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Senate Committees and the Legislative Process

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ABOUT THE AUTHOR

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Senate Committees and the Legislative Process

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INTRODUCTION

Legislating is one of the main functions of parliaments. While public deliberation on laws takes place in the main parliamentary chambers, most detailed scrutiny of bills takes place within parliamentary committees.¹ Committees play a role in helping political parties and individual members of parliament to form views about proposed legislation, including the formulation of amendments to bills that are before the parliament.

While the work of parliamentary committees is intended to influence the legislation being considered by the parliament, their power and activism varies greatly. In some jurisdictions, legislation actually originates in committees (the United States, Sweden, Iceland) or may be amended by them (Scotland, New Zealand, Germany). In other cases, committees play only an advisory role to the main parliamentary chambers (Australia, Ireland, France).² However their work is arranged, it is not well understood how committees actually affect the legislative process.

This study characterises the impact of Australian Senate committees on legislation. The focus on the Senate reflects the fact that, in the Australian parliament, the great bulk of committee consideration of legislation occurs in Senate committees.³ This research is the first to assess the direct effects of committees on the legislative activity of the Australian parliament.

Analysing the roles played by parliamentary committees reflects a broader curiosity about parliament as an institution of governance.⁴ Parliamentary committees are frequently cited as institutions that facilitate public participation in our democracy and enhance the policy deliberations of parliament.⁵ However, these roles have been overshadowed in recent years by an increasing preoccupation with the Senate's role in executive accountability and the protection of rights.⁶ This study returns to questions

of the role of committees in the deliberative process, in particular in parliamentary deliberation on legislation.

Research on parliamentary committees and legislation

There have been several studies of parliamentary committees, within Australia and overseas, that provide us with some sense of how committees engage with the legislative process. They contain diverse views on the effectiveness of committees, as well as observations about what features of committees affect their roles and effects. The literature on committee effectiveness is reviewed in more detail by Richard Grant.⁷ As the author notes, there are many different ways in which parliamentary committees might affect parliament and policy. While there is no consensus on what makes an effective committee, there are many opinions on whether committees are effective and why.

Graham Maddox described the efforts of committees as 'rather limited',⁸ while Ian Marsh remarked that they were perceived as 'largely impotent in a predominantly adversarial system'.⁹ Senate committees examining legislation have always been dominated by government members, and with the tight party discipline in Australia, this may be perceived as meaning the committees do not provide meaningful scrutiny.

A study of institutional reform and the Australian parliament by John Halligan, Robin Miller and John Power examined committee appraisal of legislation. They suggested that 'committee reviews of bills probably have had some significant effects on legislation passed, but they do not conclusively demonstrate this'.¹⁰

John Vander Wyk and Angie Lilley described the workload of the committees and demonstrated that the majority government members of committees would frequently recommend amendments to legis-

lation.¹¹ They concluded that bills were scrutinised more thoroughly as a result of committee work¹² but, like Halligan et al., they did not analyse the fate of committee recommendations. Stanley Bach showed that frequent amendment of legislation takes place within the chamber, but again, it is not clear to what extent such changes emerge from the work of committees.¹³ The present study examines the linkages between committee reviews of legislation and amendments in the parliament.

There is little doubt that a significant subject of debate in Australia is the effect of government dominance or control of the parliament. In 1999, political scientist Campbell Sharman observed that:

the only way governments are going to be persuaded to negotiate with their partisan competitors is through the use of a powerful sanction, and the Senate's veto over legislation is the most powerful sanction it possesses. If that sanction were to be removed, the Senate's review of legislation would be largely ignored and the requirement for the government to negotiate over the final form of legislation would be removed.¹⁴

In the Senate, the government went from having a minority to a majority of seats in July 2005, creating an opportunity for Sharman's proposition to be tested directly.

The Senate's work was certainly transformed as a result of the July 2005 change in the balance of power, and some of these changes are outlined later in this paper. Analyses to date do not reveal, however, whether that change affected the outcomes of committee scrutiny of legislation. The change in the Senate's balance of power did not affect the balance of power within the committees dealing with legislation, as these were always controlled by the party of government. This constant across the two periods of time (before and after July 2005) allows the present study to examine the effect of the change in the chamber, knowing that the results are not affected by the composition of the committees *per se*.

Consensus within committees has sometimes been suggested as important to their operation; however, committee members have been criticised for lacking an ability to rise above partisan differences. Anne Lynch commented that:

It is difficult to find any report on any but the most anodyne of subjects that has not resulted in a splintering of views. This is especially true in respect of legislation referred to the committees.¹⁵

At the same time, Lynch indicated that it was the dissenting reports of a minor party (the Australian Democrats) that became the foundation of the subsequent negotiations to secure passage of one of the most important legislative initiatives placed before the Australian parliament in the 1990s: the

goods and services tax (GST) legislation.¹⁶ Thus, the effectiveness of committees is not the same thing as consensus within them.¹⁷ While unanimity within committees is often sought, its benefits for legislation are not known. The present study examines this issue.

Beyond Australian shores, Mark Shephard and Paul Cairney analysed the work of the new Scottish parliament, and demonstrated the significant role of the committees in deliberations on proposed laws.¹⁸ Their analysis was of *all* chamber activity, not only that arising from committee consideration of bills. Marcus Ganley painted a similar picture for the New Zealand parliament, and concluded that the structure of the committee system there gave it great power.¹⁹ That structure included 'automatic referral of almost all legislation to a committee'; committees being able to amend bills before reintroduction to the chamber; automatic acceptance by the chamber of unanimous committee amendments; and routine invitation of public submissions and hearings on bills. The overall effect of these features of the New Zealand system was that committees typically made over 40 changes per bill considered. As this paper will show, this is a far higher rate than in Australia. However, the New Zealand and Scottish parliaments are different in character from most Westminster systems, making it hard to generalise across parliaments. Both countries have unicameral parliaments, elected using proportional representation. In both cases, committees become engaged with legislative drafting at a relatively early stage and can actually make amendments to bills.

Ingvar Mattson and Kaare Strøm have studied the roles of committees and their effects on parliamentary activity for many years. However, their data set has been confined to Western Europe and in large part to bills in one particular policy area: industrial relations.²⁰ Given the often highly contentious and partisan nature of this particular policy field in many countries, including Australia, it cannot necessarily be considered representative of bills before the parliament.

Committees may through their work contribute to the achievement of many objectives, but the literature says little about what those achievements are. This study responds to the concerns of Paul Cairney to focus less on structures and inputs and more on 'legislative outputs'.²¹ As Halligan et al. observe, 'perhaps the most important question that could be asked about [committee appraisal of bills] is what effects has it had on the bills passed by parliament?'²² Understanding these effects will then contribute to discussion about the committees' value. This study is thus an analysis of Senate standing committee work, exploring what effects these committees have on legislation, and what factors in turn

affect the committees. The concluding discussion places this analysis in the comparative context of studies from other countries, including those mentioned above.

Drawing on the literature, this study examines six questions in a bid to describe the committees' influence on legislation and contribute to the debate about whether their role is as effective as it could be. Those questions are:

- 1 What was the workload of the committees?
- 2 What impact did committees as a whole have on legislation?
- 3 Are all committees the same?
- 4 What was the impact of the government's Senate majority?
- 5 How did unity or dissent within a committee affect its work?
- 6 What other factors affected committee 'success'?

Senate committees and the legislative process

In the Australian bicameral legislature, bills progress through several stages on the way to becoming laws.²³ They go through several readings in each chamber, including two main substantive stages: the second reading, which allows consideration of the broad principles of the legislation; and consideration in detail (in the Senate referred to as the committee stage), when detailed provisions of the proposed law are debated. Bills go through these stages in both chambers, and must be agreed to in identical terms by both chambers before they can become law. Thus, a bill that is amended during its passage through parliament can be considered by each chamber several times before agreement is finally reached. Most parliamentary committee consideration of bills takes place in the Legislative and General Purpose Standing Committees (referred to in this paper as 'standing committees', or simply 'committees') of the Senate.²⁴ This often does not take place until after the bill has completed the second reading stage in the House of Representatives. There are eight permanent Legislative and General Purpose Standing Committees that stand ready to conduct inquiries as the Senate requires. Each has oversight of a number of government portfolio areas.

Referral of a bill to a standing committee for inquiry is not automatic,²⁵ and occurs for only around a third of legislation. In almost all cases, legislation is referred to a committee where referral is requested by one or more political parties through the Selection of Bills Committee, and that request is agreed to by the Senate.²⁶ Inquiries examine bills and report back to the chamber. They are not required to hold public hearings (though most hold at least one). Their reports to the Senate may suggest

amendments to a bill, but committees cannot amend bills. In theory, a committee's recommendation to amend a bill could be implemented by moving the adoption of the standing committee's report during the committee stage of a bill.²⁷ However, this is prevented if a senator has circulated any other proposed amendments in the chamber, and in practice this procedure is not used.²⁸ Bills may be referred to committee for inquiry and report by a Senate committee regardless of whether the bill was introduced in the Senate or the House of Representatives.²⁹

These arrangements are similar to those of the British parliament, though the nature of the upper house, and its capacity to amend legislation, is quite different. However, the structural role of Australia's committees differs from overseas counterparts in important respects. In the United Kingdom, Scotland and New Zealand, almost all bills are referred to committee for inquiry. In New Zealand's unicameral parliament, bills (with some exceptions) are always referred to committee following the first reading.³⁰ A New Zealand committee makes recommendations to amend bills; if those recommendations are unanimous or are agreed by the House, they are automatically adopted into the bill at the second reading stage.³¹ In Scotland's parliament (also unicameral), referral of bills to a committee is automatic.³² Stage 1 of parliamentary debate, which involves consideration of the general principles of the bill (equivalent to Australia's second reading stage) does not take place until after the committee has reported back to the parliament on the bill. Additionally, if a bill passes stage 1, the parliament will generally refer it back to the same or a different committee for detailed examination (equivalent to the Australian Senate's committee stage).³³ Where such referral has occurred, consideration in detail, and amendment to the bill, takes place in the committee. In the third and final stage, the amended bill is debated in the parliament. In most jurisdictions, including the United Kingdom, Scotland and New Zealand (as well as Australia), public hearings are frequently held for bill inquiries.

The role of parliamentary committee work thus differs across parliaments. One of the questions discussed in the current study is whether these differences in the role of committees might affect their influence on legislation.

METHOD

Scope of the study

This study focuses on Senate *bill inquiries*, that is, committee inquiries into proposed legislation, which represent the main opportunity for Austral-

ian parliamentary committees to influence legislation. Committee inquiries into bills may recommend *amendments to bills* or explanatory memoranda. They may also put forward *administrative recommendations*: proposals to alter the administration of laws, or to introduce initiatives such as the restructuring of government operations or the implementation of education programs. The parliament may respond to recommendations to amend bills; in general it is the government that must decide whether to implement any administrative recommendations.

However, it is acknowledged that there are many other indirect means by which committees contribute to the legislative process, including the possibility that the policy choices of governments and legislative design by the public service may be moulded by anticipation of scrutiny and likely criticism by committees.³⁴ It is also possible that *reference inquiries*, which examine particular policy areas, may on occasion make recommendations regarding legislative reform. Thus, while this study provides the first detailed picture of the results of Senate scrutiny of bills, it represents a 'conservative' estimate of the effect of committees on the legislative process.

As documented below, many committee reports include minority reports from non-government senators or parties. In this study, all references to committee reports or recommendations are to the majority report and its content unless otherwise indicated.

Analysing reports on bill inquiries

The principal mechanism by which committees seek to affect legislation is through recommendations that a bill be amended, or that the administration of a law be modified. This research identified those recommendations and then tracked their fate as the bill moved through the parliament. The research aimed to gather information about the committee inquiries and recommendations and look for patterns. The data gathered included:

- how a bill came to be referred to a committee;
- which party sought referral (where this was recorded);
- how many submitters participated in the inquiry, and how many witnesses attended hearings;
- when the committee reported, including whether it reported before or after the bill had been considered by the House of Representatives;
- whether the committee made any recommendations to amend a bill and what those recommendations were;
- whether there were any minority reports;

- whether minority reports contained recommendations and what they were;
- who moved the majority recommendations in the parliament, and whether they resulted in amendments to the bill; and
- in those cases where a recommendation proposed administrative changes rather than changes to a bill, whether the government indicated acceptance of the recommendation.

This information was gathered for all 309 bills that were referred to committees in the years 2003, 2004, 2006 and 2007. These four years were selected because:

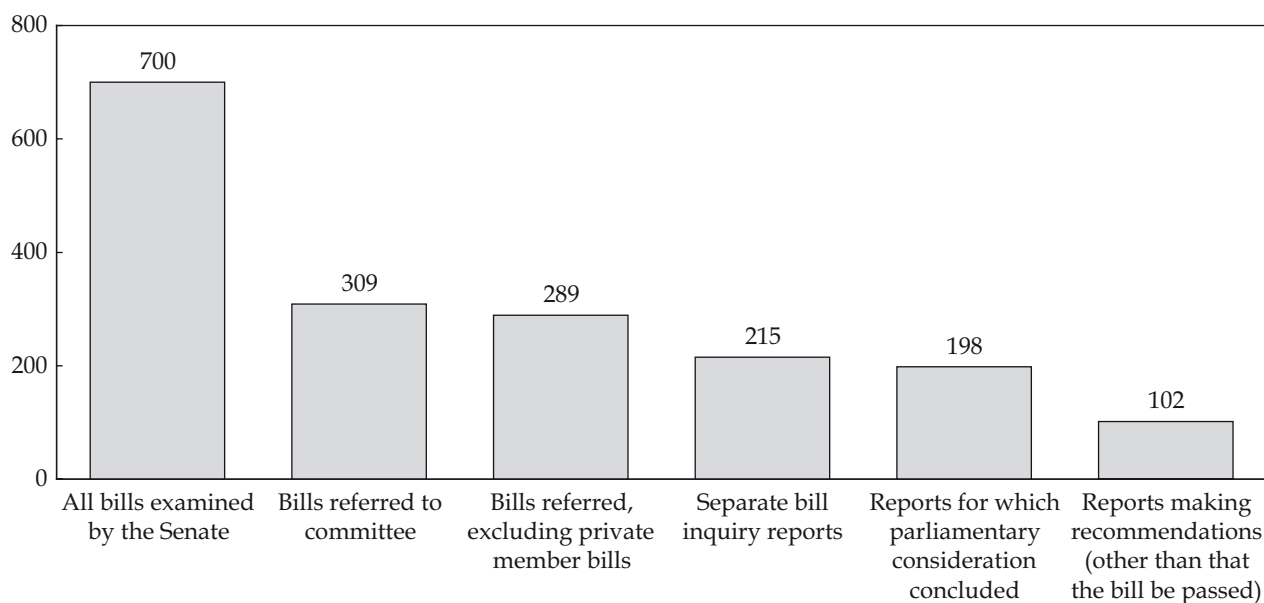
- they were years for which electronic versions of all relevant documents were available for analysis;
- they provided a two-year sample for the periods before and after the government secured a majority in the Senate; and
- the two periods included both an election year and a non-election year, to cover the range of political conditions under which committees operate.

Of the 309 bills referred in those years, 20 private member's or senator's bills were excluded from analysis. They were omitted because the process for committee consideration of such bills, and the usual outcome, is different to that for government bills, producing results that are not directly comparable.³⁵ This left 289 government bills, which were considered in 215 inquiry reports (as some reports dealt with several bills together). Of these 215 reports, 17 were excluded from the study because parliament had not addressed the committee's report, meaning there were no data on whether parliament had accepted the committee's recommendations. Thus, the core inquiry sample was 198 committee reports, as shown in Figure 1. Details of how the data for the study were generated are in Appendix 1.

The recommendations made by a committee were divided into *bill recommendations*, which were those advising amendment of legislation, and *administrative recommendations*, which were all other recommendations made by bill inquiries. The latter frequently included proposals to amend agency operations, suggestions for additional spending or program reforms, or suggestions for public education or awareness campaigns.

This study also analysed the role of dissent in committees. The deliberations of private meetings of Senate committees are confidential, so there is no public record of how committee members have voted on reports. The existence of dissenting reports

FIGURE 1 Number of Senate bills, inquiries and committee recommendations, 2003, 2004, 2006 and 2007



was therefore taken as a proxy measure of committee disunity regarding a bill on which a committee was reporting. It should be recognised, however, that occasionally a committee may be divided on an issue, but the dissenters nevertheless choose not to make a public dissenting report. The opposite also cannot be ruled out: that all committee members may support a report on a bill, but still produce a separate report making, for example, additional recommendations.

This study did not make qualitative distinctions between recommendations. Shepherd and Cairney's Scottish study distinguished between typographical/consequential amendments, detail/clarification amendments and substantive amendments.³⁶ This allowed a more nuanced study of bill amendments, and was necessary in a parliament where many amendments to bills were made during committee consideration, and where there were many amendments to correct typographical errors or to ensure consistency throughout a bill. This study did not take their approach because the typographical/consequential category of amendment was almost never suggested by Australian Senate committees. By not classifying amendments in this way, the study also minimised potential problems of inconsistencies between coders. In addition, the Scottish study covered a far larger number of amendments; in this study, a more detailed breakdown of amendments would have created small numbers that would have been difficult to analyse meaningfully. However, this does mean that an amendment to clarify the scope of a single provision of a bill was

counted in the same way as one which might omit an entire schedule from a bill, or introduce a substantial policy change.

This study also did not make qualitative distinctions between bills. Clearly some bills are greater in scope and size than others; some bills are politically controversial while others are not subject to much debate. This study did not attempt to make any judgments about the 'importance' of bills. This may limit to some extent the way in which certain data may be interpreted. For example, I analysed the amount of time spent on bill inquiries. However, it is not known whether the amount of time devoted to a bill is correlated with its political or legislative significance.

Halligan et al. argued that it would not be fruitful to conduct an analysis of the 'strike rate' of committees (the percentage of their recommendations accepted and implemented by government).³⁷ They noted problems with this measure, such as the tendency for different committees to take different approaches to the making of recommendations. A bold committee making many recommendations might have a low strike rate, while a timid committee making few recommendations might have a higher strike rate. Halligan et al. were concerned that this might say more about the work style of a committee than about the committee's effectiveness. While I acknowledge this concern, it is not an argument against measuring the proportion of recommendations that secure agreement. Rather, it is an argument in favour of measuring strike rates in conjunction with absolute numbers of recommendations

TABLE 1 Number of bills in the Senate, and number of bill inquiry and reference inquiry reports

Year	Number of bills in the Senate	Number of bill inquiry reports	Number of reference inquiry reports
2003	175	42	17
2004	187	39	8
2006	157	56	10
2007	181	61	8
Total	700	198	43

agreed. It is also an argument in favour of using such data in comparative perspective rather than in isolation. This study measured absolute numbers of recommendations agreed as well as strike rates, along with a range of other data about the work of the committees, to create as complete a picture as possible of their operations.

RESULTS

To briefly recap, the study examined six questions: (1) the workload of committees; (2) the impact of committees as a whole on legislation; (3) whether all committees are the same; (4) the impact of the government's Senate majority; (5) how unity or dissent within a committee affected its work; and (6) other factors that affected committee 'success'. I look at each in turn here.

What was the workload of the committees?

Excluding private member bills, the Senate examined 700 bills over the four years covered by this study (see Figure 1). The 289 bills referred to committee in this period represented just over 40 per cent of government bills examined by the Senate during the study period. Thus committee scrutiny of bills, while frequent, was not routine.

The 198 reports covering the 289 bills analysed made 259 recommendations to amend bills, or an average of 1.3 per inquiry, and 120 administrative recommendations, or an average of 0.6 per inquiry. Thus, around one-third of all recommendations did not relate to the amendment of legislation, but to related matters.

The median³⁸ number of calendar days that committees were given to conduct bill inquiries was 40, or around five to six weeks.

Analysis of the number of hearings and the number of public submissions showed that the committees received submissions from 3,640 individuals or organisations, and heard from 1,192 witnesses

across the 198 inquiries in the study.³⁹ The median number of submitters per inquiry was nine, and the median number of witnesses per inquiry was five.

Despite significant variations in the political climate, the workload of the Senate and its committees remained relatively consistent, though with some increase in activity in the committees (discussed later). Table 1 shows the number of bills considered each year by the chamber, and by the committees, as well as the number of non-bill references before the committees.

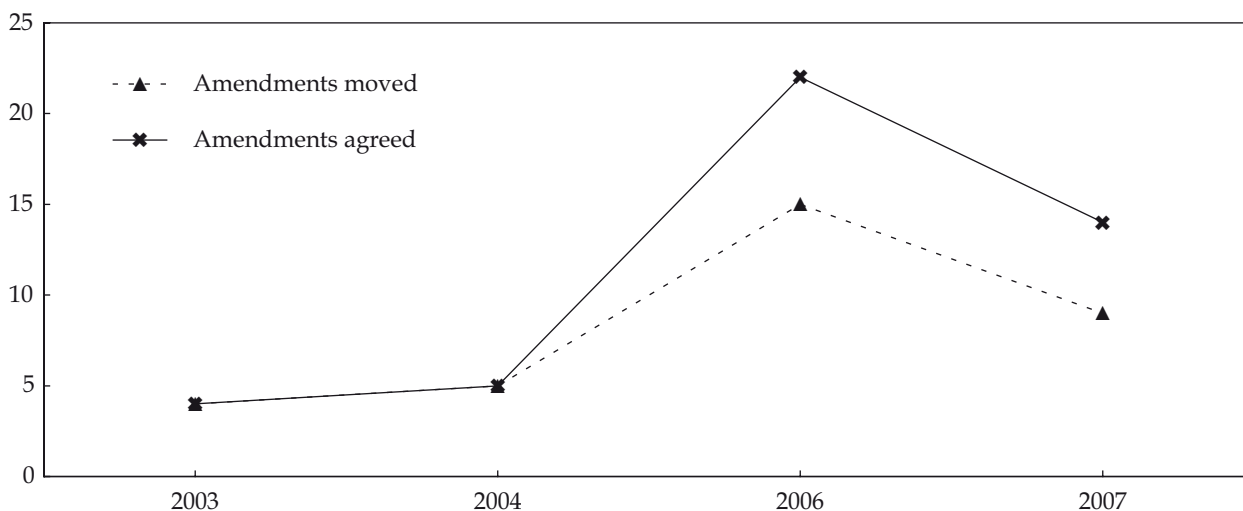
What impact did committees as a whole have on legislation?

While the committees produced 198 reports, in only 102 (51 per cent) of them did the committee make any recommendation other than that the bill be passed. Bearing in mind that only around 40 per cent of bills are referred to committees, this means that, of all the government bills considered by the Senate, only around one-fifth were the subject of any standing committee recommendations for either amendment or administrative reform.

Of the 259 recommendations to amend bills, 157 (61 per cent) were agreed to by parliament either in full or in part. The results also show that of the 120 administrative recommendations, 60 (50 per cent) were partially or fully agreed.⁴⁰ So of a total of 379 committee recommendations, 217 were acted upon by parliament. This is an average success rate of 57 per cent. These data suggest that when Senate committees identify a concern regarding proposed legislation, their reports are an effective tool for successfully engendering change, by encouraging the refinement of proposed legislation and administrative matters through parliament.

There is other evidence that the committees' reports are taken seriously. Unlike Scotland's and New Zealand's parliaments, the Australian parliament is not obliged to deal with every committee recommendation.⁴¹ However, of the 379 recommendations to amend a bill examined in this study,

FIGURE 2 Committee amendments as a percentage of all Senate amendments



in only 23 cases, or 6 per cent, were the researchers unable to locate a government response to the committee's proposals. In addition, there is extensive evidence from speakers from all parties in both chambers acknowledging the value of committee inquiries and reports.

When one considers the committees' contribution as a proportion of all bill amendments, the picture is somewhat different. The Department of the Senate already gathers data on how many amendments are moved to bills, and how many of these succeed. Combining these data with the material gathered for this study allows us to see what proportion of chamber activity may have its origins in the recommendations made by committees. Figure 2 shows that, prior to the government securing a majority in the Senate, around 5 per cent of bill amendments moved in the chamber had their origins in a committee report, and about the same proportion of amendments that succeeded were committee amendments.⁴²

The proportion of amendments originating in committees increased substantially after the government secured a majority in the Senate, with an even greater increase in the success rate: across 2006–07, at least 18 per cent of amendments agreed to by the Senate originated in a committee, whereas the figure had been less than 5 per cent in 2003–04.

These figures raise the possibility that, when political parties are required to bargain to form majorities in parliament (as when there is a balance of power in the Senate), most legislative activity occurs outside the sphere of the committees. This may be because the main rationale for legislative amendments in a balance-of-power situation is to make bargains, rather than to implement changes based on committee discussions or on direct consultations with stakeholders.

Are all committees the same?

The workload of individual committees in examining legislation varied greatly, as did the outcomes of their efforts. The busiest committee was the Legal and Constitutional Affairs Committee, which produced 51 reports on government bills over the four years studied. At the other end of the spectrum was the Finance and Public Administration Committee, which produced just eight.

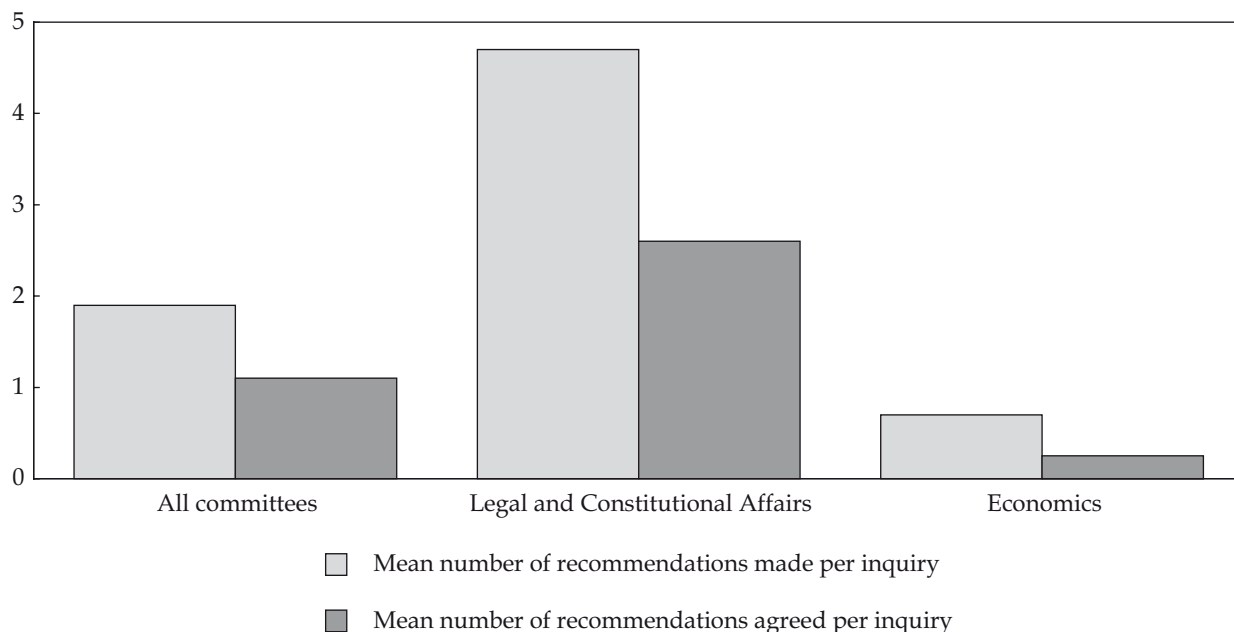
Two committees produced enough reports to undertake meaningful analysis of their results: the Legal and Constitutional Affairs Committee and the Economics Committee. They produced 51 and 48 reports respectively, accounting for exactly half of all the bill reports in this study. Their profiles reveal some striking similarities and differences.

Both committees were given the same amount of time to conduct bill inquiries. Across the study period, the median number of days was 40 for Legal and Constitutional Affairs and 41 for Economics, with neither differing from the median for all committees. However, here the similarities end.

Across the four years, the Legal and Constitutional Affairs Committee made 237 recommendations; over the same period, the Economics Committee made just 34, or almost an order of magnitude less. This represented 4.7 recommendations per inquiry for Legal and Constitutional Affairs, compared with just 0.7 recommendations per inquiry for Economics (Figure 3).

Even though the Economics Committee was parsimonious in its recommendations, its recommendations were still less likely than those of the Legal and Constitutional Affairs Committee to be agreed by the chamber. About 35 per cent of the Economics Committee's recommendations were agreed in parliament, compared with 57 per cent of those of

FIGURE 3 Mean number of recommendations per inquiry



the Legal and Constitutional Affairs Committee. The overall effect was that for every four inquiries by the Economics Committee, just one recommendation would be agreed by parliament, whereas for every four Legal and Constitutional Affairs inquiries, 10 or 11 recommendations would be implemented successfully.

These results highlight differences in the work of individual committees, and raise the question of whether the Economics Committee should be considered in some sense less effective. Why would the Economics Committee have such a low rate of recommendations made and adopted? The bills

referred to it were almost always Taxation Law Amendment Bills. Documentation from the Selection of Bills Committee indicates that it was often the government whips that sought referral, sometimes without any clear reasons for doing so. This meant that the committee conducted a number of inquiries that attracted limited interest. This is supported by data on the number of public submissions received (Figure 4). The mean number of submitters per inquiry was 18 for all inquiries, but only nine for the Economics Committee; the median number of submitters was nine for all inquiries, but just seven for the Economics Committee (and, in contrast, 14

FIGURE 4 Median and mean number of submitters per inquiry

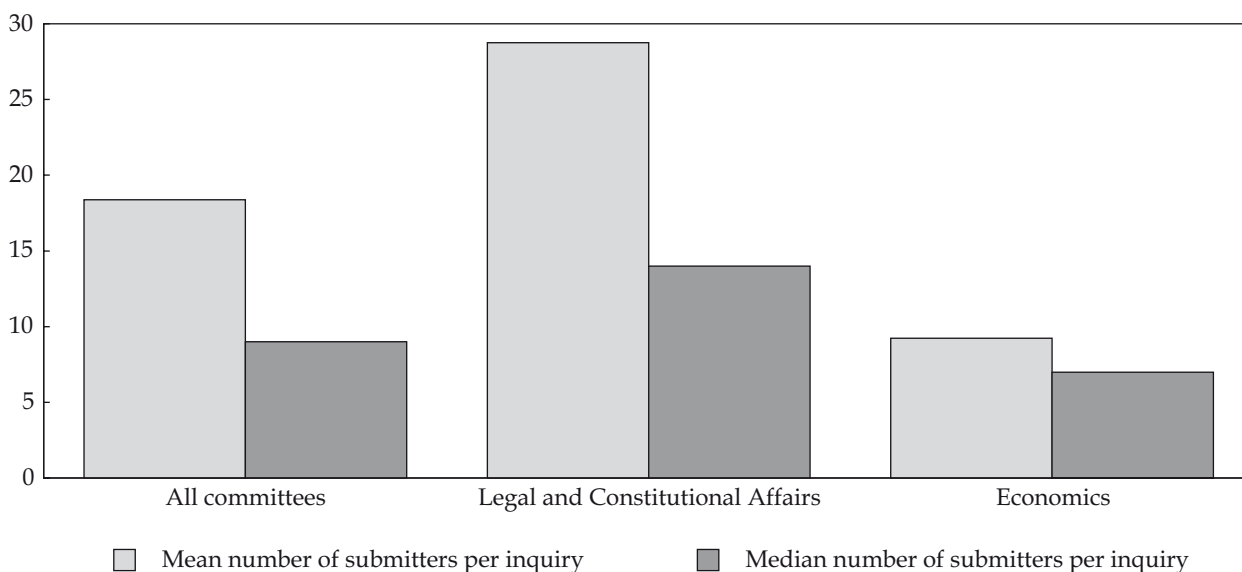


TABLE 2 Effects of the government's Senate majority on the legislative review process

	Before government majority ^a	After government majority ^b
Proportion of ALP amendments agreed to (%)	80 ^c	1 ^d
Proportion of Australian Democrat amendments agreed to (%)	26 ^c	0 ^d
Proportion of bills for which the government sought referral through the Selection of Bills Committee (%)	14	67
Proportion of all bills referred to committee (%)	22	35
Number of recommendations made per inquiry	1.5	2.2
Number of recommendations agreed per inquiry	1.0	1.2
Proportion of recommendations agreed by parliament (%)	66	53
Median inquiry length (calendar days)	47	39
Total committee days devoted to bills	4,280	4,707

a Refers to years 2003–04 unless otherwise indicated.

b Refers to years 2006–07 unless otherwise indicated.

c Figure is for 2004.

d Figure is for 2006.

for the Legal and Constitutional Affairs Committee). It is possible that a lack of interest from the government, submitters and committee members conspired to ensure that these reports had little impact. However, it is also possible that the quality of drafting within the relevant portfolios was higher, meaning that the bills presented stakeholders with fewer issues.

What was the impact of the government's Senate majority?

Sharman speculated that if the Senate lost its capacity to veto legislation, 'the Senate's review of legislation would be largely ignored'.⁴³ Once the government had a majority of Senate seats, Sharman's speculations could be tested by comparing the effects of Senate committees on legislation before and after July 2005. The changes, summarised in Table 2, perhaps surprisingly reveal an increase in bill referrals to committees and an increase in the committee recommendations made and the number accepted.

In 2004 (the last full year in which a balance of power existed in the Senate), 80 per cent of Australian Labor Party (ALP) amendments moved during detailed consideration of bills were agreed to, as were 26 per cent of Australian Democrat amendments as well as all 13 amendments moved jointly by those two parties. In 2006, less than 1 per cent of opposition amendments were agreed to, while every single one of 248 Australian Democrat amendments failed, as did nine jointly moved proposals (though several amendments moved by individual non-government senators were passed).⁴⁴

An examination of the Selection of Bills Committee also reveals a radical change in its operations. Of the 198 bills in this study, 195 were referred to committee on the motion of an identifiable political party either through the Selection of Bills Committee or in the chamber pursuant to a Selection of Bills Committee report. Before the government had a Senate majority, 86 per cent of bills were referred to committee at the request of a non-government senator or party. After the government took control, however, the roles were largely reversed: 67 per cent of referrals to committee were at the government's initiative (though non-government parties may also have sought referral of some of those bills). It appeared that all parties changed their approach to committee activity once the government had a majority in the Senate. Non-government parties reduced their efforts to seek referral of bills to committees, while the government became the key player in the selection of bills process.

There were also changes in the work of standing committees, but they were less pronounced. The most obvious result was that the proportion of bills referred to committee for inquiry increased significantly. In 2003–04, 22 per cent of bills were referred to committee. In 2006–07 that had risen to 35 per cent. This was only partly offset by an (uneven) decline in the number of non-bill reference inquiries conducted by committees. The evidence suggests that the bill inquiries were not just designed to make the committees look busy. Reports produced after the government controlled the chamber resulted in more recommendations per inquiry: up from 1.5 recommendations per inquiry in 2003–04 to 2.2 in 2006–07.

Why did committees make more recommendations once the government had a Senate majority? One possible explanation is that a closer relationship developed between committees and the executive arm of government. Committee chairs may have had more discussions with government ministers about issues with bills, and may have had more confidence that their suggestions would be supported. However, this explanation is undermined by another statistic: there was actually a modest drop in the *proportion* of committee recommendations that parliament accepted (from 66 per cent to 53 per cent). If ministers and committees were forming closer relationships, this figure might have been expected, if anything, to rise.⁴⁵

An alternative explanation for the increase in recommendations is that the government's Senate majority may have led its backbenchers to become more vocal in committees, raising issues that were of concern to them, but which they hitherto could have counted on the opposition or minor parties to address in the chamber. Once the ALP and the Australian Democrats no longer had the numbers to deal with the issues that particularly concerned 'moderate' Coalition senators, those senators had to become active in their own right. This would be consistent both with the increased number of recommendations being made and with the decreasing likelihood that the government then accepted them in the parliament.

Another possibility is that committees were responding to changes in the legislative agenda of the government. It was often claimed that the Howard government's majority in the Senate had emboldened it to introduce more radical legislation than would otherwise have been considered.⁴⁶ It is possible that increasingly radical legislation triggered increasing activity by committees in response. Nevertheless, as there was a government majority on all committees, this to some extent simply supports the previous point: that government senators became more vocal in committees when their own side had a majority in the chamber.

There were regular complaints that committees were not being given enough time to do their work.⁴⁷ However the median inquiry length after the government secured its Senate majority fell only modestly, from 47 to 39 calendar days. This is a much less drastic change than that reported by Haligan et al., perhaps reflecting the narrower sample base for their claimed 30 per cent reduction in time to report.⁴⁸ Interestingly, for the two committees with the most intensive work programs – the Legal and Constitutional Affairs Committee and the Economics Committee – there was no change at all in inquiry length before and after the government took control of the Senate.

However, while inquiry length may have fallen only moderately, the proportion of bills being referred to committee rose substantially, so that the total number of 'committee days' being devoted to bills rose.⁴⁹ In the two years before the government's Senate majority, the number of committee days devoted to bill inquiries was 4,280. In the two years after the government secured its majority, this figure rose to 4,707. This suggests that the median length of inquiries may have been driven down by the need to manage committee workload, which on this indicator at least had increased since the government took control of the chamber. It may have been the greater number of bills being referred, more than the shortening of inquiries, which led non-government senators (correctly) to say that their workloads had increased.⁵⁰

How did unity or dissent within a committee affect its work?

Some of the most interesting results of this study relate to the effects of opposition and minor party dissent on the committee process and outcomes.

Committee reports reflect the majority opinion of the membership. In considering bills, government senators have a majority on the committee, and can therefore dictate the terms of the report should they so wish. Committee reports are sometimes unanimous; that is, no other senator submits an additional report that differs from the committee's report. Often, however, one or more senators submits additional material, differentiating their position from that of the majority. That material may be termed a minority report, a dissenting report or additional comments, but all are referred to hereafter as dissenting reports. These dissenting reports may be provided by an individual senator, by senators representing a political party, or by senators representing more than one party as a joint dissenting report. It is also possible that there will be more than one dissenting report; there have been occasions where a committee report has attracted as many as four separate dissents, though this is rare. The lack of a dissenting report does not necessarily mean that all committee members agree with the majority's document, but it does indicate that there was no disagreement of sufficient importance for a senator to feel the need to submit a dissenting view.

Opposition or minor party dissent from majority committee reports is very common. Before the government secured a Senate majority in 2005, 93 per cent of bill inquiries included at least one dissenting report. This figure fell once the government had a Senate majority to a still high 68 per cent. This in large part reflected the reduced parliamentary presence of the Australian Democrats, who had gener-

TABLE 3 Number of unanimous reports and opposition dissenting reports

	Unanimous reports, or minor party dissent only	Opposition dissenting reports, with or without minor party dissent
Before government majority	36	45
After government majority	54	63

ated large numbers of dissenting reports, but who lost half their Senate representation in the July 2005 changeover.

What is most interesting is the effect of dissent on recommendations and their success. Overall, reports that were unanimous (of which there were 55 in the study period) produced 1.1 recommendations per inquiry. Reports that were not unanimous (of which there were 143) produced double this figure. The success rate of these recommendations was largely unaffected by unanimity (53 per cent for unanimous reports versus 58 per cent for non-unanimous reports). As a result, twice as many recommendations made by committees were supported by parliament if they came from a report from which at least one non-government party had dissented. Overall, dissent appeared actually to increase the impact of committees, not decrease it.

This is a significant finding. As Lynch and others have shown, unanimity and compromise within committees is often highly valued within the parliamentary community.⁵¹ Halligan et al. set out and endorsed arguments from the literature that committees need consensus to be effective.⁵² The results of this study, however, suggest that the picture is not clear-cut and that consensus in general is not linked

to outcomes in the way that Halligan and others might expect. This study has more in common with that of Rommetvedt, which associated greater committee dissent with increased effectiveness of the Norwegian parliament.⁵³

This overall picture, however, becomes more complex when we compare the periods before and after the government secured its Senate majority. For quantitative analysis, the reports were put into two groups: those which were unanimous or attracted only minor party dissent; and those where there was dissent from the opposition, with or without minor party dissent. These produce the groupings shown in Table 3, with a significant sample size in every category.

An analysis of indicators for the two groups before and after the government obtained its Senate majority is given in Table 4. The results suggest that, on all three indicators shown – number of recommendations per inquiry, the success rate of those recommendations in the chamber and the resulting number of recommendations agreed per inquiry – the government's Senate majority reversed the effect of unanimity or dissent within committees.

With the Senate in a balance-of-power situation, unanimous or near-unanimous reports contained

TABLE 4 Number of recommendations, success rate of recommendations and number of recommendations agreed to by parliament per inquiry

	Unanimous reports, or minor party dissent only	Opposition dissenting reports, with or without minor party dissent
Average number of recommendations per inquiry		
Before government majority	2.2	0.9
After government majority	1.9	2.5
Success rate (% of recommendations agreed per inquiry)		
Before government majority	73	54
After government majority	33	66
Average number of recommendations agreed per inquiry		
Before government majority	1.6	0.5
After government majority	0.6	1.7

more recommendations, which were more likely to be agreed by the parliament, resulting in a far higher number of agreed recommendations than if the opposition had dissented (1.6 compared with 0.5).

Once the government had a majority, however, the reverse was the case. The government's majority reports contained more recommendations in cases where the opposition had chosen to dissent; these government recommendations were far more likely to be agreed by the parliament; and this resulted in a far higher number of agreed majority recommendations than when the opposition had *not* dissented (1.7 compared with 0.6).

The pattern when there was a balance-of-power situation in the Senate suggests that if the opposition were going to disagree with the government about a bill that had been referred to committee, the government's committee members were either unable or unwilling to put forward amendments that might secure majority support. Negotiating compromises on bills appears to have been left to debate in the chamber. Only where government and opposition committee members were able to build a consensus around a bill would the committee go to the effort of making recommendations. This consensus building appeared to carry through to the chamber, where cross-party proposals by a committee to amend legislation were very likely to make it through both houses of parliament (73 per cent of cases, the highest success rate for any subset of the data analysed in this study).

Once the government had a Senate majority, however, the situation was reversed: government committee members were more likely to make recommendations if there *was* an opposition dissenting report (2.5 compared with 1.9). However, the most striking result concerns the subsequent fate of these recommendations. If the opposition had written a dissenting report, the government majority's recommendations had a 66 per cent chance of being agreed by the parliament. However, if the committee was unanimous in its recommendations, that success rate was halved, to 33 per cent.

This could be interpreted as evidence that the government did not trust its own committee members in cases where those members had reached some sort of accommodation with the opposition in committee. It may highlight how partisan the politics of the period 2006–07 had become. Anything associated with the opposition was treated with suspicion, with the government far more likely to use its numbers to defeat bipartisan committee proposals and retain its legislation as originally proposed – more willing, in fact, to defeat a bipartisan suggestion than to defeat one that came from within its own ranks, but was opposed by the ALP.

What other factors affected committee 'success'?

A number of factors apart from the government's numbers in the chamber may have affected a committee's influence on the legislative process. Associated with the government's Senate majority were complaints that not enough time was being devoted to the scrutiny of legislation, including insufficient time being allowed for public submissions. In this study we compared the outcomes of long and short bill inquiries. Over the four years studied, the results showed a slight relationship between the number of recommendations made per inquiry and the amount of time devoted to a bill inquiry. Inquiries of more than 40 calendar days resulted in 2.3 recommendations per report, whereas shorter inquiries resulted in 1.8 recommendations per report. There was little difference in the proportion adopted by the parliament (56 per cent compared with 52 per cent), meaning that on average a long inquiry would see 1.3 recommendations agreed, whereas a short inquiry would see just under one agreed.

Interestingly, this result was affected by whether or not the government had a majority in the Senate. When the government had a majority, short and long inquiries had quite similar outcomes: short inquiries resulted in a mean of 2.3 recommendations, while long ones were barely higher, at 2.5 recommendations. The proportion that succeeded was almost identical (48 per cent for long inquiries and 50 per cent for short inquiries), meaning that the absolute number of recommendations agreed by parliament was identical for long and short inquiries (1.2 in both cases).

However, when the government did *not* have a Senate majority, the outcomes for long and short inquiries were quite different. Short inquiries produced far fewer recommendations (0.7 compared with 2.1 recommendations), were less likely to see those few recommendations agreed to by parliament (60 per cent compared with 65 per cent), with the result that short inquiries on average produced just 0.4 successful recommendations, while long ones resulted in 1.4 successful recommendations, or over three times as many.

One possible explanation of these results is that the non-government parties had been setting reporting deadlines according to the anticipated level of controversy surrounding the content of bills. Complex or controversial legislation was given more time for examination and resulted in more suggested amendments. Once the government had control of the amount of time a committee would be given to report, the level of controversy or complexity may have ceased to be a factor in setting the reporting deadline, meaning that the length of an inquiry

TABLE 5 Median number of submitters and witnesses

	Median number of submitters	Median number of witnesses
Overall	9	5
Long inquiries (> 40 days)	9.5	5
Short inquiries (≤ 40 days)	8.5	4
Before government majority	8	5
After government majority	9	5

ceased to be related to the level of concern about a bill. Thus short and long inquiries were equally likely to result in recommendations.

The data show that the level of public involvement in inquiries was not affected by any of the indicators examined here, and had little or no impact on inquiry outcomes. As Table 5 shows, there was no sign that the government’s securing of a majority had an effect on the quantity of stakeholder engagement, whether in terms of written submissions or in terms of participation in public hearings. Similarly, the shortening of inquiries did not have any obvious effect on the number of stakeholders making submissions.

The final question of interest here is whether a high level of interest, indicated by large numbers of submissions or more extensive public hearings, resulted in either more committee recommendations or a greater likelihood of those recommendations being adopted. The results of a correlation test showed a weak link between the number of submitters and these two outcome measures, and almost no link between the number of witnesses and the two outcome measures (Table 6).

Interpreting these results is difficult, and it should be reiterated that the correlation is not strong. Committees may be more likely to recommend amendments to legislation where there is strong stakeholder interest in the bill. However, the results may simply mean that the attention of senators and stakeholders alike is attracted by flawed legislation, resulting both in more submissions and a need for more recommendations. Either way, the figures give some support to the idea that bill inquiries successfully pick up issues of concern to the broader community.

TABLE 6 Correlation test between number of submitters or witnesses and number of recommendations made or agreed

	Number of submitters	Number of witnesses
Number of recommendations made	0.30	0.10
Number of recommendations agreed	0.25	0.11

DISCUSSION

The main findings of this study can be summarised as follows.

- Senate committees conduct inquiries into a large minority of bills.
- Only around one-fifth of bills before parliament are the subject of any standing committee recommendations for either amendment or administrative reform.
- The majority of committee recommendations on bills are accepted by the parliament, but so few recommendations are made that this represents an average of about one recommendation agreed per inquiry, or about 0.4 recommendations per bill if one includes all bills considered by the Senate.
- Individual committees have very different outcomes in terms of recommendations made and recommendations agreed by the parliament.
- The government majority in the Senate has significant effects on legislative scrutiny, but they are not always the effects that might be expected. They include more bills being referred to committee for report; less time being given to report (though this effect is patchy across committees and not as great as previously suggested); more recommendations being made by committees; more committee recommendations being accepted by the parliament; and a greater proportion of all parliamentary amendments to legislation having their origins in committee reports.
- Neither the length of an inquiry nor the government’s majority in the Senate has any effect on

the median number of submitters or witnesses participating in inquiries.

- Consensus in committees is not a precondition for success in getting recommendations accepted by the parliament, but the relationship between consensus and success is a complex one, and is significantly affected by the make-up of the Senate.
- Any effect of inquiry length on numbers of recommendations made or agreed is also significantly affected by the make-up of the Senate.

Overall, Senate committees appear to have little direct impact on bills through their recommendations. It is true that, as noted previously, there are many other ways in which committees contribute to democratic life beyond inquiring into bills. They can facilitate public access to members of parliament, they can provide an early testing ground for new policy proposals, and they can help senators develop skills and relationships across party lines, all of which may provide the glue that keeps an effective democracy intact.⁵⁴ An analysis merely of the fate of recommended bill amendments is obviously not the whole picture.

If this study may understate the role of committees, however, there are also cases where it may overstate it. The following example illustrates how the study's quantitative methods could overstate committee influence. The Senate's Foreign Affairs, Defence and Trade Committee inquired into the Defence Legislation Amendment Bill 2006. The committee made one recommendation that was agreed in part, which was counted in this study as parliament agreeing with a committee recommendation. During speeches in parliamentary debate, the government portrayed its amendment of the bill as being in response to the committee's report. However, the opposition argued that the fundamental principle advocated on a bipartisan basis by the committee had been rejected:

At the heart of this is the government's acceptance of the view that the military justice system should remain within the defence hierarchy and not be removed to a civilian model as the committee recommended ...⁵⁵

Thus, in a case where the government claimed to be responding to a committee's inquiry, there was dissent as to whether it was really doing so.

Within these limitations, what does this study suggest about the role of committees in the legislative process? Australian Senate committees considered many bills and produced extensive reports during the study period, and their role in scrutinising legislation appeared if anything to intensify. At the same time, their effects appeared to be lim-

ited, particularly when considered in comparative perspective.

The previously mentioned studies by Cairney for Scotland and Ganley for New Zealand both describe committee processes playing a major role in the moulding of legislation. The New Zealand figures in particular are stark, with Ganley recording for 1997 an average of 43 changes per bill resulting from committee activity – well over an order of magnitude more than in Australia.

Ganley's research notes a number of distinctive features that might have a bearing on the effectiveness of the New Zealand committees.⁵⁶ These are:

- automatic referral of bills to committees;
- inviting submissions and holding hearings as a matter of course;
- the unicameral nature of the parliament; and
- committees having power to amend legislation, rather than only recommending changes.

The results of this study, and other research in the area, provide support for the importance of some of these features, but suggest that others may be less significant in determining the impact of committees.

Ganley thought that the routine invitation and reception of submissions might be a factor that accounted for committee impact. However, the Australian Senate committees, like their New Zealand counterparts, also routinely invite and receive submissions and hold public hearings on bills. In the period 2003 to 10 September 2006 covered in this study (the latest for which data were readily available in this particular form), 164 public hearings were held by legislation committees for a total of 121 bill inquiries.⁵⁷ While not every inquiry held hearings, they were clearly the norm for committee scrutiny of legislation. All Senate inquiries invited and received public submissions. Despite this public consultation activity, the Australian committees had nothing like the impact on the actual form of legislation of their New Zealand counterparts. Looked at in comparative perspective, it does not seem that public consultation explains the effects of committees on legislation.

Ganley suggested that the automatic referral of legislation to committees contributed to their ability to make a difference. This may be a factor, but some evidence from this study suggests that it probably does not have an effect on its own. The Senate committee that comes closest to experiencing automatic referral of bills is the Economics Committee, with its routine referral of Tax Law Amendment Bills. Yet this committee had the lowest rate of recommendations, and a poor degree of success in seeing them adopted by the parliament. It would seem that any effect of automatic referral is mediated by cul-

tural expectations and institutional arrangements. Where committees have only advisory powers (as in the Australian Senate), they may make their own choices about which legislation to target for their closest attention, most detailed recommendations and longest reports. In such an environment, a committee that experiences 'quasi-automatic' referral of bills, such as the Economics Committee, is able to have little impact. Its work may even be devalued or discounted precisely because senators, including committee members, do not see the referrals as signifying that any particular importance should be attached to the bills by the committee, while simultaneously the higher workload dilutes their resources. It may be that automatic referral is not important unless it is matched with greater power to affect the legislation once referred.

This study suggests that it may be other distinctive structural features of the New Zealand and Scottish committee systems that lead to their greater impact. These include the fact that bills are referred before the second reading stage, and that the committees can amend the bills, with a presumption that the chamber will adopt bipartisan committee amendments. Such a redrafting capacity is not uncommon in parliamentary committees, including in bicameral legislatures, and exists, for example, in Germany, Italy and Spain.⁵⁸ In theory, a limited capacity of this type exists within the Senate's procedures, but it is not as strong as that of the other jurisdictions discussed here, nor, in reality, is it used.

Kaare Strøm reasoned that 'it is reasonable to suggest ... that the role of committees increases if the major debate on a bill has not taken place before [that bill] is referred to [a committee]'.⁵⁹ In Australia, most bills are introduced in the House of Representatives rather than the Senate. During the period covered by this study, 48 per cent of bill inquiries conducted by Senate committees were unable to report until after the bill had already passed through all stages in the House of Representatives. This effectively means that cabinet and government members of parliament have already committed themselves to a bill, both in principle and in detail, before most Senate committees have the opportunity to make recommendations to improve the legislation. This seems consistent with the data showing that New Zealand and Scottish committees play a greater role in modifying legislation.

This study suggests that fears about the effect of a government Senate majority on legislation inquiries may be somewhat overstated. However, a picture also emerges of a parliament where committee work has a limited effect on bills, and where most bill amendments do not appear to be connected to committee activity.

The study opens up two avenues for further reflection. The first is the need for additional research to create a fuller picture of the role of Senate committees in the legislative process. This would include closer examination of how minority parties use their committee experience to shape amendments put forward in Senates when one or more of those parties shares a balance of power; and consideration of the role of legislation inquiries in developing the policy platform and legislative activity of oppositions, particularly when they subsequently become governments.

The second idea on which this study invites reflection, particularly in a comparative context, is the possibility of changing the institutional role of the committees to enhance their engagement in the legislative process. The obvious avenues are those evident from many other jurisdictions: earlier referral of bills (meaning, in the Australian case, before the bill is given a second reading in the House of Representatives), and some form of committee amendment of bills (rather than the committees merely making recommendations). This second proposal has also been made by Bach and by Vander Wyk and Lilley.⁶⁰

This kind of reform might give the committees a stronger role in legislating, but there are many questions that would need to be considered. First of these is whether either the Senate or the committees would want such an enhanced role. With fewer than 76 senators available to fill all committee roles,⁶¹ in addition to their other tasks, senators may be ambivalent about being handed a greater legislative responsibility in their committee work. In any event, while the Senate's effect on legislation may be less than in other jurisdictions, senators may regard it as sufficient.

Then there are other questions about the institutional consequences of such a change. Reference inquiries are an important part of the workload of many of the standing committees. This study has not considered the impact of these inquiries. Reforms that gave greater prominence to the committees' legislative review function might indirectly reduce the scope or effectiveness of reference inquiries, as fewer resources might be available for senators to undertake the work. Consideration would need to be given to whether senators thought the trade-off (if there was one) would be worth it.

It is also not clear how effective these reforms would be in actually increasing the impact of committees on legislation. Committees with a high degree of what Mattson and Strøm call 'drafting authority' (for example, the capacity to amend bills) exist in both unicameral and bicameral legislatures. However, the two parliaments for which this study has reviewed detailed evidence (Scotland and New

Zealand) are both unicameral. Further research would need to consider the fate of committee bill amendments in bicameral contexts such as Germany. The fate of upper house committee amendments when they reach the lower house warrants particular scrutiny.

There is also the question of the practical and logistic consequences of committee bill inquiries occurring prior to second reading. It may be, for example, that the number of sitting days that would elapse from the introduction to the passage of a bill would increase. The Scottish parliament sat for 179 days and the New Zealand one for 92 days in 2007, compared with Australia's 41 (for the Senate) and 50 (for the House of Representatives). In these circumstances, a reform that required more sitting days to elapse during the course of a bill's consideration by parliament could be disruptive to the operations of a parliament that sits as seldom as Australia's. This of course raises the larger question of *why* Australia's parliament meets so rarely; however, the factors involved in this are far broader than legislative scrutiny.

All these questions and more would need to be examined. This study has served merely to open a window on the operations of parliamentary committees, and through it to glimpse possible alternatives to the current organisation of Senate committee business.

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APPENDIX 1

Bills referred to committees: methods of analysis

This appendix notes aspects of the methods used in the quantitative analysis of information on bills referred to committees.

Limiting the scope of the analysis

Committees may affect legislation in many ways. The main avenues are as follows.

- 1 Committee inquiries into bills may recommend amendments to bills or explanatory memoranda, or put forward proposals regarding the administration of laws. These recommendations may subsequently be adopted by parliament or by government.
- 2 Reports of the Scrutiny of Bills Committee may draw attention to concerns with legislation that lead to amendments being made in parliament.
- 3 Minority reports of inquiries may recommend amendments not supported by the majority, but which may be implemented as part of a bargaining process (most likely in a balance-of-power situation).
- 4 Senators' participation in inquiries, and the inquiries' reports, may influence development of policy preferences within political parties, particularly oppositions that subsequently win office.⁶²
- 5 Committees may not recommend amendments to bills they consider, but, based on committee inquiry evidence, governments may make amendments to them anyway.
- 6 Reference inquiries may recommend the introduction or review of legislation based on evidence they receive.
- 7 Policy choices of governments and legislative design by the public service may be moulded by anticipation of scrutiny and likely criticism by committees.⁶³

The many ways in which committees influence legislation create methodological complexity in evaluating the effect of committees. Only the first is relatively direct and readily understood through analysis of committee reports and events in the chambers.

The first avenue by which committees affect bills is relatively straightforward (though complex in the detail). A bill is referred to a committee; the committee recommends a change to the bill; an amendment to the bill is then proposed after the bill is introduced into parliament.

In the second case, where the Scrutiny of Bills Committee comments on a bill, the situation is different. The Scrutiny of Bills Committee does not

make recommendations, but merely draws the Senate's attention to its concerns. Yet those concerns are clearly targeted at ensuring legislation is framed in certain ways, and thus is intended to improve bills, by encouraging amendment where necessary.

In the third case, it becomes necessary to examine recommendations in minority or dissenting reports and search for amendments that match them. These are most likely to occur in the context of bargaining in the chamber. This will be most relevant when a government lacks a majority in the Senate (as was the case before July 2005 and after July 2008). However, it is also possible that a government may accede to such an amendment if it believes it is necessary to shore up internal support. There were at least two relevant examples in the 41st parliament. First, an amendment moved by Senator Joyce, partly consistent with the recommendation of an opposition dissenting committee report, was defeated only when Senator Fielding voted with the government on voluntary student unionism (9 December 2005). And second, an amendment moved by the opposition on the private health insurance bills, implementing an ALP minority recommendation, was accepted in part by the government (23 March 2007).

The remaining four pathways by which committees affect legislation may be significant, but for a number of reasons are not readily understood through an analysis of formal committee operations.

In the fourth case, tracking the effect of committee inquiries on the platforms of future governments is extremely difficult. It would involve examining media reports of party policy development, interviews with past or present ministers and committee members, and comparison of policy announcements and minority committee reports and recommendations. It is doubtful whether an accurate picture of this effect could ever be formed, yet committees are often considered to play a role as a source of information and education for senators in general, and future ministers in particular.

In the fifth case – where a government changes a bill based on inquiry evidence – it is possible for a bill to be amended without a committee recommendation having been made. Yet it would be a mistake to fail to recognise the impact of the committee's efforts on the final form of the legislation. If the committee had not conducted the inquiry, the evidence leading to the amendment may never have come to light. However, demonstrating a causal relationship would be challenging.

In the sixth case, a reference inquiry, rather than a bill inquiry, may recommend legislative action. In this case there is no connection with any bill inquiry. Indeed, it is possible that there is no Senate committee inquiry into a bill precisely because senators take the view that the necessary examination of issues

has already taken place during the process that led a reference inquiry to make the recommendation in the first place. But although a recommendation may be unconnected to any bill inquiry, this clearly represents an impact of Senate committee activity on the legislative process. However, identifying such recommendations would be hard; linking them to subsequent legislation would be harder still; and proving a causal connection would frequently be impossible.

In the seventh and final case, it would be hard to attribute legislation drafting choices to the watchful eye of committees. Governments in particular would hardly be likely to admit that they would have drafted legislation differently had it not been for the cross-examination they knew they would face from the legislative scrutiny committees. Nevertheless, scrutiny as prophylaxis is an important feature of the committee system.

This research focused on the first pathway. While it provides the first detailed picture of the results of Senate scrutiny of bills, there are other ways in which the committees contribute to parliament's legislative function. This research thus produces what might arguably be a 'conservative' estimate of the effect of committees on the legislative process.

Bills

The analysis was based on the referral of bills to committees.

A bill was counted and analysed if it was referred to any standing committee by any means; it did not have to be through the Selection of Bills Committee (though almost all were referred by this means). Before September 2006 most bills were examined by legislation committees; however, a few bills were referred to references committees, and these were included.

A bill was not counted if the reference was subsequently withdrawn prior to the committee making a report.

A bill was not counted if it could not be established whether both chambers had agreed to any amendments moved in one chamber following a committee report. A bill was also not counted if there was no debate on the bill after the committee reported. These two criteria reflect the reality that, in the absence of conclusive parliamentary debate, there is no capacity to analyse agreement or otherwise of the parliament with the committee's recommendations. As these exclusions would have had the potential to overlook major effects of committee work, an exception was made. If a bill was subsequently not proceeded with, withdrawn or set aside in a way that could be linked directly to an adverse committee report (including, before July 2005, an

adverse minority report by the ALP, either alone or in conjunction with other parties), then this was counted as agreement with committee recommendations. By 'adverse' is meant a report recommending that a bill not proceed; recommending that a bill not proceed without significant amendment; containing a large number of recommendations that go to the heart of a bill's purpose; or recommending that a bill be opposed.

For this analysis, a referral of a bill 'and four related bills' was counted as one bill rather than five. In this sense, this study is best understood as an analysis of committee reports rather than of bills referred.

For the purpose of most of the quantitative analysis, inquiries into private member bills were excluded. This was because most private member bills result in recommendations that the bill not proceed, or an extensive list of proposed amendments to which the mover will seldom agree. These bills almost invariably do not proceed in the chamber. If they were included in the quantitative analysis, this could result in the addition of several committee reports containing recommendations that were agreed to by the government. However, this is not a meaningful reflection of the contribution by the committees to parliament's deliberations.

For the purpose of most quantitative analysis, bills on which a conscience vote was allowed by either major party were excluded. This was again to avoid confusing any effects of committee reports with other factors. However, it should be recognised that committee inquiries can be extremely important in assisting the chamber to address bills where conscience votes take place.

Terminology and classification

Who sought the inquiry?

If referral of a bill was initiated through the Selection of Bills Committee, the party seeking referral was identified from the whips' letters attached to the relevant Selection of Bills Committee report.

If a bill was referred directly by the chamber, the party seeking referral was that of the mover of the motion, as well as the party of any other person or persons on whose behalf the motion was moved, in the small number of cases where this was relevant.

If more than one party sought referral of the same bill, then, for the analysis of the data, that bill was classified as having been referred by the largest party that sought the referral. If the government sought referral, for example, the bill was classified as a government referral regardless of what other party also sought the referral. If the Australian Democrats sought referral, it was classified as a minor party

referral if neither the government nor the opposition also wanted the bill referred.

Recommendations

Some of the research was based on quantitative analysis of recommendations made by committees and their implementation. This required procedures covering what should be treated as a recommendation; what should be counted as a single recommendation; and the criteria for assessing whether a recommendation was agreed to or not. The key to establishing criteria was that the research aimed to analyse the impact of committee deliberations upon the legislative process.

What is a recommendation?

A recommendation is defined as any statement by a committee of a definite view about how the government should proceed in pursuing its legislative agenda, or how the chamber should act in response to that legislative agenda. Thus, a recommendation may not relate to amendment of a bill but may pertain to its implementation or the administration of an agency, or to future actions of a government (such as a 12-month review of the operation of an act).

Most committee (majority) reports had discrete, numbered recommendations. However, a very small number did not; and formalised recommendations were less common in dissenting reports.

For example, in 2003 the Rural and Regional Affairs and Transport Committee considered the Maritime Transport Security Bill 2003. Unusually, it made no formal recommendation (including no recommendation that the bill be passed), but in the text of the report made a number of comments, such as:

In the Committee's view the bill does not adequately reflect [the Department of Infrastructure, Transport, Regional Development and Local Government's] stated intention that in formulating the bill and associated policy discussions, there was no intention of affecting employees' rights to take industrial action. This must be absolutely clear in the bill.

This was counted as a recommendation. The words that led to it being counted as such are emphasised. Effectively two elements are present: a statement of a deficiency in the bill *and* a statement that the deficiency should be corrected.

In one case (the Private Health Insurance Bill 2006 and Six Related Bills), a matter was counted as a recommendation even though it was not raised by the committee at all in its report. This was because it was raised by the chairman in the chamber, through a statement explicitly linking amendments moved by him in the committee stage to evidence received

during the inquiry.⁶⁴ The fact that the amendments were moved by him (rather than by a minister, leader or whip) was important in deciding to count this case.

What should be counted as a single recommendation?

A recommendation in a committee report addresses a single topic in a bill or related bills. In general, anything numbered as a discrete recommendation by a committee was treated as such for the purpose of the analysis. In a small number of cases, a single recommendation was treated as two or more recommendations, if two conditions were satisfied: (1) the elements appeared unrelated, and (2) there were differing responses from the government when the bill was subsequently debated.

Agreement with recommendations

It can be surprisingly difficult to ascertain whether a committee's recommendations have met with agreement from the mover of the bill. This is particularly so where the recommendation is administrative rather than seeking amendment of the bill.

A recommendation was considered to have been agreed to (in the case of amendments to the bill) if any of the following four conditions were met, *and* the relevant amendment passed both chambers:

- 1 if an amendment to the bill was moved in either chamber that largely reflected the intention of the committee recommendation, regardless of the words in which the amendment or recommendation was expressed;
- 2 if a minister, or member of parliament representing a minister, either wrote to the committee or stated in a chamber that the government agreed with the committee recommendation, unless there was clear evidence in Hansard to the contrary;
- 3 if a supplementary or revised explanatory memorandum stated that a variation in the bill since its introduction had the effect of the committee's recommendation, regardless of the words in which the explanatory memorandum or recommendation was expressed (that is, the supplementary or revised explanatory memorandum did not have to refer explicitly to the committee's report); or
- 4 a minister introduced amendments to a bill prior to a committee reporting, and explicitly linked the amendments to concerns raised with the minister by the committee, even if there was no matching recommendation in the committee's report when eventually tabled.⁶⁵

An administrative recommendation was considered to have been agreed to if any of the following three conditions were met:

- 1 if a minister, or member of parliament representing a minister, either wrote to the committee or stated in a chamber that the government agreed with the committee recommendation, unless there was clear evidence in Hansard to suggest this was not in fact the case;
- 2 if a supplementary or revised explanatory memorandum was issued for what appeared to be the purpose of responding to committee concerns (for example, about a lack of clarity in the explanatory memorandum); or
- 3 if a review or other body was established by the government or parliament in terms that reflected a committee recommendation, regardless of whether a statement was made in parliament linking the initiative with that recommendation.

In respect of the last of these three criteria, it would have been possible for an administrative recommendation to be implemented without this being detected by the researchers. The analysis should therefore be taken as a 'lower limit' in estimating such effects.

Tracking recommendations across bills

Agreement with a committee recommendation could occur through a different bill to that originally examined by the committee. This situation arose when a committee reported on a bill near the end of a parliament, and the bill was then revived under a new name in the new parliament. These situations required particularly careful tracking, because committee recommendations could be incorporated into a revised bill prior to its (re)introduction to parliament. This thus meant there could be agreement with a committee report's proposed amendments to a bill without amendments needing to be moved in parliament. A very small number of instances of this sort were found in the data for 2004.

What was not counted as agreement

For the quantitative analysis, one of the key questions was whether the passage of a bill should be counted as agreement with a committee recommendation that a bill be passed.⁶⁶ This was a common recommendation, so its treatment would have a significant effect on the analysis. On the one hand, such a case can be seen as the chamber accepting the committee's advice, and it should therefore be considered significant. On the other hand, the institutional context must be remembered: the party

initiating the legislation has a majority on the committee, and party discipline in Australia is extremely strong. In around half of cases, bills have already passed the second reading stage in the House of Representatives before a Senate committee has had an opportunity to consider them. The government has thus already signalled a clear commitment to implementing the legislation. In this context, committee support for the passage of a bill is not particularly notable.

The passage of a bill was not counted as agreement with a recommendation that a bill be passed.

Agreement in part

The analysis necessitated developing criteria for what constituted agreement *in part* with a committee recommendation and, for the quantitative analysis, a way of assigning numerical value to such partial agreement.

A recommendation was considered to have been agreed in part (in the case of amendments) if any of the following three conditions were met:

- 1 if an amendment to the bill was moved in either house that partly, but clearly not fully, reflected the intention of the committee recommendation, regardless of the words in which the amendment or recommendation was expressed (for example, if a recommendation for a legislated 24-month review was amended to a 12-month review);
- 2 if a minister, or member of parliament representing a minister, either wrote to the committee or stated in a chamber that the government agreed only in part with the committee recommendation (this was the commonest scenario); or
- 3 if a supplementary or revised explanatory memorandum stated that a variation in the bill since its introduction had the effect partly, but clearly not fully, of fulfilling the committee's recommendation, regardless of the words in which the amendment or recommendation was expressed (that is, the supplementary or revised explanatory memorandum did not have to explicitly refer to the committee's report).

Assigning numerical value to these cases is to some degree an arbitrary exercise. For the analysis, agreement in part was given the same value as agreement in full. The reason for this goes back to the principle underpinning the research, and the work of committees. The purpose of the committees is to inform the parliamentary chamber, not to be a substitute for the chamber's deliberations. If a committee makes an argument and the chamber responds by accepting that argument in part, but reasons that it would prefer not to do so in full, this

nevertheless shows conclusively that the committee has influenced the chamber's deliberations. As this is the goal of committee recommendations, it would seem inappropriate to discount this achievement.

NOTES

- 1 Philip Laundy (1989), *Parliaments in the Modern World*, Gower, Aldershot.
- 2 Ingvar Mattson and Kaare Strøm (2004), 'Committee effects on legislation', pp. 91–111 in Herbert Döring and Mark Halleberg (eds), *Patterns of Parliamentary Behavior: Passage of Legislation across Western Europe*, Ashgate, Aldershot, pp. 100–1; Marcus Ganley (2001), 'Select committees and their role in keeping parliament relevant', *Australasian Parliamentary Review*, 16(2): 140–50; Mark Shephard and Paul Cairney (2005), 'The impact of the Scottish parliament in amending executive legislation', *Political Studies*, 53: 303–19.
- 3 According to Halligan, Miller and Power (2007: 170), 92 per cent of committee consideration of bills takes place in Senate committees; see John Halligan, Robin Miller and John Power (2007), *Parliament in the Twenty-first Century*, Melbourne University Press, Melbourne.
- 4 See, for example, Ian Marsh (1995), *Beyond the Two-party System*, Cambridge University Press, Cambridge; John Uhr (1998), *Deliberative Democracy in Australia: The Changing Place of Parliament*, Cambridge University Press, Cambridge.
- 5 See, for example, Ian Holland (2006), 'Parliamentary committees as an arena for policy work', pp. 66–90 in H. Colebatch (ed.), *Beyond the Policy Cycle: The Policy Process in Australia*, Allen & Unwin, Sydney; Kathleen Dermody, Ian Holland and Elton Humphery (2006), 'Parliamentary committees and neglected voices in society', *The Table*, 74: 45–55; Uhr (1998), op. cit., pp. 122, 144.
- 6 See, for example, the Democratic Audit of Australia project of the Australian National University, Canberra; <http://democratic.audit.anu.edu.au/>.
- 7 Richard Grant (forthcoming), 'Can we account for parliamentary committees? A survey of committee secretaries', Parliamentary Studies Paper, Australian National University, Canberra, <http://www.parliamentarystudies.anu.edu.au/publications.php>.
- 8 Graham Maddox (1996), *Australian Democracy in Theory and Practice*, third edition, Longman, Melbourne, p. 233.
- 9 Ian Marsh (2006), 'Can Senate committees contribute to "social learning"?' pp. 53–78 in *A Light of Reason: Transcript and Supporting Papers of a Seminar on the Work of the Senate Select Committee on Superannuation*, Papers on Parliament No. 45, Department of the Senate, Canberra, p. 69.
- 10 Halligan, Miller and Power (2007), op. cit., p. 172.
- 11 John vander Wyk and Angie Lilley (2005), 'Reference of bills to Australian Senate committees', Papers on Parliament No. 43, Department of the Senate, Canberra, pp. 32–3.
- 12 *ibid.*, p. 46.
- 13 Stanley Bach (2003), *Platypus and Parliament: The Australian Senate in Theory and Practice*, Department of the Senate, Canberra, p. 209.
- 14 Campbell Sharman (1998), 'The Senate and good government', pp. 153–70 in Kay Walsh (ed.), *The Senate and Good Government and Other Lectures in the Senate Occasional Lecture Series*, Papers on Parliament No. 33, Department of the Senate, Canberra, 1999, p. 157.
- 15 Anne Lynch (1999), 'Personalities versus structure: the fragmentation of the Senate committee system', pp. 181–8 in Marian Sawyer and Sarah Miskin (eds), *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, Papers on Parliament No. 34, Department of the Senate, Canberra, p. 182.
- 16 *ibid.*, p. 188.
- 17 See also Erik Damgaard and Ingvar Mattson (2004), 'Conflict and consensus in committees', pp. 113–39 in Herbert Döring and Mark Halleberg (eds), *Patterns of Parliamentary Behavior: Passage of Legislation across Western Europe*, Ashgate, Aldershot.
- 18 Shephard and Cairney (2005), op. cit.; Paul Cairney (2006), 'The analysis of Scottish parliament committee influence: beyond capacity and structure in comparing west European legislatures', *European Journal of Political Research*, 45: 181–208.
- 19 Ganley (2001), op. cit.
- 20 Ingvar Mattson and Kaare Strøm (1995), 'Parliamentary committees', pp. 249–307 in Herbert Döring (ed.), *Parliaments and Majority Rule in Western Europe*, Campus Verlag and St. Martin's Press, Frankfurt and New York; Mattson and Strøm (2004), op. cit.
- 21 Paul Cairney (2006), op. cit., p. 205.
- 22 Halligan, Miller and Power (2007), op. cit., p. 172.
- 23 Department of the Senate (2006), 'The Senate and legislation', Senate Briefs, No. 8, available at <http://www.aph.gov.au/Senate/pubs/briefs/brief08.htm>, accessed March 2008.
- 24 The Senate has a number of other standing committees, including the Scrutiny of Bills Committee, but they are not dealt with in this study.
- 25 All bills are reviewed by the Scrutiny of Bills Committee. However, its scrutiny is confined to a small number of particular issues, such as the potential for undue infringement of individual rights and liberties.
- 26 Senate Standing Order 24A. The Selection of Bills Committee meets each sitting week to consider requests (submitted by the whips of each party) that bills be referred to committee. Where the committee is unable to reach agreement on whether or not a bill should be referred, it does not make a recommendation, instead indicating to the Senate that it has been unable to reach agreement; the Senate then determines the question. In a small number of cases, bills are referred to committee directly on a motion in the Senate, rather than through the Selection of Bills Committee.
- 27 Senate Standing Orders 24A(9) and 115(5).
- 28 John vander Wyk (2006), *Guide to Committee Procedure and Practice*, Department of the Senate, Canberra, p. 59.
- 29 Senate Standing Order 115.
- 30 New Zealand, Standing Orders of the House of Representatives, Standing Order 285.
- 31 New Zealand, Standing Orders of the House of Representatives, Standing Order 296.

- 32 Scottish Parliament, Standing Orders, Rule 9.6, available at <http://www.scottish.parliament.uk/business/so/sto-4.htm#9>.
- 33 Scottish Parliament, Standing Orders, Rule 9.7, available at <http://www.scottish.parliament.uk/business/so/sto-4.htm#9>.
- 34 John Uhr (1991), 'Future directions: scrutiny of bills in the 90s and beyond', in *Ten Years of Scrutiny*, Parliament House, Canberra, 25 November, p. 77.
- 35 A private member's or senator's bill in most cases does not have the support of the government of the day. Thus the 'normal' outcome for consideration of such bills in government-controlled standing committees is a recommendation that the bill *not* be passed. Recommendations for changes to such bills are likely to reflect executive policy positions, whereas recommendations for changes to government bills are likely to reflect committee views at variance to those of the executive.
- 36 Shephard and Cairney (2002), *op. cit.* See also A. Kreppel (2002), 'Moving beyond procedure: an empirical analysis of European parliament legislative influence', *Comparative Political Studies*, 35(7): 784–813.
- 37 Halligan, Miller and Power (2007), *op. cit.*, pp. 222–3.
- 38 Medians have been used to analyse those data where a small number of large inquiries would otherwise skew the results.
- 39 Details of the origins of these numbers, and how they differ from those gathered by the Department of the Senate in its *Work of Committees*, are given in Appendix 1. Important to these differences is a small number of private senator's bills, excluded from my study, that attracted a disproportionately large number of submissions, mainly due to a large number of submissions on one bill involving a conscience vote: the Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005.
- 40 See Appendix 1 for an explanation of full or partial agreement.
- 41 While there is a resolution of the Senate requiring a government response to all committee reports, the poor response rate for reference inquiries suggests that this in itself does not necessarily drive the government to comply.
- 42 The data on amendments *agreed* are not perfectly comparable, but are adequate for this purpose. The number of committee amendments agreed was defined in this study as amendments agreed by both chambers. In contrast, the figures for all amendments agreed are for agreement by the Senate only. It is assumed that the number of amendments agreed by the Senate but ultimately rejected by the House of Representatives and not insisted on by the Senate was small enough not to have a large bearing on the rates being analysed here. This limitation is not relevant to the figures on amendments *moved*.
- 43 Sharman (1998), *op. cit.*
- 44 Department of the Senate, *Statsnet*, various years.
- 45 The lower proportion of recommendations being accepted was not enough to offset the rise in absolute numbers of recommendations: the number of recommendations accepted by parliament per committee inquiry rose from 1.0 to 1.2.
- 46 See, for example, Glenn Milne, 'PM drunk on political power', *The Australian*, 12 December 2005, p. 8; Ross Gittins, 'Time for a swing back to decency in public life', *West Australian*, 28 November 2007, p. 20.
- 47 Examples include Senator Andrew Bartlett, *Senate Debates*, 23 March 2003, p. 21,641; Philip Ruddock, *House of Representatives Debates*, 1 April 2004, p. 28,073; Jenny Macklin, *House of Representatives Debates*, 8 December 2004, p. 171; Senator Ian Campbell, *Senate Debates*, 8 February 2006, p. 19.
- 48 Halligan, Miller and Power (2007), *op. cit.*, pp. 256, 260.
- 49 A 'committee day' means a calendar day during which a bill or package of bills stood referred to a committee for inquiry. Thus, each day that a committee had three different bill inquiries standing referred to it simultaneously would be counted as three committee days.
- 50 Other factors may also have been relevant, including the lower number of non-government senators available to cover the work of all committees.
- 51 See, for example, Lynch (1999), *op. cit.*; Vander Wyk and Lilley (2005), *op. cit.*, p. 47.
- 52 Halligan, Miller and Power (2007), *op. cit.*, pp. 227–34.
- 53 Cited in Lawrence Longley and Roger Davidson (1998), 'Parliamentary committees: changing perspectives on changing institutions', *Journal of Legislative Studies*, 4(1): 1–20, p. 11.
- 54 Holland (2006), *op. cit.*; Dermody, Holland and Humphery (2006), *op. cit.*
- 55 Mr McClelland, *House of Representatives Debates*, 29 November 2006, p. 55.
- 56 Ganley himself rules out the proportional representation system as a factor, pointing out that a similar result was produced for New Zealand committees in 1990, when the country still had single-member electorates.
- 57 Department of the Senate, *Work of Committees*, various years.
- 58 Mattson and Strøm (2004), *op. cit.*
- 59 Kaare Strøm (1998), 'Parliamentary committees in European democracies', *Journal of Legislative Studies*, 4(1): 21–59, p. 46. See also D.M. Olson (1994), *Democratic Legislative Institutions: A Comparative View*, ME Sharpe, Armonk NY.
- 60 Stanley Bach (2004), 'A delicate balance: the accidental genius of Australian politics', pp. 39–63 in *Bicameralism and Accountability: Lectures in the Senate Occasional Lecture Series, 2002–2003*, Papers on Parliament No. 40, Department of the Senate, Canberra, p. 52; Vander Wyk and Lilley (2005), *op. cit.*, p. 48.
- 61 Because senators who are ministers do not normally sit on committees.
- 62 Marsh (2006), *op. cit.*
- 63 Uhr (1991), *op. cit.*, p. 77.
- 64 *Senate Debates*, 23 March 2007, p. 23.
- 65 There was one case matching this fourth criterion: the inquiry into the Transport Safety Investigation Bill 2002 by the Rural and Regional Affairs and Transport Committee.
- 66 Other equivalent wordings included 'that the bill be brought on for debate and enactment'.