chance of appearing as a witness.

Third, it can be concluded that References Committee inquiries are more open to 'oncercs'. This is likely to be primarily a result of the longer timeframes available to References Committee inquiries, allowing more organisations to marshal resources to make submissions, and allowing for more hearing days, and therefore more

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<sup>21</sup> Personal communication, 20 June 2003.

<sup>22</sup> Paxman, op cit: 84.

opportunities to appear (once the initial appearances by the relevant ‘usual suspects’ have been scheduled).

The introduction to this paper included the suggestion that Senate Committees ‘provide a means of access for citizens to participate in law making and policy review’. In the period examined, 503 organisations were able to use this ‘means of access’ to present their views to their Parliament. The usual suspects were there, but so were the Disability Advisory Council, Kindergarten Parents Victoria, the Rasmussen State School and the Taxi Drivers Association. And with a touch of altruism, the author considers the Senate was enriched, as much by the latter group of witnesses as by the former.