

## **The various types of committee work**

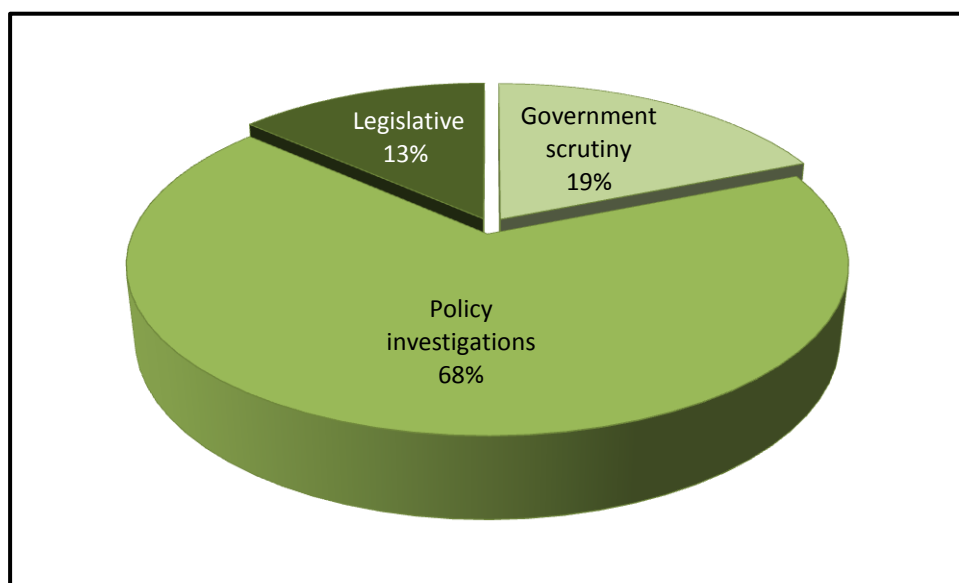
- 6.1 Committees undertake a range of activities and perform a number of different roles. The types of activities are broadly similar between parliaments. However, the emphasis tends to vary from parliament to parliament, depending on the historical and cultural context of the parliament. The functions of the main chamber and the powers given to committees are also relevant in determining what role a committee system will play.
- 6.2 The types of inquiry House of Representatives committees are currently able to carry out may be summarised as follows:
- public policy investigations;
  - scrutinising government;
  - legislative inquiries; and
  - inquiries into petitions.
- 6.3 Each of these is considered in a separate section of this chapter, with reference made to other committee systems where relevant. First, however, a brief comparative overview is provided to give an overall picture of the activities carried out by the House committee system.

## The current balance: the House in context

6.4 The main types of inquiry that House committees currently conduct, and historically have conducted, are:

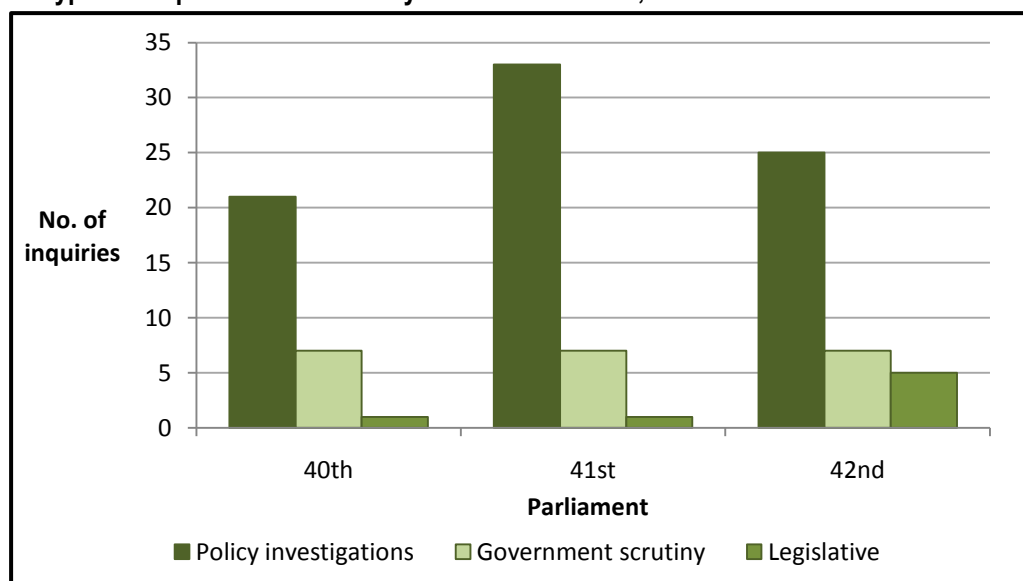
- policy-focussed investigations;
- scrutinising government decisions and actions by inquiring into annual and audit reports; and
- considering pre-legislation proposals and bills.<sup>1</sup>

Figure 6.1 Types of inquiry by House committees, 42nd Parliament



Source *Current and completed inquiries carried out by House of Representatives general purpose standing committees, as at 15 February 2010, as listed on committee websites, at:* [http://www.aph.gov.au/house/committee/comm\\_list.htm](http://www.aph.gov.au/house/committee/comm_list.htm)

<sup>1</sup> For the purposes of this report, 'policy investigations' are taken to be those inquiries into matters of public policy, or government programs. An example might include the Standing Committee on Health and Ageing inquiry into obesity in Australia. 'Government scrutiny' inquiries are taken to be those into annual reports or audit reports. Readers should note that such inquiries have the potential to consider policy matters as well. An example might include the Health and Ageing Committee's inquiry into the Department of Health and Ageing's 2006-07 annual report, which was used to conduct a roundtable forum on impotence medications. 'Legislative inquiries' are inquiries into bills or pre-legislation proposals, such as green papers and white papers. Examples include the inquiry into the Resale Royalty Right for Visual Artists Bill 2008, conducted by the Standing Committee on Climate Change, Water, Environment and the Arts.

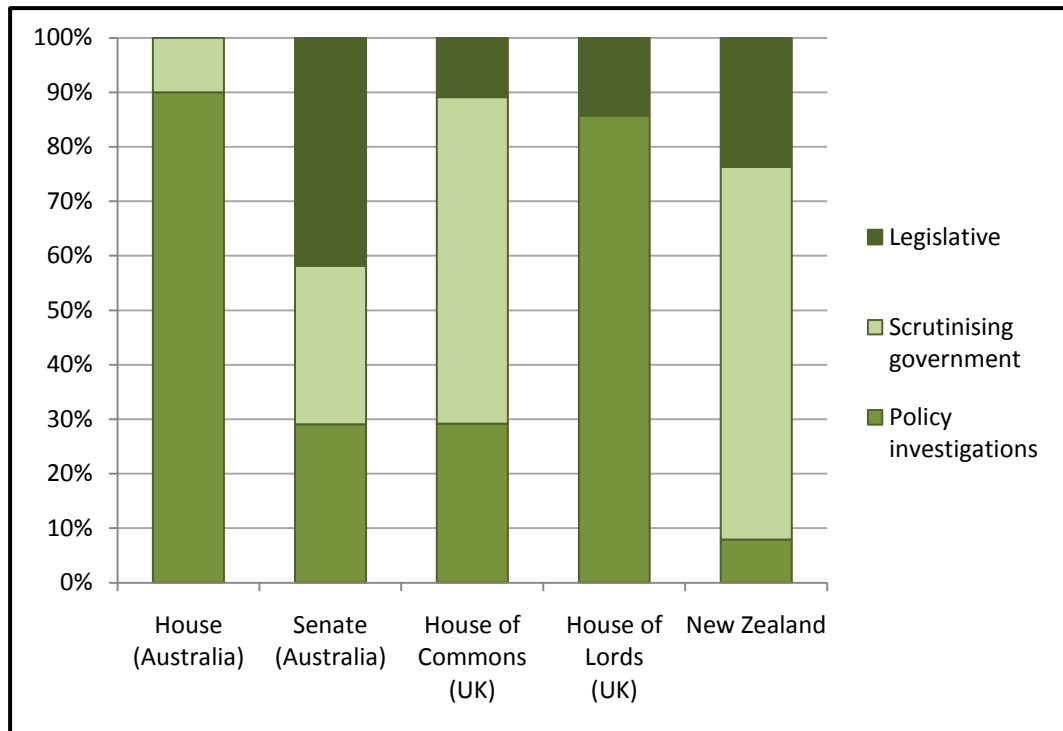
**Figure 6.2** Types of inquiries undertaken by House committees, 40th to 42nd Parliaments

Source Reports tabled by House general purpose standing committees, as listed on committee websites, viewed 13 February 2010, at: <<http://www.aph.gov.au>>

- 6.5 The focus of House committees tends to be on public policy. As figure 6.1 shows, so far in the 42nd Parliament, more than two thirds of current and completed House committee inquiries may be characterised as ‘policy investigations’.<sup>2</sup> This preponderance of policy work is also reflected in figure 6.2, which provides some historical data.
- 6.6 The emphasis on different types of inquiry varies from parliament to parliament, and this is demonstrated by the ‘snapshot’ survey of inquiries set out in figure 6.3. The House’s activity profile most resembles that of the UK House of Lords, with policy inquiries featuring heavily, supplemented by a smaller number of either scrutiny or legislative inquiries.
- 6.7 Committee systems of the UK House of Commons and the New Zealand House of Representatives both emphasise an accountability role, with moderate amounts of legislative and policy work. The Australian Senate’s emphasis appears to be on legislative inquiries, with moderate levels of scrutiny and policy work.<sup>3</sup>

2 This figure may underestimate the amount of policy work done by House committees, as some of the ‘government scrutiny’ inquiries into annual and audit reports may also consider public policy.

3 The availability of data and time constraints has necessitated taking a ‘snapshot view’ of all active committee inquiries, as listed on parliamentary websites, at a particular point in time. The Committee notes that a full survey of inquiries undertaken over an entire parliament may provide a more representative picture. For instance, the current data excludes Senate committees’ Estimates work, and completed inquiries (for example, legislative inquiries in the House) undertaken earlier in the Parliament.

**Figure 6.3 Current proportion of types of inquiry: Australia, United Kingdom and New Zealand**

Source Current inquiries listed on committee websites, as at 17 February 2010, at: <<http://www.aph.gov.au>>; <<http://www.parliament.uk>>; and <<http://www.parliament.nz>>

6.8 Having noted these differences between committee systems, the remainder of this chapter discusses each type of inquiry that House committees may currently carry out, considering whether there may be merit in fine-tuning the balance of activities.

## Investigating matters of public policy

6.9 House committees tend to focus on carrying out long-term, investigative inquiries into matters of public policy.<sup>4</sup> This is not necessarily true of some other committee systems. For instance, Senate committees tend to focus on matters of accountability more than policy inquiries.<sup>5</sup>

6.10 In discussions with colleagues, the Committee heard that the policy investigation aspect of committee work is particularly valued by Members and is perceived to also benefit the government of the day by providing

4 Department of the House of Representatives, *Submission No. 6*, p. 2; M Rodrigues, 'Parliamentary inquiries as a form of policy evaluation', *Australasian Parliamentary Review*, vol. 23, no. 1, p. 36.

5 M Rodrigues, 'Parliamentary inquiries as a form of policy evaluation', *Australasian Parliamentary Review*, vol. 23, no. 1, p. 36.

input into policy formulation processes, often early in the cycle. Typically, these longer-term investigative inquiries are characterised by a spirit of cooperation, and are focussed on formulating effective solutions to policy problems.

- 6.11 So far in the 42nd Parliament, House committees have completed 25 inquiries that can be considered investigative or policy-focused in nature.<sup>6</sup>

### **Committee conclusions**

- 6.12 The policy aspect of committee work is particularly valued by Members, and there was no suggestion that the number of policy inquiries should be reduced. Nevertheless, throughout the remainder of this chapter, the Committee considers whether there may be merit in adjusting the balance by increasing the number of other types of inquiries.

## **Scrutinising government expenditure and administration**

- 6.13 The work of Senate committees tends to focus on scrutiny of government administration.<sup>7</sup> Senate estimates committees, in particular, receive a great deal of attention for their detailed and sometimes adversarial hearings with Ministers and senior public servants. Similarly, UK House of Commons committees focus strongly on scrutinising the government.
- 6.14 Inquiries referred to House committees tend not to relate to scrutinising government administration or actions, but more to policy formulation. This is not to say that House committees cannot hold the government to account. Although all House general purpose standing committees have the power to conduct inquiries into annual reports of, and Auditor-General's reports relating to, government agencies within their area of responsibility, not many such inquiries have been conducted by them.<sup>8</sup> This may be because committees judge that their other activities should take priority, or because there is no immediate need for such an inquiry.

---

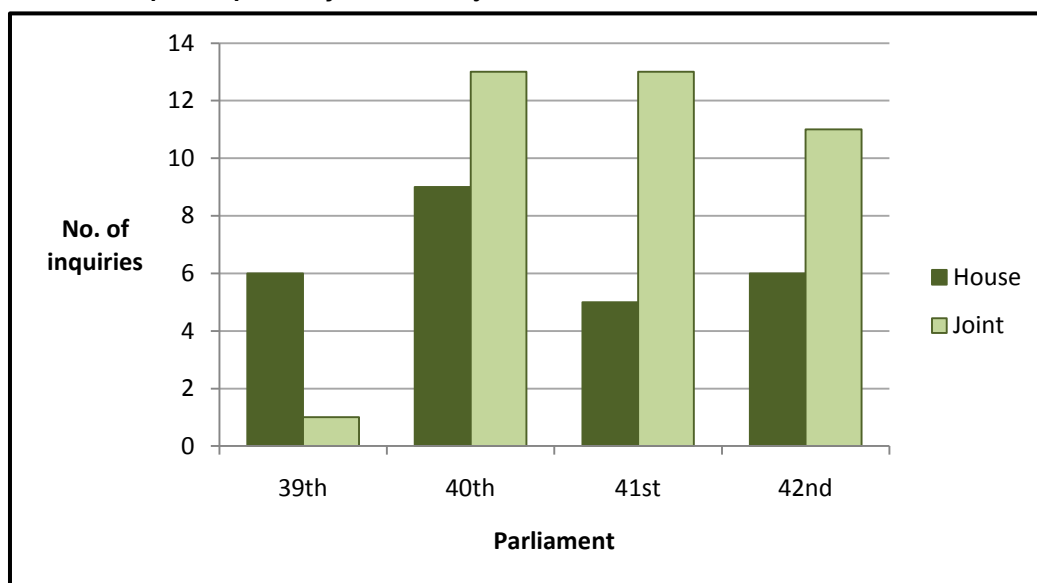
6 Based on committee website listings of reports presented during the 42nd Parliament, as at 13 February 2010.

7 M Rodrigues, 'Parliamentary inquiries as a form of policy evaluation', *Australasian Parliamentary Review*, vol. 23, no. 1, p. 36.

8 This is illustrated in figures 6.1 and 6.3, which show that only 10 to 20 per cent of current and completed House inquiries relate to the scrutiny of annual and audit reports.

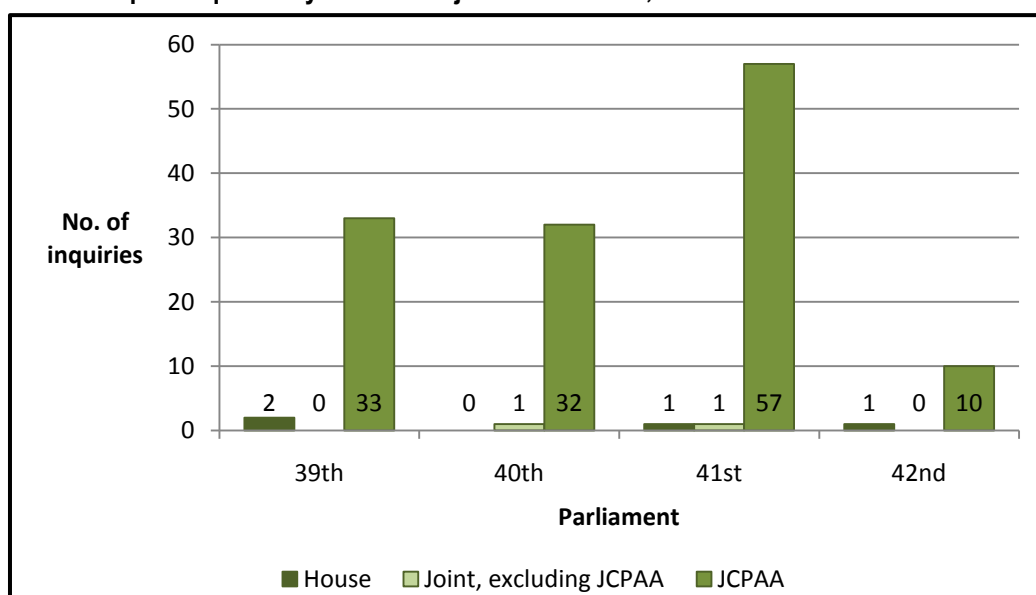
- 6.15 Members of the House have an additional role in scrutinising government through scrutiny activities undertaken by joint committees, most notably the Joint Committee of Public Accounts and Audit (JCPAA). Figures 6.4 and 6.5 show the number of regular and *ad hoc* inquiries into annual and audit reports carried out by House and joint committees. The JCPAA's regular inquiries into audit reports are separated out in figure 6.5, illustrating that the activities of the JCPAA account for a significant proportion (96 per cent) of audit report inquiries conducted by all House and joint committees.
- 6.16 Another joint statutory committee, the Public Works Committee, scrutinises all capital projects estimated to cost over \$15 million that the government proposes to carry out. A number of other joint committees also scrutinise government administration through regular inquiries into the annual reports and expenditures of relevant government bodies.<sup>9</sup>

**Figure 6.4 Annual report inquiries by House and joint committees, 39th to 42nd Parliaments**



Source Reports tabled by House general purpose standing committees and joint committees, as listed on committee websites, viewed 15 February 2010, at: <<http://www.aph.gov.au>><sup>10</sup>

- 9 For example: Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity; Parliamentary Joint Committee on the Australian Crime Commission; Parliamentary Joint Committee on Corporations and Financial Services; Parliamentary Joint Committee on Foreign Affairs, Defence and Trade; and Parliamentary Joint Committee on Intelligence and Security.
- 10 Includes reviews of administration and expenditure carried out by the Parliamentary Joint Committee on Intelligence and Security. Includes policy inquiries conducted under a committee's power to inquire into an annual report. 42nd Parliament up to 15 February 2010.

**Figure 6.5 Audit report inquiries by House and joint committees, 39th to 42nd Parliaments**

Source Reports tabled by House general purpose standing committees and joint committees, as listed on committee websites, viewed 15 February 2010, at: <<http://www.aph.gov.au>><sup>11</sup>

### Committee conclusions

6.17 The Committee acknowledges the useful contributions that annual and audit report inquiries make, and would certainly welcome more of these being carried out by House and joint committees. It is not convinced, however, that changes to committees' formal powers – as set out in the standing orders – are necessary. Rather, the Committee suggests that committees may rely on existing provisions to conduct annual and audit report inquiries, as appropriate.

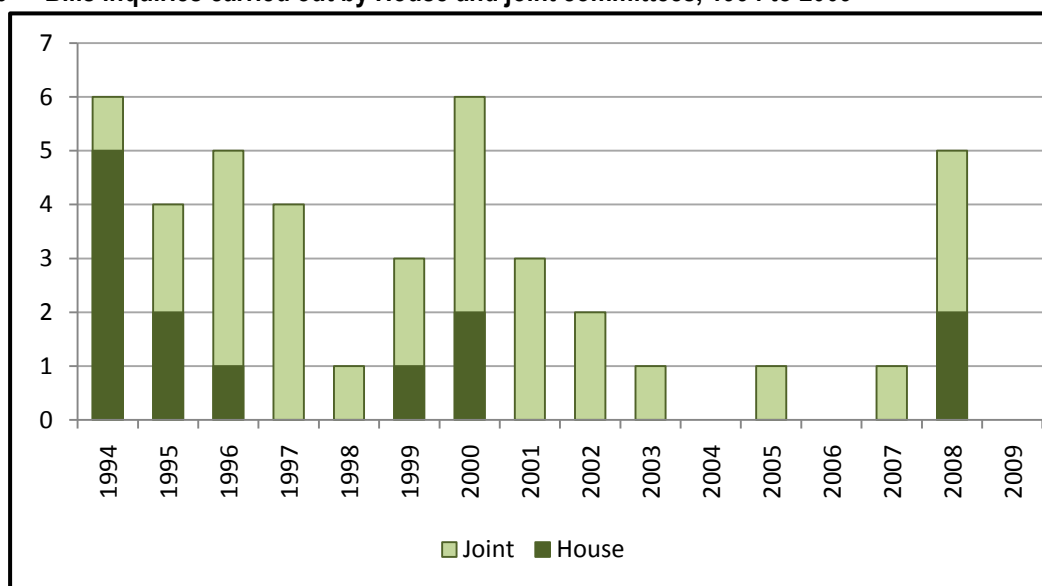
### Legislative inquiries: pre-legislation proposals and bills

6.18 Standing order 215 allows a general purpose standing committee to inquire into and report on any pre-legislation proposal or bill referred to it. This power has existed since the establishment of the committee system in 1987. Historically, however, House committees have had very little involvement in considering legislation or pre-legislation proposals. Such inquiries have only been undertaken since 1994, and there have only been a handful of such inquiries since then.

11 The JCPAA figure for the 41st Parliament includes 25 audit reports inquired into during the 41st Parliament, but tabled at the beginning of the 42nd Parliament.

- 6.19 All bills that have been referred to House committees are listed in table 6.1. Figure 6.6 shows the number of bills inquiries undertaken by House general purpose standing committees. It also illustrates that the legislative contribution of House committees is supplemented by joint committee inquiries, which also involve Members of the House.
- 6.20 By contrast, committees of the Senate, the Parliaments of Scotland and New Zealand, and the UK and Canadian Houses of Commons, are more involved in considering bills and proposed legislation.<sup>12</sup> Automatic referral of bills to committees tends to be the norm in many other parliaments.<sup>13</sup> This is notably the case in the unicameral New Zealand and Scottish Parliaments. These differences are illustrated by figure 6.7, which shows the relative proportion of bills referred to committees in a number of different houses or parliaments.

**Figure 6.6 Bills inquiries carried out by House and joint committees, 1994 to 2009**



Source Department of the House of Representatives, *Submission No. 6*, p. 3; reports tabled by joint committees, as listed on committee websites, viewed 15 February 2010, at: <<http://www.aph.gov.au>>

12 Department of the Senate, *Annual report 2007-08*; M Rodrigues, 'Parliamentary inquiries as a form of policy evaluation', *Australasian Parliamentary Review*, vol. 23, no. 1, p. 36; The Hon. K. Rozzoli AM, *Submission No. 2*, pp. 10-12; Professor I. Marsh, *Submission No. 13*, pp 2-3; Dr P. Larkin, *Submission No. 14*, p. 8.

13 Dr P. Larkin, *Submission No. 14*, p. 8; The Hon. K. Rozzoli AM, *Submission No. 2*, p. 8.



**Table 6.1 Bills referred to House committees, 1994 to present**

| Year | House standing committee                        | Bill <sup>1</sup>   |
|------|---|---|
| 1994 | Legal and Constitutional Affairs                | Crimes (Child Sex Tourism) Amendment Bill 1994  |
| 1994 | Legal and Constitutional Affairs                | Employment Services Bill 1994<br>Employment Services (Consequential Amendments) Bill 1994                             |
| 1994 | Legal and Constitutional Affairs                | International War Crimes Tribunal Bill 1994<br>International War Crimes Tribunal (Consequential Amendments) Bill 1994 |
| 1994 | Legal and Constitutional Affairs                | Legislative Instruments Bill 1994   |
| 1994 | Industry, Science and Technology                | Trade Practices Amendment (Origin Labelling) Bill 1994  |
| 1995 | Transport, Communications and Infrastructure    | Civil Aviation Legislation Amendment Bill 1995<br>Air Services Bill 1995  |
| 1995 | Transport, Communications and Infrastructure    | Sydney Airport Curfew (Air Navigation Amendment) Bill 1995  |
| 1996 | Legal and Constitutional Affairs                | International Transfer of Prisoners Bill 1996   |
| 1999 | Legal and Constitutional Affairs                | Copyright Amendment (Digital Agenda) Bill 1999  |
| 2000 | Legal and Constitutional Affairs                | Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999  |
| 2000 | Legal and Constitutional Affairs                | Privacy Amendment (Private Sector) Bill 2000  |
| 2008 | Primary Industries and Resources                | Draft Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008   |
| 2008 | Climate Change, Water, Environment and the Arts | Resale Royalty Right for Visual Artists Bill 2008   |

**NOTE**

1 All bills referred to House committees have been listed. In some cases, a single inquiry has related to more than one bill.

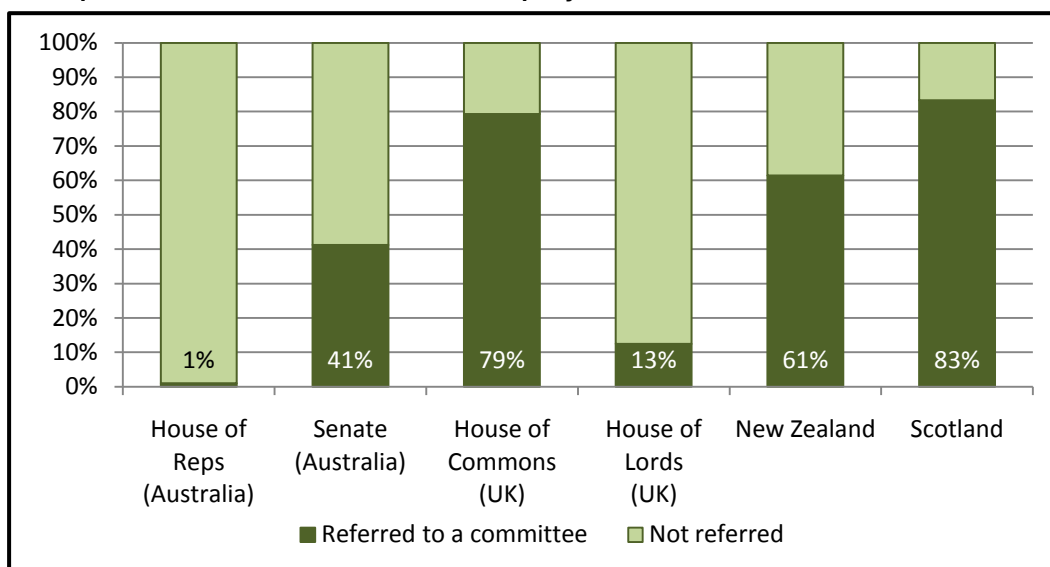
- 6.21 Feedback from the Committee's colleagues – from both sides of the Chamber – has been overwhelmingly positive about the impact of bills inquiries conducted by House committees. The cooperative approach House committees typically take to bills inquiries has resulted, for example, in improvements and unintended consequences being identified in bills before they are considered by the Chamber. The result is generally better quality legislation passed by the House.
- 6.22 Such sentiments are echoed by other witnesses. The Hon. Kevin Rozzoli supports a greater role for House committees in considering legislation, suggesting that it would result in better legislative outcomes.<sup>14</sup> Similarly, the Department of the House of Representatives (DHR) recommends that the Procedure Committee investigate mechanisms for encouraging more frequent referral of bills to committees.<sup>15</sup> The Standing Committee on

14 The Hon. K. Rozzoli, *Submission No. 2*, p. 12.

15 Department of the House of Representatives, *Submission No. 6*, p. 3

Legal and Constitutional Affairs (LACA) considers the increased number of bills referred to committees in the 42nd Parliament to be a positive trend.<sup>16</sup>

**Figure 6.7 Proportion of bills referred to committees per year, various Parliaments**



Source Information published on each Parliament's website, as at 19 February 2010, at: <<http://www.aph.gov.au>>; <<http://www.parliament.uk>>; <<http://www.parliament.nz>>; and <<http://www.scottish.parliament.uk>><sup>17</sup>

## Committee conclusions

6.23 Bills inquiries deliver considerable benefits to the House, the Government, and the Australian public, and contribute constructively to the legislative process. The Committee is pleased with the recent revival of bills inquiries being referred to House committees. The Committee is keen to ensure that this trend continues, and has considered a number of ways to encourage this.

6.24 One mechanism is the automatic referral of bills to House committees. This would involve bills being introduced into the House and subsequently standing referred to a House committee for inquiry and report, which is the process undertaken in many other parliaments.<sup>18</sup> This automatic referral process has not occurred in the House of

<sup>16</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs, *Submission No. 7*, p. 2.

<sup>17</sup> Due to the availability of statistics, the periods covered by these statistics are: 2008 (Australia); 2007-08 session (UK); and 2009 (New Zealand and Scotland). Figures relate to all bills (all public bills in the case of the UK) introduced into a chamber, which were then referred to a parliamentary committee for inquiry and report (does not include committees of the whole chamber).

<sup>18</sup> The Hon. K. Rozzoli AM, *Submission No. 2*, p. 8; Dr P. Larkin, *Submission No. 14*, p. 8.

Representatives, partly because ‘... Australia has a large number of very small bills’ compared with some other parliaments, which may have fewer, bigger bills.<sup>19</sup>

- 6.25 There was a broad consensus that not all bills need to be inquired into by committees, although Dr Phil Larkin did suggest that it should be up to the committee itself to make this decision. Furthermore, there is a need to ensure that House committees do not duplicate the efforts of their Senate counterparts, who conduct many bills inquiries (albeit with a different culture and membership composition).
- 6.26 Therefore, the Committee does not support the automatic referral of bills to House committees. Rather, it expresses its strong support for more bills inquiries to be undertaken by House committees. The Committee strongly encourages Ministers to take advantage of the consultative, bi-partisan and constructive nature of House committees by referring more bills to them for inquiry and report.
- 6.27 Bills inquiries often require specialist legal advice. In the past, this has often involved the secondment of staff from the relevant department during an inquiry. But this may become an issue if there is a sustained need for such assistance and, more so, if committees develop a practice of drafting proposed amendments as well as recommendations. The Committee is therefore concerned to ensure that the DHR is adequately resourced to allow it to carry out more bills inquiries without compromising its present standard of committee support.<sup>20</sup>
- 6.28 Through their investigative inquiries, committees already have some role in providing advice to government in the pre-legislation stages of the policy process. There may be scope to expand the involvement of House committees at slightly later stages of the process as well.
- 6.29 This might involve committee consideration prior to the introduction of legislation, such as through inquiries into white papers or green papers. Dr Larkin notes that such inquiries are more common in the UK Parliament.<sup>21</sup> House committees may be an ideal vehicle for these inquiries, particularly if they have examined related matters earlier.
- 6.30 At a post-legislation stage, House committees can have a constructive role in monitoring the implementation of Acts of Parliament, as well as inquiring into legislative instruments and other delegated legislation.

---

19 Dr P. Larkin, *Transcript of evidence*, 22 October 2009, p. 4.

20 Resourcing is considered in greater detail in Chapter 2.

21 Dr P. Larkin, *Transcript of evidence*, 22 October 2009, p. 10.

- 6.31 The Committee notes that governments ask many extra-parliamentary bodies to conduct various inquiries. While this may be appropriate and necessary in some cases, the Committee is concerned about any unnecessary increase in this trend. House committees are ideal bodies for investigating matters of public policy, at whatever stage of the policy formulation and implementation process. The capacity of House committees to consult widely and access expert advice, act as a 'bridge' between Parliament and the people, and their tendency to work cooperatively and constructively, contribute to their effectiveness in this regard. The Committee therefore strongly supports more pre-legislation proposals, subordinate legislation and other matters being referred to House committees. The Committee asks that the Deputy Speaker, as Chair of the Liaison Committee of Chairs and Deputy Chairs, inform Ministers of the benefits associated with House committee inquiries and the broad support for greater utilisation of House committees.

### **Recommendation 22**

**The Committee recommends that the Government consider increasing references to House committees for inquiry and report in areas such as:**

- **bills and pre-legislation proposals, including draft bills, green papers, white papers and other investigative inquiries; and**
- **post-legislation issues, including delegated legislation and matters relevant to policy implementation.**

## **Inquiries into petitions**

- 6.32 Following the Procedure Committee's inquiry into the House petitioning process in the 41st Parliament, a new process was instituted and a Petitions Committee established at the beginning of the 42nd Parliament.<sup>22</sup> The Petitions Committee now considers petitions for compliance with standing and sessional orders, before they are presented to the House and refers petitions to relevant Ministers for a response.<sup>23</sup> From time to time, the Petitions Committee holds public hearings into petitions and Ministerial responses. However, the committee does not have the power to refer petitions to other committees for their consideration.

<sup>22</sup> *Making a difference*; VP 2008-10/11-26.

<sup>23</sup> This process of committee consideration ensures that petitions comply with the standing orders.

6.33 Dr Larkin supports petitions being referred to other committees for inquiry and notes that this approach has been adopted in comparable parliaments.<sup>24</sup> As noted in Chapter 5, the House's standing orders have long provided for committees to examine any petition referred to them by the House or a Minister.<sup>25</sup> No such inquiries have taken place.<sup>26</sup> Motions to refer a petition to a House or joint committee have been moved in the House on several occasions, without success.<sup>27</sup>

### Committee conclusions

6.34 The establishment of the Petitions Committee has had a considerable effect on the way petitions are processed in the House and responded to by Ministers. The Committee is pleased to note the improved status of petitions, but notes that petitions are not necessarily inquired into on a regular basis. While this may be perfectly appropriate in some cases, House committees should have the option to inquire into petitions relevant to their policy areas.

6.35 Because of the Petitions Committee's level of involvement and familiarity with the petitioning process, it may be logical for it to be more involved in the referral of petitions to House standing committees.

6.36 Although the existing referral mechanisms (that is, referral by the House or by a Minister) should be retained, the Committee supports the DHR's proposal: the Petitions Committee should be given the power to refer relevant petitions to the other House committees, which would then have the opportunity to inquire into a petition if they so wish.<sup>28</sup>

### Recommendation 23

**The Committee recommends that the standing and sessional orders be amended to give the Standing Committee on Petitions the power to refer petitions to the relevant House committee, which may then choose to inquire into a petition referred to it and report to the House.**

24 Dr P. Larkin, *Transcript of evidence*, 22 October 2009, p. 5. And see Chapter 5 for a brief description of role of the Public Petitions Committee of the Scottish Parliament.

25 Department of the House of Representatives, *Submission No. 6*, p. 3.

26 Department of the House of Representatives, *Submission No. 6*, pp. 3–4.

27 *H.R. Practice*, p. 618, footnote 265. Although petitions have not been successfully referred to existing standing committees, on two occasions select committees have been appointed to inquire into, among other things, matters in connection with certain petitions presented to the House; *H.R. Practice*, pp. 618–9.

28 Department of the House of Representatives, *Submission No. 6*, p. 4.

