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ANU COLLEGE OF LAW

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Committee Secretary  
Standing Committee on Procedure  
House of Representatives  
Parliament House  
Canberra ACT 2600  
email: [Procedure.Committee.Reps@aph.gov.au](mailto:Procedure.Committee.Reps@aph.gov.au)

Dear Committee Secretary,

Thank you for the opportunity to make a submission to your inquiry into the effectiveness of the House Committees. Our submission is based upon our long engagement with law reform and social justice. We first discuss the contribution of the ANU College of Law to law reform and social justice. We then make some observations on committee structure, function and procedure based on our own experience, and propose some reforms. We then draw your attention to seminar papers that may be of help to your inquiry. Finally we offer you some references for your further research. We trust that the matters raised here will contribute to your inquiry, and would be very happy to discuss them with you.

Yours sincerely,

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## 1. The ANU College of Law

The ANU College of Law has a strong tradition of active engagement with law reform and social justice.

Thirty years ago, the ANU College of Law held a conference under the banner of *Australian Lawyers and Social Change*, the proceedings of which were published in a book of the same name edited by David Hambly and Jack Goldring.<sup>1</sup>

The current Dean of the ANU College of Law, Professor Michael Coper, has reflected on the contribution of legal education to law reform and social justice:

First, lawyers are important in ensuring certainty, transparency, and fairness in the day-to-day application of the system of rules that govern our lives. The rule of law is vital to the efficacy of business and personal transactions, and to keeping the acts and decisions of officials within lawful bounds. Without a class of experts knowledgeable in and faithful to the fundamental values of the law, society could descend into chaos, and turn not on due process and equality but on privilege and raw power.

Yet, important as this is, it is not enough. Legislators and judges can make bad laws. Society changes and the law lags behind. So lawyers must be concerned not just with what the law is, but, secondly, with what it might or should become. Even the lawyer who is asked simply to advise on what the law is fails in that duty if he or she fails to anticipate what the law—often in a state of flux—is likely to become. But, more importantly, those who understand the law are best placed to advise on how it might be improved and on how the legal system might better serve the ends of justice.

Consequently, concern about law reform and social justice is a strong component of the ethos of the ANU College of Law. The highest standards of teaching and research, and the production of lawyers of the highest competence, are important goals in their own right, but are also necessary preconditions to the effectiveness of agitation for law reform and social justice. They are a platform for adding value to society through vindication of the fundamental values of the law and through the relentless pursuit of improvement in the law and the operation of the legal system.<sup>2</sup>

The academic members of the ANU College of Law have played a significant role in law reform processes in a variety of different ways, over a significant period of time.

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<sup>1</sup> David Hambly and Jack Goldring, *Australian lawyers and social change: proceedings of a seminar held at the Faculty of Law*, Sydney: Law Book, 1976.

<sup>2</sup> Michael Coper, 'Dean's Message', 2009, <http://law.anu.edu.au/deansMessage.asp>.

The contributions of the scholars have ranged from submissions to parliamentary committees and law reform bodies; participation in law reform processes, independent reports and the provision of expertise advice; and engagement with the wider community in the media. Such publicly-spirited interventions have encompassed a wide variety of legal disciplines – covering the multi-faceted nature of intellectual property law; access to justice; international law; administrative and constitutional law; refugee rights and immigration policy; environmental law and climate change policy; and corporate and commercial law.

In 2004, the ANU College of Law hosted a conference on ‘Law and Social Change’.<sup>3</sup> The overarching theme of the conference was, what role can and should Australian lawyers play in the continuous improvement of the law and the operation of the legal system? In particular, what role can and should Australian lawyers play in the promotion of law reform and the achievement of social justice? After an initial session focused on the phenomenon of law reform, these questions were asked in turn of the judiciary, the legal profession, and legal educators. Speakers debated, *inter alia*, the relative merits of different models and conceptions of the law and the legal system: law as, on the one hand, an agent of change, and, on the other, as a conservative influence that provides a natural brake on change.

In 2007, the ANU College of Law appointed Associate Professor Simon Rice OAM – one of the co-authors of this submission - as its inaugural Director of Law Reform and Social Justice. This appointment further develops the College’s established ethos of producing lawyers who are not only competent and ethical but who will also carry with them throughout their careers a sense of responsibility for working to improve the law and the operation of the legal system. Both through specialist courses on law reform and the content of its curriculum, the ANU College of Law teaches undergraduate students to:

- understand different philosophical conceptions of law reform
- explain different theoretical justifications for law reform
- describe the different available methods of achieving law reform

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<sup>3</sup> ANU College of Law, *Law and Social Change*, 2004, <http://law.anu.edu.au/CIPL/Conferences&SawerLecture/04ALSCconfbrochure.pdf>

- analyse the appropriateness of those different methods according to a particular law reform issue
- design a law reform strategy that is appropriate to a particular law reform issue
- describe the skills necessary for a lawyer to engage effectively in law reform; and
- act ethically in undertaking law reform.

The cohort of 60 postgraduate research students – undertaking PhDs, SJDs and masters - are encouraged to contemplate the implications of their research for law reform and social justice. Reflecting ANU College of Law’s distinct ethos of law reform and social justice, the theme for 2009 ANU College of Law postgraduate conference was, *Law and Change: Exploring the Role of Legal Research in Law Reform and Social Justice*.

Given this longstanding commitment to law reform and social justice, we are well placed to provide feedback and commentary upon the effectiveness of House of Representatives domestic and general purpose standing committees.

## **2. Observations on structure and resources**

Parliamentary committees have six basic roles: to advise, to inquire, to administrate, to legislate, to negotiate, and to scrutinise and control’.<sup>4</sup> After a slow start in Australia,<sup>5</sup> committees have become increasingly important to democratic governance in Australia.<sup>6</sup>

The committees’ effective performance of their tasks are vital to a healthy Australian democracy. It is our experience, as frequent participants in parliamentary committee inquiries, that the committees are not sufficiently resourced, in time and personnel, to effectively discharge their increasingly important role.

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<sup>4</sup> Citing KC Wheare, Gordon Barnhart, *Parliamentary Committees: Enhancing Democratic Government*, Commonwealth Parliamentary Association, 1999.

<sup>5</sup> Martin Indyk ‘Making Government Responsible: The Role Of Parliamentary Committees’ (1980) 15 *Australian Journal of Political Science* 93.

<sup>6</sup> Philip Norton, ‘Nascent Institutionalisation: Committees in the British Parliament’, in Lawrence Longley and Roger Davidson (eds) *The New Roles of Parliamentary Committees*, 1998.

Barnhart's view is that 'Governments by their very nature do not want ... the committees to be strong', and that committees have been, accordingly, starved of resources.<sup>7</sup> This may be too emphatic an opinion, but it is certainly our experience that parliamentary committees are not given sufficient time to 'investigate detailed and complex issues' and are not given sufficient resources for research and consultation.

While it is an ideal that a government would rely on independent advice from committees (Barnhart),<sup>8</sup> we accept that parliamentary committees are necessarily political in their operations. We **submit**, however, that the degree of their independence and authority is increases proportionally to their capacity to engage in thorough inquiry and investigation.

We **commend** to you the recommendations for improving the performance of parliamentary committees, made by the Commonwealth Parliamentary Association's Study Group on Parliamentary Committees and Committee Systems.<sup>9</sup> In particular we draw your attention to recommendation 7, which begins by noting that '[t]he success of any committee will be determined by the amount of research resources that are available to members', and we **submit** that the current capacity of committees to discharge their functions be reviewed, costed and funded.

As well as resource issues, there are fundamental questions of committees' structure function and power. In 2006, Shane Martin evaluated the committee systems of national legislatures in 31 developed democracies across 9 key factors:

(a). *Are committees jurisdictional to government departments?* The more closely the committee system corresponds to ministerial portfolios the better able committees are to monitor the actions and behavior of individual ministers and hold 'property rights' over proposed legislation and oversight in a particular area of policy. It may be more difficult to

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<sup>7</sup> Gordon Barnhart, *Parliamentary Committees: Enhancing Democratic Government*, Commonwealth Parliamentary Association, 1999.

<sup>8</sup> Gordon Barnhart, *Parliamentary Committees: Enhancing Democratic Government*, Commonwealth Parliamentary Association, 1999.

<sup>9</sup> Gordon Barnhart, *Parliamentary Committees: Enhancing Democratic Government*, Commonwealth Parliamentary Association, 1999.

keep tabs on individual ministers where committees have a cross-departmental remit, or where multiple committees oversee the same ministry.

(b). *At what stage, if any, of the legislative process are bills considered by committees?* The earlier a committee involves itself in the process of law-making the more influential it is likely to be. It is likely more difficult for a committee to influence a bill where the bill has already been debated and voted on in the floor of the house.

(c). *Do committees have the right to initiate legislation?* The ability to act independent of the executive by introducing legislative proposals signals a strong agenda setting role for committee systems in policymaking. Even if a minister shirks from promised legislation, strong committees may be able to compensate for ministerial inaction by introducing legislation independently.

(d). *Do committees have the right to amend proposed-legislation and/or re-write bills?* Weak committees may have little scope to amend proposals coming from the executive whereas stronger committees should be empowered to redraft or otherwise reshape government bills. In some cases a minister may be able to veto amendments made by the committee, thus reducing the significance of the committees' role in shaping and monitoring policy change.

(e). *Can committees compel ministerial attendance and evidence?* Having the power to compel individual cabinet ministers to attend a committee meeting and supply oral testimony places committees in a strong position to monitor a minister's activity. Committees can use such hearings as an opportunity to question a minister on her activities and policies and determine how the minister's actions and attitude might differ from coalition policy.

(f). *Can committees compel civil servants to attend?* Civil servants act as an important source of ministerial information but also as agents of the minister. As such, they are in a position to inform on the actions or inactions of ministers. Committees empowered to compel public servants to attend and supply oral testimony are better able to oversee and judge the performance of executive departments.

(g). *Is Committee time unique?* Legislators have limited resources, not least of which is time. If members must choose between committee work and attending plenary sessions they may be less inclined to focus on committee assignments. It is therefore important for the strength of the committee system that committee time be separately timetabled from when the plenary is meeting.

(h). *Do Sub-committees exist?* Sub-committees provide a mechanism for committees to further specialize and delegate workload. The gains from division of labor brought about by delegation within committees will likely strengthen the efficiency and overall effectiveness of the committee system.

(i). *Can committees issue minority (dissenting) reports?* Minority reports act as an important source of critical information where the committee is unable to reach a consensus. For example, minority reports have the potential to be used as a source of output for inter-coalition tensions because one party can publicly digress from the policy of other parties in government but nevertheless not withdraw legislative support in a roll-call. Equally of course, minority reports can be used by parties outside government to put forward ideas different to government policy. While the latter may not be in keeping with our theoretical claim that committees exist to facilitate the needs of parties in government, the need to allow parties in government publicly diverge while maintaining voting unity in the chamber may outweigh any cost to the government of allowing parties outside government oppose government policy.

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According to Martin, the ‘strength’ of Australia’s committees system scored only 4 out of 9, failing to score on committees considering bills at an early stage of the legislative process, committees having the right to initiate legislation, committees having the right to amend proposed-legislation, committees compelling ministerial attendance, and committee time being scheduled separate from plenary time.<sup>11</sup> Again we **commend** to you the recommendations of the Study Group which address such matters.

### **3. Observations on procedure**

Our experience is that committee inquiries usually attract few submissions and conduct limited hearings. Neither the submission nor the hearing process is widely promoted or particularly accessible. A committee’s questioning of witnesses is often uninformed by the written submissions and contemporary research, and seems often to be undertaken to make a political or party point rather than to elicit information or opinion. The resulting report is usually written quickly, with cursory examination of submissions and evidence, and very often supports the view of the executive. We attribute this principally to a number of factors: insufficient time; inadequate resources; and the partisan nature of many of the committees.

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<sup>10</sup> Shane Martin ‘Explaining variation in the strength of parliamentary committees’ , 2006, <<http://webpages.dcu.ie/~martins/committees1.pdf>>.

<sup>11</sup> Shane Martin ‘Explaining variation in the strength of parliamentary committees’ , 2006, <<http://webpages.dcu.ie/~martins/committees1.pdf>>.

### 3.1 Witnesses

We contend that parliamentary committees need to engage in broad-based community involvement. We have been concerned about submissions and public hearings being dominated by government departments, and special interest groups. We believe that the parliamentary committee process could be enhanced through greater participation of independent academics, researchers, and scholars both through submissions and public hearings.

We have sometimes been concerned about personal attacks made upon academics in the course of parliamentary committees (notably during the debates over stem cell research, and the *Australia-United States Free Trade Agreement 2004*). We have been worried that such instances may serve discourage the participation of independent academics and scholars in the parliamentary process. That is worth taking into consideration in the operation of the Privileges Committees in the Australian Parliament.

In order to encourage greater participation by academics and scholars in the parliamentary process, we believe that there needs to be statutory protection of academic freedom. We note that Section 161 of the New Zealand *Education Act 1989* provides:

- (1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced.
- (2) For the purposes of this section, **academic freedom**, in relation to an institution, means—
  - (a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions:
  - (b) the freedom of academic staff and students to engage in research:
  - (c) the freedom of the institution and its staff to regulate the subject matter of courses taught at the institution:
  - (d) the freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning:
  - (e) the freedom of the institution through its chief executive to appoint its own staff.
- (3) In exercising their academic freedom and autonomy, institutions shall act in a manner that is consistent with—



- (a) the need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
- (b) the need for accountability by institutions and the proper use by institutions of resources allocated to them.

That could well be a good model for Australia to emulate. In the meantime, it would be worthwhile for universities to develop policies promote both academic participation in public debate, and the protection of academic freedom: The Code of Conduct at the ANU emphasizes: ‘The University recognises the concept and practice of academic freedom as central to the proper conduct of teaching, research and scholarship. Academic and general staff are expected to use this freedom in a manner that is consistent with a responsible and honest search for knowledge and its dissemination.’

### 3.2 Time Pressures

We note that many parliamentary committees have been unduly affected by the pressures of tight deadlines for reporting to Parliament. Our colleagues, Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams, observe of the Joint Standing Committee on Treaties:

While JSCOT is empower to inquire into and report upon matters arising from treaties and their related NIAs, it generally only has 15 or 20 parliamentary sitting days to do this. This time frame is usually adequate for simple treaties, but it can be too short for treaties to be considered at one time. Perhaps because of this, the media has also failed to scrutinise and comment on Australia’s treaty-making decisions in a detailed way.<sup>12</sup>

This experience has certainly been reinforced by our engagement with the Joint Standing Committee on Treaties. The rushed inquiry into the *Australia-United States Free Trade Agreement* in 2004 was completely inadequate, especially given that the accompanying legislative instruments had not been made publicly available.<sup>13</sup> The dissenting report noted: ‘A treaty of the magnitude of the Australia — United States

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<sup>12</sup> Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams, *No Country is an Island: Australia and International Law*. Sydney: The University of New South Wales Report, 2006, 152.

<sup>13</sup> Joint Standing Committee on Treaties, *The Australia–United States Free Trade Agreement: Report 61*, June 2004, at <http://www.aph.gov.au/house/committee/jsct/usafta/report/fullreport.pdf>.

Free Trade Agreement requires substantial analysis and consideration by the Committee and the Parliament in order to determine that the eventual outcome is in the national interest and that the associated consequential legislative, regulatory and administrative actions contemplated by the Treaty are also consistent with the national interest.’<sup>14</sup> A parallel Senate report noted: ‘The Government acted unilaterally and pursued a trade deal for political also purposes, with an unrealistic negotiating time frame imposed by the US electoral cycle.’<sup>15</sup>

Similar problems have arisen with trade agreements under the new government. The *Australia-Chile Free Trade Agreement 2008* only received cursory attention from the Joint Standing Committee on Treaties. A recent inquiry into a new treaty on geographical indications between Australia and the European Union had insufficient time to canvass a wide range of submissions or hear a cross-section of opinion from witnesses or pay due regard to the large literature on the subject.<sup>16</sup>

Similar time-constraints have afflicted other parliamentary committees. The House of Representatives Standing Committee on Legal and Constitutional Affairs had only a few months from the public hearings to report on the infinitely legally and technically complex issue of technological protection measures.<sup>17</sup> Indeed, the High Court of Australia had remarked of the area of law, with some exasperation: ‘It may be going too far to say of the definition of ‘technological protection measure’ and of s 116A, as Benjamin Kaplan wrote of the American law even as it stood in 1967, that the provisions have a ‘maddeningly casual prolixity and imprecision’’.<sup>18</sup> The poor woebegone Secretariat and Members of the House of Representatives Standing

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<sup>14</sup> Ibid.

<sup>15</sup> Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, 2004. *Final Report* (August), 2004, p. 225 at [http://www.aph.gov.au/Senate/committee/freetrade\\_ctte/report/final/report.pdf](http://www.aph.gov.au/Senate/committee/freetrade_ctte/report/final/report.pdf).

<sup>16</sup> Joint Standing Committee on Treaties, *Agreement Between Australia and the European Community on Trade in Wine 2009*, Report 101, June 2009, <http://aph.gov.au/house/committee/jsct/3february2009/report1/fullreport.pdf>

<sup>17</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs, *Review of Technological Protection Measures Exceptions*, 2006, at <http://www.aph.gov.au/house/committee/laca/protection/report/fullreport.pdf>.

<sup>18</sup> *Stevens v Kabushiki Kaisha Sony Computer Entertainment* [2005] HCA 58; (2005) 221 ALR 448; (2005) 79 ALJR 1850 (6 October 2005)

Committee on Climate Change, Water, Environment and the Arts held hearings on the right of resale on the 5<sup>th</sup> and 6<sup>th</sup> February 2009; and then had to report on the subject by the end of the month.<sup>19</sup> The topic was one of great complexity – it raised difficult legal and constitutional questions; economic issues about the operation of the marketplace; cultural matters about the status of visual artists, and the protection of Indigenous artists; and administrative questions about the regulation of copyright collecting societies. The Committee made a valiant effort to address the key issues; but, obviously in such a short time frame, the full range of issues raised by the public hearings could not be fully canvassed.

In order to improve the deliberations of parliamentary committees, they need to have greater time and resources to perform their inquiries, fully and adequately.

### 3.3 Partisanship

The partisan approach taken by many committees is a significant impediment to their effective contribution to democratic deliberations. Our colleagues, Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams, observe that this has been particularly a problem with respect to the Joint Standing Committee on Treaties:

A further problem is that JSCOT has not proven to be the vehicle for analysis, or even robust critique of government action about treaties, that some might have hoped. Indeed, JSCOT has almost always made recommendations in line with government policy. As a joint committee of the federal parliament, on which the government has a majority and which a government member chairs, this is to be expected. It is fair to say that, in this, JSCOT suffers from the same limitations that afflict other like parliamentary committees.<sup>20</sup>

The chairing of committees by a non-government member could help in this regard, or committee members could appoint the chair by secret ballot. Again, we **commend**

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<sup>19</sup> House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts, *Resale Royalty Right for Visual Artists Bill 2008*, Canberra: Australian Parliament, February 2009, <http://www.aph.gov.au/house/committee/ccwea/resaleroyalty/report/fullreport.pdf>

<sup>20</sup> Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams, *No Country is an Island: Australia and International Law*. Sydney: The University of New South Wales Report, 2006, 152.

to you the recommendations made by the Commonwealth Parliamentary Association's Study Group, particularly recommendation 21.

### 3.4 Review and Implementation of Recommendations

Finally, we make the unremarkable observation that recommendations from committee reports often remain unaddressed by the government. In a recent submission to the Senate Standing Committee on Legal and Constitutional Affairs, Mr Rice noted that much the same question as was being asked in that inquiry (access to justice) had been asked and answered in at least 10 committee reports in the preceding 17 years, and in three committee reports in the previous five years. He observed that

Recommendations from parliamentary inquiries such as the Committee's current inquiry have, as a rule, not been adopted as policy, not been the subject of any implementation plan, not been supported by budgetary allocations, and not been monitored or reported against. As a result, Australian justice policy continues to lack coherence and direction. The consequent dissatisfaction gives rise to periodic inquiries such as the current one.

For the credibility of the committee process, there needs to be a stronger obligation on the government to respond promptly and properly to committee reports.

The failure to properly implement committee recommendations can have serious consequences. Let us mention one example. In 2007, the Joint Standing Committee on Treaties supported the adoption of the WTO General Council Decision 2003 to facilitate the export of essential medicines to developing countries.<sup>21</sup>

The Committee supported the acceptance of the Protocol, followed by any necessary amendments to the *Patents Act 1990* (Cth) to allow for compulsory licensing to enable export of cheaper versions of patented medicines needed to address public health problems to least-developed and developing countries. The Committee encouraged 'the consultations to be coordinated by IP Australia later this year and urges the

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<sup>21</sup> Joint Standing Committee on Treaties. *Protocol Amending the TRIPS Agreement*, Canberra: Australian Parliament August 2007, <http://www.aph.gov.au/house/committee/jsct/9may2007/report/chapter9.pdf>

Government to actively support the provision of patented medicines to least developed and developing countries.’<sup>22</sup>

Two years later, IP Australia has still not engaged in such consultations. Neither the Howard Government and the Rudd Government have implemented any amendments to the *Patents Act* 1990 (Cth) – despite bipartisan support for the *WTO General Council Decision* 2003. The Joint Standing Committee on Treaties has not followed up the implementation of its recommendations in domestic legislation. Such a failure is particularly egregious given the impact of infectious diseases – such as HIV/AIDS, tuberculosis, and malaria; and emerging infectious diseases, such as avian influenza, the SARS virus, and the so-called ‘Swine flu’. The lack of an export mechanism means that Australian companies cannot export patented pharmaceutical drugs to address public health concerns, without infringing patent rights, and risking heavy penalties.

So we would emphasize that the review and implementation of Committee recommendations is not merely a question of procedural nicety; in the case of the inquiry into the *Protocol Amending the TRIPS Agreement* it literally is a matter of life and death.

We **submit** that committees be required and resourced to periodically review and report on progress on previous reports, including on the nature or failure of a government response.

#### **4. The Australian Law Reform Commission**

We note that the Australian Law Reform Commission reports annually on the implementation of recommendations of its policy inquiries, and its other outputs.<sup>23</sup> We would note that the law reform body has a number of key indicators of effectiveness.

First, the Australian Law Reform Commission considers ‘broad-based community involvement in law reform’:

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<sup>22</sup> Ibid., 81.

<sup>23</sup> The Australian Law Reform Commission, *Annual Report 2007-2008*, <http://www.austlii.edu.au/au/other/alrc/publications/reports/109/>

The ALRC measures its effectiveness in achieving its outcome by the extent of community participation in its work. Community consultation is the cornerstone of the ALRC's approach to developing effective, practical recommendations for law reform. The ALRC's strategy to ensure broad-based consultation is incorporated into the *Corporate Plan 2006–08*. This strategy involves establishing and maintaining good communication with relevant sectors of the community during the Commission's inquiries and other work, and organising targeted consultations with key interest groups and individuals.<sup>24</sup>

We would note that parliamentary committees should similarly be judged by their ability to encourage 'broad-based community involvement in law reform'. An inquiry, which receives few submissions, or submissions from a few select range of narrow interest groups, should be duly flagged.

Second, the Australian Law Reform Commission considers the 'reception of law reform reports and recommendations'.<sup>25</sup> It notes: 'The ALRC also measures effectiveness by analysing critical feedback on the extent to which recommendations are implemented'. Key factors include 'positive critical feedback on quality of reports', 'court citations', and 'percentage of reports implemented by those to whom recommendations are targeted'.<sup>26</sup> The Australian Law Reform Commission observes:

As at 30 June 2008:

- 58% of reports had been substantially implemented;
- 29% of reports had been partially implemented;
- 8% of reports without any implementation to date were currently under consideration; and
- 5% of reports had not yet been implemented.

The ALRC notes: 'Implementation by government is not the sole measure of the success of a report'.<sup>27</sup> Indeed, in its view: 'Increasingly, the ALRC makes recommendations aimed at other bodies, including the courts, regulators, other

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

government instrumentalities, the legal profession, educators, and other professions and industries'.<sup>28</sup> The ALRC concludes: 'Monitoring implementation therefore involves consideration of the actions of all of these bodies and not merely the enactment of legislation'.<sup>29</sup>

Admittedly, the process of evaluation by the ALRC of outcomes is not perfect. On occasion, the ALRC has taken a rather rosy view of what constitutes 'substantial implementation' or 'partial implementation'. For instance, the ALRC somewhat over-confidently asserts that the report, *Essentially Yours*, has been partially implemented:

There were further developments in 2007–08 in relation to the report *Essentially Yours: The Protection of Human Genetic Information* (ALRC 96, 2003), which was already partially implemented. In response to Recommendation 11–2 of the Report, which recommended the development of ethical standards for medical genetic testing, in 2007 the National Pathology Accreditation Advisory Council (NPAAC) published *Classification of Human Genetic Testing 2007 Edition*, which is a supplementary guide to the *Laboratory Accreditation Standards and Guidelines for Nucleic Acid Detection and Analysis* (2006). The new supplement took effect from 1 January 2008.<sup>30</sup>

In truth, it would be accurate to say that the key recommendations of the report, *Essentially Yours*, have been roundly ignored by the Federal Government. Comparatively, there has been greater law reform in respect of genetic discrimination and genetic privacy in the United States – with the passage of the *Genetic Information and Non Discrimination Act 2008* (US) under the Bush Administration.

So ideally, the ALRC should have external audits of its outcomes in terms of law reform – rather engage in self-reporting. There is still room for improvement in terms of self-evaluation.

Nonetheless, much can be learnt from the ALRC's current practices in terms of reporting law reform outcomes.

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<sup>28</sup> Ibid

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

We **recommend** that the House Committees subject to the outcomes of its law reform processes to self-reporting and external evaluation.

## 5. Reforming the Senator Committee System

A public seminar that was presented by the ANU Parliamentary Studies Centre & the Centre for International and Public Law, at the ANU College of Law on 15 September 2006: *Reforming the Senate Committee System*.<sup>31</sup>

The seminar featured presentations from Senators Marise Payne, Joe Ludwig and Andrew Bartlett, and from Mr Richard Gilbert, CEO of the Investment and Financial Services Association, Professor Jon Altman, Director of the Centre for Aboriginal Economic Policy Research at ANU, and Professor John Warhurst, Professor of Political Science at ANU.

Both sessions were recorded, and the full recording can be streamed or downloaded from the website of the Centre for International and Public Law.<sup>32</sup> Professor Altman's paper was excerpted at page 4 of the Centre's 2007 newsletter,<sup>33</sup> and we note that Senator Payne's presentation is available under the 'Speeches' tab.<sup>34</sup>

We **commend** these seminar papers to you.

## 6. References

There is a useful bibliography available in a University of Indiana database of scholarly works about the Parliament of Australia. Almost 150 scholarly works about Australia's parliamentary committee system are listed at [www.indiana.edu/~librcsd/bib/australia\\_parliament](http://www.indiana.edu/~librcsd/bib/australia_parliament) → Parliamentary Organization → Committees.

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<sup>31</sup> <[http://law.anu.edu.au/cipl/Lectures&Seminars/2006/Reforming%20the%20Senate%20Committee%20System\\_Program.pdf](http://law.anu.edu.au/cipl/Lectures&Seminars/2006/Reforming%20the%20Senate%20Committee%20System_Program.pdf)>

<sup>32</sup> <<http://law.anu.edu.au/cipl/Archived%20Downloadable%202006%20Past%20Events.htm>>

<sup>33</sup> <<http://law.anu.edu.au/cipl/Newsletters/07SeptNewsletter.pdf>>

<sup>34</sup> <[www.marisepayne.com](http://www.marisepayne.com)>



In addition we refer you to following:

Gordon Barnhart, *Parliamentary Committees: Enhancing Democratic Government*, Commonwealth Parliamentary Association, 1999.

Martin Indyk 'Making Government Responsible: The Role Of Parliamentary Committees' (1980) 15 *Australian Journal of Political Science* 93.

Robert Lee, 'Legal Parameters of Administration in a Democratic Society: The Case of Australia' (1991) 23 *Administration & Society*, 201.

John Lees and Malcolm Shaw (eds) *Committees in Legislatures: A Comparative Analysis* Duke University Press, 1979.

Shane Martin 'Explaining variation in the strength of parliamentary committees' <<http://webpages.dcu.ie/~martins/committees1.pdf>>.

Ingvar Mattson, and Kaare Strøm 'Parliamentary Committees' in *Parliaments and Majority Rule in Western Europe*, Herbert Döring (ed) Campus Verlag, Frankfurt, 1995.

Philip Norton, 'Nascent Institutionalisation: Committees in the British Parliament', in Lawrence Longley and Roger Davidson (eds) *The New Roles of Parliamentary Committees*, 1998.