

Powers and operations

- 5.1 One of the determinants of a committee's effectiveness is the powers it has to carry out its business. Some evidence to the inquiry has suggested that the powers of House committees are relatively weak, particularly compared with those in Parliaments overseas.
- 5.2 The existing powers of committees are outlined briefly in the first part of this chapter. In the next section, the Committee considers and presents its conclusions on proposals that may strengthen committee powers, or give committees additional powers.

Existing powers

- 5.3 The powers explicitly granted to a committee by the standing orders include those to:
- conduct proceedings, using means approved by the House, at any time or place, and whether or not the House is sitting;¹
 - call witnesses and require that documents be produced;²
 - consider and make use of the evidence and records of similar committees appointed during previous Parliaments;³
 - confer with a similar committee of the Senate;⁴
 - authorise publication of any evidence given before it or documents presented to it;⁵ and

1 Standing order 235.

2 Standing order 236.

3 Standing order 237.

4 Standing order 238.

- report from time to time.⁶

5.4 These formal powers significantly contribute to the effectiveness of House committees, allowing them to undertake work in a way that the Chamber cannot. The extent to which these *formal* powers are used, and the range of *informal* powers committees do use, must also be taken into account. Dr Phil Larkin notes that focusing solely on formal powers can be misleading:

A noted study by Lees and Shaw comparing the committee systems of eight national legislatures found that, whilst the committees in Japan and the USA had near identical formal powers, committees in Japan were the weakest in their study and the USA's the strongest.⁷

5.5 For example, inquiry terms of reference are referred to committees by the House or the relevant Minister. In practice, however, the parameters of inquiries are usually negotiated between the committee and relevant Minister, giving the committee some flexibility in determining its work program. House general purpose standing committees may also inquire into relevant annual or audit reports, as part of the scrutiny and accountability process. These inquiries also have:

... a secondary purpose in providing a mechanism by which a committee may conduct an inquiry where a minister may be reluctant to refer a particular matter to a committee for investigation.⁸

5.6 Therefore, House committees have a range of powers that assist them in carrying out their important policy investigative, scrutiny, and other functions. Despite this, Dr Larkin asserts that:

... House committees' powers – both formal and as utilised in practice – are weak in comparison with similar parliaments.⁹

5.7 Consistent with this view, the Committee has received some evidence in support of strengthening the formal powers of committees in general, and of the Joint Standing Committee on Treaties (JSCOT) in particular. These are discussed below.

5 Standing order 242.

6 Standing order 243.

7 Dr P. Larkin, *Submission No. 14*, p. 9.

8 Department of the House of Representatives, *Submission No. 6*, p. 2.

9 Dr P. Larkin, *Submission No. 14*, p. 2.

Consolidating and extending committee powers

- 5.8 In this section, the Committee considers a number of proposals aimed at strengthening the powers of committees, including those relating to:
- initiating inquiries;
 - legislative involvement;
 - the referral of and inquiry into petitions;
 - conferring with Senate committees;
 - accessing and amending records from previous Parliaments; and
 - the Joint Standing Committee on Treaties, in particular.
- 5.9 First, however, the Committee discusses how committee powers may need to be reconsidered as a result of the adoption of new technologies.

Committee powers and new technology

- 5.10 In Chapter 3, the Committee suggested that modern technologies give the House an opportunity to engage with the community in new ways, extending the operation of committees where appropriate to dialogue and interaction. Certainly, these new ways of interacting with the public will have resource implications, given the learning curve it would involve for Members and support staff. However, the adequacy of committee powers is another issue given consideration in this chapter.
- 5.11 While standing order 235 gives committees very broad scope to conduct their proceedings as they consider appropriate¹⁰, the Committee considered whether movement into more interactive ways of working would require an extension of these powers to allow for more flexibility and speed. The Committee also considered whether the application of parliamentary privilege would need to be adjusted to deal with these new ways of engaging with the public.

Committee conclusions

- 5.12 The customs and practices associated with parliamentary privilege are well established. Where committee work is protected by parliamentary privilege, the same care that committees currently display in handling printed evidence must apply in all formats. The Committee notes that

10 Standing order 235 provides, among other things, for a committee or subcommittee to 'conduct proceedings using any means approved by the House', including private meetings, hearing witnesses in public or private, or 'any other meeting, discussion or inspection conducted under the practice of committees of the House.'

committees have managed matters of privilege as they relate to less formal proceedings – such as informal discussions, public meetings, telephone hotlines and workshops – and the use of internet-based technologies.

- 5.13 Many of the new methods of operation envisaged for committees could be enabled under the current practices and procedures of the House, especially given the extensive committee discretion provided by standing order 235. Powers and practices may need to be adjusted to enable committees to respond as quickly as necessary. As these new types of committee work evolve over coming years and their full effects become known, it will be necessary for the House revisit relevant standing orders. The Committee therefore does not, at this time, recommend a change in committee powers, but affirms its commitment to monitoring these issues as they develop.

Initiating inquiries

- 5.14 The Committee has heard extensive evidence supporting committees having the power to initiate their own references.¹¹ Although House committees have some influence over their work programs¹², Dr Larkin notes that the committees of comparable parliaments have considerably more freedom:

In relying on references from the main chamber or a minister, House of Representatives' Standing Committees are unusual in not having control over the issues they examine or the timescale of any inquiry.¹³

- 5.15 One submission claims that committees are not given adequate time to investigate detailed and complex issues.¹⁴ Associate Professor Simon Rice and Dr Matthew Rimmer cite examples of inquiries of the JSCOT and the Legal and Constitutional Affairs (LACA) Committee they regard as being unduly affected by tight reporting deadlines.¹⁵ This may be because general purpose standing committees technically cannot initiate their own inquiries and, therefore, may have little control over the timeframe of inquiries and reporting deadlines. However, in practical terms, many

11 Department of the House of Representatives, *Submission No. 6*, pp. 2–3; House of Representatives Standing Committee on Legal and Constitutional Affairs, *Submission No. 7*, p. 2; Dr P. Larkin, *Transcript of evidence*, 22 October 2009, p. 5.

12 By virtue of negotiations with the Minister prior to receiving a reference, and the standing option to conduct inquiries into annual and audit reports, as described earlier this chapter.

13 Dr P. Larkin, *Submission No. 14*, p. 7.

14 Associate Professor S. Rice OAM and Dr M. Rimmer, *Submission No. 11*, pp. 4–5.

15 Associate Professor S. Rice OAM and Dr M. Rimmer, *Submission No. 11*, pp. 4–5.

Chairs already help determine the parameters of inquiries through discussions with the relevant Minister or by initiation inquiries into annual and audit reports.

Committee conclusions

- 5.16 The Committee did not receive any other evidence specifically relating to timeframes and their impact on the effectiveness of committee inquiries. Rather, the concerns expressed by its colleagues focussed more on how committee work might be more successfully integrated into the work of the House. The Committee considers this in Chapters 2 and 7.
- 5.17 While noting the current flexibilities and informal powers available to committees, the Committee favours formally allowing House general purpose standing committees to initiate their own inquiries.¹⁶ Self-initiated inquiries allow committees to respond to issues as they arise or are brought to their attention. They also allow committees to determine their own priorities. This is consistent with the conclusion reached by the Procedure Committee in 1998:
- There appears to be little justification to deny committees the right to initiate their own inquiries.¹⁷
- 5.18 In light of the characteristics of the House and the cooperative nature of its committee work, the Committee does not accept any suggestion that self-initiated inquiries would necessarily be disruptive or be used in a politically-motivated way. It is more likely that policy-focussed inquiries will continue to dominate the work of House committees, given the culture of the institution and the preference of most Members. Self-initiated inquiries would simply facilitate House committees' ability to respond to emerging issues as required.
- 5.19 The Committee acknowledges that, given the large number of House, joint and Senate committees, an inquiry carried out by one committee might overlap with or be relevant to another committee's area of responsibility. This may be exacerbated if committees are given the power to initiate their own references.
- 5.20 All current inquiries by House and joint committees are listed in the House *Notice Paper*.¹⁸ This an appropriate way for committees to stay informed of new inquiries. The current process of Ministers referring

16 Some House committees, including the Procedure Committee, currently have this power.

17 *Ten years on*, p. 15.

18 See *Notice Papers* at: <<http://www.aph.gov.au/house/info/notpaper/index.htm>>. Committee membership and current inquiries are listed at the back of each day's *Notice Paper*.

inquiries to committees also minimises the potential for duplication. However, there may be merit in Chairs immediately informing their colleagues of new inquiries, perhaps by way of a brief letter. This would be particularly pertinent if committees are given the power to initiate their own inquiries. The Committee does not recommend any changes to the House's formal practices and procedures at this time, but asks that committee Chairs continue their informal commitment to keeping their colleagues informed of new inquiries.

- 5.21 The Committee does not suggest the discontinuation of references by the House or Ministers. Rather, these mechanisms would complement one another. Furthermore, the Committee's support for self-initiated inquiries stems from a desire to have formal powers reflect the practical reality that committees can currently exercise some control over their work programs, by conducting inquiries into annual and audit reports and by negotiating terms of reference with Ministers.
- 5.22 The Committee limits its recommendation to general purpose standing committees. Many domestic committees already have the power to initiate their own inquiries, and any adjustments to the powers of joint committees would require negotiation with the Senate.

Recommendation 19

The Committee recommends that general purpose standing committees be given the power to initiate their own inquiries, and that any disputes between committees over policy coverage continue to be resolved by the Speaker.

Committees and the legislative process

- 5.23 As discussed in Chapter 6, House committees do not regularly inquire into bills. Not only are committees of legislatures outside Australia more frequently involved in the legislative process, but the extent of their involvement can also be more considerable. House committees, following an inquiry into a bill, are able to recommend amendments that the government may choose to move as (government) amendments.¹⁹

19 This was the process that applied to the first instance of legislation being considered by a House committee – the inquiry by the Standing Committee on Legal and Constitutional Affairs into the Crimes (Child Sex Tourism) Amendment Bill 1994. See http://www.aph.gov.au/house/committee/reports/1994/1994_PP90.pdf for a copy of the report. For details of the presentation of the government response and subsequent amendments to the bill, see H.R. Deb. (29.6.1994) 2344–65. This process also applied to the

- 5.24 By contrast, committees in many other parliaments, including in Canada and New Zealand, have the power to amend proposed legislation.²⁰ The power of committees in some parliaments, including in Canada and Scotland, is more significant still: committees may initiate legislation themselves.²¹
- 5.25 Associate Professor Rice and Dr Rimmer argue that the ability to act independently of the executive by introducing legislative proposals signals a strong agenda setting role for committee systems in policymaking.²² They therefore advocate House committees being given the power to initiate legislation, a proposal also supported by the Hon. Kevin Rozzoli:

The ability to act independent of the executive by introducing legislative proposals signals a strong agenda setting role for committee systems in policymaking.²³

Committee conclusions

- 5.26 The Committee is mindful of structural and cultural factors that may explain the discrepancy between the legislative involvement of committees of the House and of other parliaments. The New Zealand Parliament, for instance, is unicameral. Its committees therefore take on some of the functions that a second chamber might ordinarily undertake, such as reviewing legislation. The same explanation could apply to the unicameral Scottish Parliament. The nature of legislation could also have

most recent bill inquiry, carried out by the Standing Committee on Climate Change, Water, Environment and the Arts, into the Resale Royalty Right for Visual Artists Bill 2008. The report is available on the committee's website, at:

<<http://www.aph.gov.au/house/committee/ccwea/resaleroyalty/report.htm>>; and the government response is available at:

<<http://www.aph.gov.au/house/committee/ccwea/resaleroyalty/response/Resale%20Royalty%20Right%20for%20Visual%20Artists%20Bill%202008.pdf>>. Details of subsequent amendments to the bill are at H.R. Deb. (7.9.2009) 8793–800.

- 20 Other countries where this power is in use include: Austria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. S Martin, *Explaining variation in the strength of parliamentary committees*, p. 31, viewed 3 August 2009, at: <<http://webpages.dcu.ie/~martins/committees1.pdf>>. Cited in: Associate Professor S. Rice and Dr M. Rimmer, *Submission No. 11*, p. 6.
- 21 Dr P. Larkin, *Submission No. 14*, p. 8; Dr P. Larkin, *Transcript of evidence*, 22 October 2009, p. 4; S Martin, *Explaining variation in the strength of parliamentary committees*, p. 31, viewed 18 December 2009, at: <<http://webpages.dcu.ie/~martins/committees1.pdf>>.
- 22 Associate Professor S. Rice OAM and Dr M. Rimmer, *Submission No. 11*, p. 6.
- 23 Associate Professor S. Rice OAM and Dr M. Rimmer, *Submission No. 11*, p. 6. See also: The Hon. K. Rozzoli AM, *Submission No. 2*, p. 7.

an impact: the Australian Parliament tends to deal with many more small amendment bills, while the UK Parliament tends to consider fewer, more substantial bills.²⁴

- 5.27 The effectiveness of any reform to a committee system needs to account for the context and culture of the parliament in which it is introduced.²⁵ It is unclear how committee-initiated legislation would operate in the Australian context, and how this might interact with the accepted prerogatives of executive government. It may be better for the House to first focus on addressing the historical infrequency of bills inquiries, before expanding the legislative role of committees.
- 5.28 For these reasons, and in the absence of further evidence, the Committee does not at this time support House committees being given the power to initiate or amend legislation.

Petitions: responses and inquiries

- 5.29 House committees may inquire into any petition (or any other matter) referred to them by the House or a Minister.²⁶ In practice, however, petitions inquiries very rarely occur. In the 42nd Parliament, the House established a Petitions Committee as part of a new petitioning process.²⁷ The committee has very actively referred petitions to Ministers for response, and has also inquired into petitions from time to time. It does not, however, have the power to refer petitions to other committees of the House.
- 5.30 In contrast, the Public Petitions Committee of the Scottish Parliament, on which the House's committee was modelled to some extent, has a substantial role in considering the content of petitions and determining what further action, if any, should be taken.²⁸ The committee may refer a petition to the relevant parliamentary committee for further inquiry, or bid for time to have it considered in the main chamber. All committees in the Scottish Parliament are therefore more involved in the petitioning process than are House committees.

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

25 Dr P. Larkin, *Submission No. 14*.

26 Standing order 215(b).

27 Standing order 220 establishes the committee; Sessional orders 207 and 209 set out new procedures relating to the presentation and referral of petitions.

28 The Scottish Parliament, *How to submit a public petition*, viewed 18 December 2009, at: <http://www.scottish.parliament.uk/vli/publicInfo/documents/Howtosubmitapublicpetition.pdf>.

- 5.31 In Chapter 6, the Committee considers further the relative merits of House committees being more involved in inquiring into petitions, and whether there is any role for the Petitions Committee in bringing about such a change.

Enhancing cooperation: conferring with Senate committees

- 5.32 Under the current standing orders, House committees may confer with their equivalent in the Senate. Standing order 238 currently reads:

238 Conferring with Senate committees

A committee may confer with a similar committee of the Senate.

- 5.33 Currently, this power is not widely used – at least not by general purpose standing committees. Some domestic committees have conferred with Senate committees more often. For example, the House Publications Committee regularly meets in conference with the Senate Publications Committee to select documents for inclusion in the Parliamentary Papers Series.²⁹ When it has met in conference with its Senate counterpart, the House Publications Committee has also:

... inquire[d] into and report[ed] on the publication and distribution of parliamentary and government publications and on matters referred to it by a Minister.³⁰

Similarly, the Library Committees of the House and Senate used to meet in conference regularly, before being replaced by a joint standing committee established by resolution of both houses.³¹

- 5.34 The LACA Committee acknowledges that the use of the ‘conference’ provision is largely unexplored and suggests that the scope of cooperation between House and Senate committees is undefined.³² Perhaps the infrequent use of standing order 238 can be explained by the lack of clarity about its scope.

29 *H.R. Practice*, p. 597.

30 As provided for by standing order 219.

31 Joint Standing Committee on the Parliamentary Library, *Committee establishment, role and history*, viewed 5 January 2010, at:
<<http://www.aph.gov.au/house/committee/jscpl/role.htm>>.

32 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Submission No. 7*, p. 2.

Committee conclusions

- 5.35 The LACA Committee and Professor Marsh support enhancing cooperation between House and Senate committees, including joint inquiries.³³ In the previous chapter, the Committee noted that the provisions of standing order 238, concerning the power of House committees to confer with their Senate counterparts, may benefit from further clarification.
- 5.36 Committees may benefit from meeting informally with their Senate counterparts to discuss relevant issues, or meeting jointly to receive a briefing or gather evidence. This can also be an effective tool to avoid the unnecessary duplication of other committees' efforts.
- 5.37 In the Committee's view, standing order 238, as it currently stands, does not extend to joint inquiries. Indeed, House and Senate committees may take different approaches and have different areas of focus, perhaps reflecting their different compositions and traditions, so there may be some benefit to committees conducting separate inquiries into similar matters. Of course, none of this precludes the House and Senate resolving to refer a matter to a joint select committee comprising members of certain committees from both houses.

Recommendation 20

The Committee recommends that standing order 238 be amended to read:

238 Conferring with Senate committees

A committee may confer with a similar committee of the Senate to discuss relevant issues, receive briefings or gather evidence to an inquiry.

Building on the work of previous Parliaments

- 5.38 House committees start operating when Members are appointed to them at the beginning of a Parliament, and cease to exist only upon dissolution or expiry of the House.³⁴ Usually, a House standing committee is reappointed by the standing orders at the beginning of the next Parliament but, even if that committee has identical terms of reference,

33 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Submission No. 7*, p. 2; Professor I. Marsh, *Submission No. 13*, p. 4.

34 *H.R. Practice*, p. 631.

powers and title, it is in fact considered a different committee.³⁵ For this reason, the standing orders authorise House committees to have access to the records of, and evidence taken by, the previous committees:

237 Use of records of previous committees

A committee or subcommittee may consider and make use of the evidence and records of similar committees appointed during previous Parliaments.³⁶

- 5.39 The DHR questions the clarity of standing order 237. One interpretation suggests that committees have *access* to records of previous committees, but may not *alter the status* of records.³⁷ This raises difficulties where, for example, a committee wishes to alter the public accessibility of a previous committee's evidence.³⁸ A committee is currently able to change the status of records from within its own term of appointment.

Committee conclusions

- 5.40 The Committee favours standing order 237 being clarified to affirm the power of committees to alter the public accessibility of a previous committee's evidence. If they consider such action to be appropriate, committees should be able to respond to requests from previous witnesses and those named in submissions to remove submissions from their websites.
- 5.41 The Committee is confident that such powers would be used appropriately, but notes that such a power could be used to make previously private records publicly accessible. For this reason, the Committee suggests the inclusion of a safeguard: the requirement for the Speaker's approval before any records are changed.

35 *H.R. Practice*, p. 632.

36 Standing order 237. As stipulated by standing order 242, such records and evidence would otherwise be considered private.

37 Department of the House of Representatives, *Submission No. 6*, p. 11.

38 For example, the Committee may wish to remove from its website a submission to an inquiry conducted in a previous Parliament, following a request from the author or a person referred to in the submission.

Recommendation 21

The Committee recommends that standing order 237 be amended as follows:

237 Use of records of previous committees

A committee or a subcommittee may consider and make use of the evidence and records of similar committees appointed during previous Parliaments. A committee may, with the prior consent of the Speaker, alter the status of such evidence and records.

Joint Standing Committee on Treaties

- 5.42 Throughout this inquiry, the Committee has received more evidence about the JSCOT than about any other existing committee. Much concerns its potential involvement in an expanded human rights role for the House. This is addressed in Chapter 4, where the committee considers proposals for new committees.
- 5.43 Apart from the proposed human rights involvement, Professor George Williams argues that the current mandate of the JSCOT is insufficient.³⁹ He suggests the committee have a greater role in ensuring that the executive government cannot unilaterally commit Australia to treaty action. He also suggests expanding JSCOT's role to consider less-than-treaty status instruments, such as memoranda of understanding. Professor Williams also supports the JSCOT being able to inquire into instruments before they are signed by the executive.

Committee conclusions

- 5.44 The Committee has not received sufficient evidence from other parties that would suggest the powers of the JSCOT in particular are inadequate, or that would justify recommendations for change. Moreover, such a change has not been sought by the JSCOT. Therefore, the Committee does not consider that this is a pressing area for reform at this time.

39 Professor G. Williams, *Submission No. 1*, p. 2.