

Committee work in a hung Parliament A House of Representatives perspective

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The overwhelming emphasis of media and community interest in the House of Representatives during the 43rd Parliament has been on members, especially on leading members, and on the work in the House itself. The finely balanced numbers have ensured that the House itself, the plenary, has been an interesting place. In some ways, the impact of the hung parliament on the working of House and joint committees has been no less significant, although its effects on committees have received much less attention.

The most notable of all changes was the substantial increase in the numbers of bills referred to House and joint committees.

Although the standing orders had long provided for the referral of bills to House committees, only small numbers had in fact been referred. House committees had long concentrated on broader inquiries, which allowed them to give in-depth and bipartisan attention to a very wide range of issues of public policy and administration. The new standing orders allowed one member of the Selection Committee to require that a bill, whether a government or a private member's bill, be referred to a House or a joint committee for an advisory report. Accordingly, at the Selection Committee's second regular meeting each week, the committee would have before it details of all the bills that had been introduced since the last meeting. These referrals did not need to be approved or endorsed by the House; the report of the committee simply recorded the referrals.²

Full advantage was taken of this provision: by the end of June 2013, 224 bills had been referred to House or joint committees, with 182 of these referred by the Selection Committee. Often the reporting deadlines were very tight – three weeks was not uncommon. The challenge of conducting inquiries into bills within a timeframe that is not regarded as imposing unreasonable delays in the programming of government legislation will be familiar to many Presiding Officers and Clerks. The timeframes meant that hearings were limited and that round-tables, which allowed a number of individuals or groups to appear and participate together, were often used.

For many years Senate committees have been very active in the consideration of bills, and this had probably been a factor in the very limited number of bills that had been referred to

¹ I am indebted to colleague Justin Baker for his help with this paper.

² Standing order 222.

House committees in the past. The referral of a significant number of bills to House committees in the 43rd Parliament allowed the possibility of two inquiries into the same measure. From our perspective as staff supporting the institution, we would say that it is entirely within the rights of each House to require one of its own committees to consider and report to it on any bill. In some bicameral parliaments it is possibly inconceivable that bills would not be subject to whatever consideration was thought to be necessary by a committee of each House.

Committees depend heavily on the willingness of individuals and organisations to make submissions and give evidence in person. The prospect of interested people having to go through it all twice is a matter of genuine concern. This happened on around thirty occasions.³ In reporting on the Wheat Export Marketing Amendment Bill the Senate Standing Committee on Rural and Regional Affairs and Transport commented:

The committee respects the prerogative of each parliamentary chamber to refer for inquiry whichever bills it sees fit. However, the committee also observes that the decision by both the Senate and the House of Representatives to refer the Wheat Export Marketing Amendment Bill 2012 for inquiry, combined with each committee's decision to hold public hearings on different dates, resulted in duplication of effort. This duplication created confusion among some witnesses as well as inconvenience for those witnesses who were invited to attend multiple hearings.

It is pleasing to report that for some of the thirty-plus dual inquiries the committees worked in co-operation and examined different issues, or sought to seek evidence from contributors to the counterpart committee's inquiry.

On several occasions House committees to which a bill had been referred noted that the bill had also been referred to a Senate committee and did not proceed to conduct an inquiry. In these cases the reports from the House committees were formal only, and the practice developed of Chairs making oral reports to the House in discharge of the obligation to report to the plenary.

The statement of the Chair of the House Standing Committee on Infrastructure in respect of three telecommunications bills that had been referred to the Committee was representative:

It is the view of the committee that an inquiry conducted by this committee would unnecessarily duplicate the inquiry process concurrently being undertaken by the Senate committee. As has been noted in the House by chairs of other House committees, this committee welcomes the opportunity to examine bills referred to it by the House and indeed has already conducted an inquiry into legislation as part of its work during this parliament. It is important, however, that inquiries be conducted in a manner which is both timely and constructive. Where both houses are inquiring into the same legislation at the same time, those individuals and organisations who are interested

³ Notable examples of bills referred to committees of both Houses include: a group of Education Services for Overseas Students Bills, two flood levy bills, a Wheat Export Marketing Amendment Bill and the package of Minerals Resource Rent Tax Bills.

in participating may wonder why they are being asked to present their views twice in two different review processes.

In two other cases Senate committees decided not to proceed with inquiries because the bills in question had also been referred to the Joint Committee of Public Accounts and Audit⁴ and the House of Representatives Social Policy and Legal Affairs Committee respectively.⁵ No doubt individuals, private organisations and government departments and agencies appreciated any efforts to reduce duplication.

In the long-term it could be assumed that members of each House will wish to have the right to consider bills by means of committee inquiry. The reasonable interests of those who contribute to inquiries should be given a high consideration. In this regard, the availability of existing joint committees in some areas should always be borne in mind. Although it has been said that the use of joint committees does not sit happily with the theory of bicameralism, joint committees are a well-accepted feature of parliamentary life, and I have never heard any criticism of a report from a joint committee on the grounds that the inquiry had been conducted by a joint committee.

In addition, if there was a desire to do so, a way could be found to allow House and Senate committees to meet together for inquiries into bills. From an internal perspective, as well as issues of the theory of bicameralism, there would be practical challenges, including timing.

From the wider perspective of those who participate in inquiries, whether individuals, representatives of voluntary or other organisations or personnel of government departments and agencies, the advantages would be considerable. Again, looking internally, there would be benefits for members and senators in working with their colleagues from the other House – and there would be benefits for House and Senate staff members.

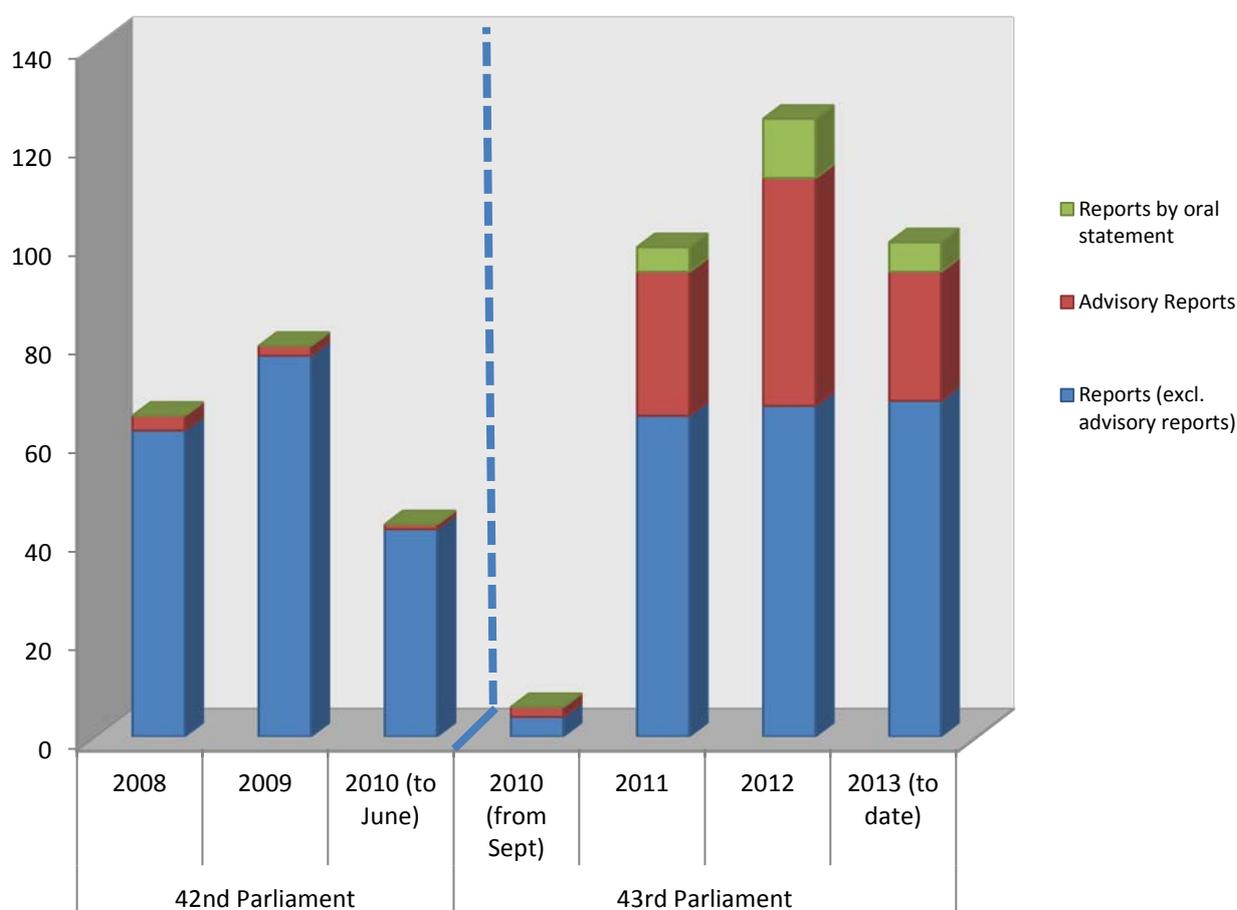
After evidence had been taken the Senate and the House Committees would be able to deliberate separately if they wished, and each committee could make its own reports, in the terms it wished, to its ‘parent’ House. The burden on participants would be reduced a great deal.

Of the 330 reports presented by House and joint scrutiny committees during the 43rd Parliament, 103 (or almost one-third) have been advisory reports on bills, with the balance comprising either scrutiny of government administration – for example by the Parliamentary Standing Committee on Public Works and the Joint Committee of Public Accounts and Audit – or investigations into matters of public policy.

⁴ Public Governance and Accountability Bill 2013.

⁵ Intellectual Property Laws Amendment Bill 2013.

Reports presented by House and joint scrutiny committees: 42nd and 43rd Parliaments



In respect of completed inquiries, House and joint committees received 9,461 written submissions and collected oral evidence at 854 hearings. In contrast to bills inquiries, which were generally conducted within short timeframes, some public policy inquiries generated a significant volume of submissions and have seen committees undertake an extensive program of hearings to inform their deliberations. Some examples were:

- the Joint Standing Committee on Migration’s inquiry into multiculturalism in Australia (27 hearings);
- the Regional Australia Committee’s inquiry into the use of ‘fly-in, fly-out’ workforce practices (26 hearings);
- the Aboriginal and Torres Strait Islander Affairs Committee’s inquiry into language learning in Indigenous communities (23 hearings); and
- the Health and Ageing Committee’s inquiry into registration processes and support for overseas trained doctors (22 hearings).

The ability of House and joint committees to balance the marked increase in bills inquiries whilst completing a significant number of detailed inquiries into general policy matters, as

well as maintaining their important scrutiny of government administration function, has been an important feature of the 43rd Parliament.

Committee members have valued greatly the general policy inquiries. Getting to the bottom of important issues has not meant that the practice of treating witnesses with courtesy and respect had to be compromised. Some inquiries have focused on confronting social issues. In the best traditions such inquiries have seen committee members supporting carefully witnesses who were invited to give evidence. Inquiries considering youth suicide (Health and Ageing Committee), workplace bullying, and mental health and workforce participation (Education and Employment Committee), were good examples of the ability of members to deal with difficult subjects, receive helpful evidence and make constructive reports.

In my view, the taxpayer received good value for the cost of supporting committees during the 43rd Parliament. Support for committees provided by the House of Representatives in 2012-13 was estimated to cost \$8.38m (it may come in a little under that figure). During the year 102 reports were presented by the committees supported. This figure includes 31 advisory reports on bills but excludes 11 reports (really non-reports) by oral statements and reports of the Selection Committee and the Publications Committee. The average cost per inquiry covered works out at around \$82,000. This figure does not allow for the cost of members' time or travel, IT and Hansard and office accommodation, and so it is far from a full picture. Nevertheless it is a good indication of the relatively modest cost of supporting inquiries by parliamentary committees. Inquiry by Royal Commission is often necessary or desirable - the nature and practice of the inquiries is often such that counsel assisting and other special procedures are necessary. They often do work that would not be done appropriately by a parliamentary committee, and it understandable that they are much more costly: the Royal Commission into the UN Oil for Food program was estimated to have cost \$9.953m. The full cost of some parliamentary committees would be a great deal more than \$82,000, but in my view they often represent very good value for the taxpayers' dollar.

As well as the greatly increased workload of committees notable changes were made to the provisions about committee membership.

During the 42nd Parliament the Procedure Committee, which monitors and reviews the practices and procedures of the House, had conducted a thorough review of the House committee system. In a June 2010 report the committee reported that during that Parliament between them 118 members had been eligible to serve on committees,⁶ and that between them they had been required to fill 256 places on committees. This had meant that most

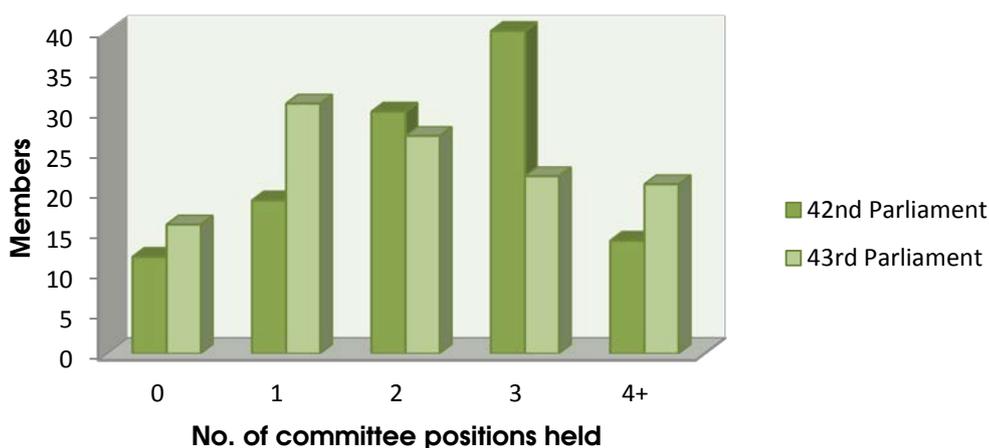
⁶ Ministers and the Speaker were excluded.

eligible members served on two or three committees and a number on four.⁷ The Procedure Committee concluded that changes should be made to increase the efficiency and effectiveness of House committees, and recommended a reduction in the number of committees and in their size.⁸

The Procedure Committee's recommendations were picked up as a part of the large number of amendments to the standing orders that were made to give effect to the changes that had been negotiated between the election and the opening of the new parliament. The number of general purpose committees was reduced from twelve to nine, and the standard number of members was reduced from ten to seven, being four government and three non-government members. Reflecting the circumstances of the hung parliament, when a non-aligned member wished to serve on a committee the membership was enlarged to eight: four government and four non-government. The number of places to be filled on the House's general purpose committees was thus reduced significantly, as the Procedure Committee had proposed. In fact however the pressure on members to fill places was increased by the appointment of two new ongoing joint committees—a standing committee and a statutory committee—and ten joint select committees.⁹

The result of all this was that there was a substantial increase in the number of members who were required to serve on numerous committees. For example, no member was serving on more than five committees at the close of the 42nd Parliament, whereas eight members were serving on six or more committees during the last sitting week in June this year, where 117 eligible members of the House were filling 257 places on House and Joint Committees.

Distribution of committee positions among members in the 42nd and 43rd Parliaments



⁷ Standing Committee on Procedure, *Building a modern committee system: an inquiry into the effectiveness of the House Committee System*, June 2010, pp 68-9.

⁸ *Ibid.*

⁹ Standing Committee on Procedure, *Monitoring and review of procedural changes implemented in the 43rd Parliament: 4th Report*, June 2012, para 5.9.

Also reflective of the new arrangements was the appointment of numbers of members as supplementary or participating members. In respect of the House general purpose committees the new standing orders allowed up to four members to be appointed as supplementary members for particular inquiries, two government and two Opposition or non-aligned members. Supplementary members had the same rights to attend meetings, question witnesses and so on, but were not able to exercise a vote. The Senate practice of appointing participating members, which had its origins in the desire to allow independent and minor party Senators to participate in committee inquiries although they were not members of the committees in question¹⁰, was adopted in respect of several joint committees. The extent of the use of this device often reflected the level of political interest in an inquiry: in presenting a final report from the Joint Standing Committee on the NBN on 17 June the Chair, Mr Oakeshott, thanked the committee's 60 members: 16 were voting members, but an additional 42 senators and two members had been appointed as participating members!¹¹

Also reflective of the circumstances of minority government were the provisions which allowed three committees to be chaired by non-government members. Mr Windsor became Chair of the Standing Committee on Regional Australia, and Mr Oakeshott Chair of the Joint Committees of Public Accounts and Audit, and the National Broadband Network. Although common in the Senate, this was a new development for a House committee, and a rare one for a joint committee.

The standing orders also reflected a low-key but significant development in providing that committee Chairs and Deputy Chairs could make statements to inform the House of progress with inquiries. This provision can be seen as encouraging a closer integration between committee work and the work of the House itself. The Procedure Committee noted that Chairs and Deputy Chairs had made good use of this opportunity and reported that it 'welcomes the increased prominence provided to committee work'.¹²

One of the long-standing complaints of committee members in many jurisdictions is that they may work very conscientiously in conducting an inquiry and making a report only finds it 'sit on the shelves' awaiting decisions by government. Successive federal governments have undertaken to provide government responses to committee reports within three months.¹³ These commitments have been on the authority of statements by responsible ministers. The reform agreements wanted something more concrete, and accordingly, on 29 September 2010, the House adopted a resolution that required governments to present responses to committees' recommendations within six months of reports being presented. The resolution provided that if the government failed to respond within that time the relevant minister was

¹⁰ *Odgers' Australian Senate Practice*, 13th edn, p 479.

¹¹ *Hansard*, 17 June 2013, p 21

¹² Standing Committee on Procedure, *Monitoring and review of procedural changes implemented in the 43rd Parliament: 4th Report*, June 2012, p 48, para 5.30.

¹³ *Odgers' Australian Senate Practice*, 13th edn, p 505.

expected to present a signed statement explaining the delay, and committees were given authority to request a minister to appear before them to provide an explanation.

It has long been pleasing to supporters of the value of parliamentary committees to hear retiring members speak very positively of their experiences on committees; similar statements are of course to be found in the Senate Hansard. Despite the significant pressure that committee members were under during the 43rd Parliament and the additional places that had to be filled, it was pleasing to hear such statements once again when members made valedictory remarks during the last two sitting weeks.

The 43rd Parliament has seen the House committee system well and truly tested. Members have worked diligently and often to very tight deadlines in their committee work. Their success has confirmed the commitment of members to the tradition of subject matter inquiries, and it has proven also that committees can discharge their responsibilities in relation to bills referred for inquiry. Once again, and in particularly challenging circumstances, the House has seen what committed and hard-working members can achieve when they are supported by capable and professional parliamentary staff.