

# **Australasian Study of Parliament Group**

## **2007 Annual Conference: Adelaide, 23 - 25 August**

### **Session 1**

## **The Role of Parliamentary Committees in Public Accountability (1)**

### **‘Parliamentary inquiries as a form of policy evaluation’**

**Mark Rodrigues<sup>1</sup>**

#### **Abstract**

The literature on Australian parliamentary committees tends to focus on Senate committees and their function of attempting to hold the executive accountable to the parliament along with their function of ‘bringing parliament to the people’. This paper examines the method of inquiry practised by House of Representatives general purpose standing committees as a form of policy evaluation and assesses its contribution to the policy making process. The paper observes that the method of inquiry employed by these committees is consistent with what may be described as ‘proactive evaluation’ which values evidence-based practice and promotes reflexive policy learning. This inquiry approach provides an important but often neglected contribution to public policy. The paper also makes some observations on the use and nature of evidence in the inquiry process with reference to the law of evidence and evidence-based policy.

The year 2007 marks the twentieth anniversary of the committee system in the House of Representatives. In February 2008, the House will hold a seminar on the committee system to commemorate that anniversary. It is anticipated that a future version of this paper will form part of a research project to support the twentieth anniversary seminar.

#### **Introduction**

The development of the modern committee systems in the Australian House of Representatives and Senate have been identified as the most important reform to Australian parliamentary practice since federation. It is a key component of what the Secretary of the Department of the Prime Minister and Cabinet has called the ‘network of integrity’ that has developed as part of the evolution of the Westminster tradition over the past thirty years.<sup>2</sup> While Parliament has made use of committees since 1901, it was not until the 1970s that a comprehensive system of committees was established. On 11 June 1970 the Senate resolved to broaden the use of its standing

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<sup>1</sup> Principal Research Officer, House of Representatives Standing Committee on Legal and Constitutional Affairs. I would like to thank Ms Robyn Webber, Ms Joanne Towner and Dr Nicholas Horne for comments on an earlier draft of this paper.

<sup>2</sup> Shergold, P. (2006) Address to the National Press Club, 15 February, Canberra.

committees – a decision described by Reid and Forrest as one ‘that revolutionised the Parliament as a whole’.<sup>3</sup> In 1987 the House of Representatives adopted its own comprehensive committee system by establishing eight general purpose standing committees. While the volume of output, and breadth and function, of House committees does not match that of the Senate, House committees have made their own contribution to the committee work of the Parliament.

The development of the House and Senate committee systems has been seen as a major reform counteracting a decline in parliamentary standards caused by the rise of the party system and the ascendancy of the executive.<sup>4</sup> It can certainly be argued that the advent of the modern committee system has reinvigorated the aspiration of parliamentary control over the executive. Between 1970 and 1999, parliamentary committees produced 3,220 reports, more than half of which were produced by Senate committees.<sup>5</sup>

The literature on parliamentary committees tends to focus on Senate committees due to the long-standing Senate committee system and its reputation as the key instrument of accountability within the Australian Parliament. Senate committees tend to be more critical of the government and conduct more controversial inquiries than Joint or House committees, thereby attracting greater academic and media attention. The literature on committees also focuses on the role of committees in ‘taking parliament to the people’ and enabling the participation of otherwise marginalised groups,<sup>6</sup> on fostering social learning among policy practitioners,<sup>7</sup> and on the role of community and interest group participation in the committee process.<sup>8</sup> There has also been some work on measuring the effectiveness of committees.<sup>9</sup>

The aim of this paper is to examine the method of inquiry practiced by House of Representatives general-purpose standing committees as a form of policy evaluation and to consider the contribution of this method to the policy making process. In doing so, the paper situates the committee method of inquiry in the broader literature on policy evaluation and makes some observations on how well parliamentary inquiries

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<sup>3</sup> Reid, G. S. & Forrest, M. (1989) *Australia's Commonwealth Parliament 1901-1988: Ten Perspectives*, Melbourne University Press, Melbourne, p. 375.

<sup>4</sup> Halligan et al (2007) *Parliament in the Twenty-first Century*, pp. 2-5; Marsh, I. (1995) *Beyond the two party system: Political representation, economic competitiveness and Australian politics*, Cambridge University Press, p. 242.

<sup>5</sup> Halligan, J., Miller, R. & Power, J. (2007) *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Melbourne, p. 276.

<sup>6</sup> For example, Marsh, I. (2004) ‘Australia’s Representation Gap: A Role for Parliamentary Committees?’ Department of the Senate Occasional Lecture Series, Parliament House, 26 November 2006; Dermody, K. Holland, I. & Humphery, E. (2006) ‘Parliamentary Committees and Neglected Voices in Society’, *The Table*, pp.-

<sup>7</sup> For example, Marsh, I. (2006) ‘Can Senate Committees Contribute to ‘Social Learning’? *A Light of Reason: Transcript and supporting papers of a seminar on The Work of the Senate Select Committee on Superannuation*, Senate, p. 53.

<sup>8</sup> For example, Marsh, I. (1995) *Beyond the two party system*, Marinac, A. (2004) ‘The Usual Suspects? ‘Civil Society’ and Senate Committees’, *The Distinctive Foundations of Australian Democracy: Lectures in the Senate Occasional Lecture Series 2003-2004*, Papers on Parliament No. 42, Department of the Senate, pp. 129-139; Webber, R. (2001) ‘Increasing Public Participation in the Work of Parliamentary Committees’, *Australasian Parliamentary Review*, Vol. 16 (2), pp. 110-120.

<sup>9</sup> For example, Aldons, M. (2000) ‘Rating the Effectiveness of Parliamentary Committee Reports: The Methodology’, in *Legislative Studies*, Vol. 15 (1) Spring, pp. 22-32. Halligan, J., Miller, R. & Power, J. (2007) *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*

can work in evaluating policy. The paper also reflects on the use and nature of evidence in the inquiry process with reference to evidence-based policy and the law of evidence.

### **House of Representatives general purpose standing committees**

The functions of parliamentary committees are varied and include:

- Conducting investigations of issues of public importance
- Gathering evidence and making recommendations
- Facilitating the participation of the public in the legislative process
- Promoting public debate
- Reviewing policy and scrutinising the activities of the executive
- Enabling parliamentarians to learn about policy issues in a mostly non-partisan environment
- Generally performing functions that the House of Representatives or Senate themselves are ‘not well fitted to perform’.<sup>10</sup>

In performing these functions, committees can have an impact on each stage of the policy cycle including agenda-setting, developing policy, decision making (indirectly), implementation of decisions, evaluation, and consultation.<sup>11</sup>

The House of Representatives committee system currently consists of thirteen general-purpose standing committees appointed for the duration of a parliament, a number of domestic or internal committees concerning matters such as procedure and publications, and occasional select committees that examine single issues in short and sharp inquiries.<sup>12</sup> There are currently twelve Joint committees consisting of members of both Houses. Joint committees are established by a resolution or legislation passed by both Houses of Parliament. Secretariats for most of the Joint committees are based in the House of Representatives. The Constitutional basis for the appointment of committees is derived from s. 49 of the Australian Constitution, which refers to ‘the powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees’, and s. 50, which refers to the power of each House to ‘make rules and orders with respect to ... its powers, privileges, and immunities ... [and] the order and conduct of its business and proceedings’.

General-purpose standing committees are the primary investigatory committees of the House and are established under Standing Order 215. The thirteen general purpose committees are:

- Aboriginal and Torres Strait Islander Affairs
- Agriculture, Fisheries and Forestry
- Communications, Information Technology and the Arts
- Economics, Finance and Public Administration
- Education and Vocational Training
- Employment and Workplace Relations and Workforce Participation
- Environment and Heritage
- Family and Human Services

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<sup>10</sup> Harris, I (ed.) (2005) *House of Representatives Practice*, 5<sup>th</sup> Edition, Department of the House of Representatives, Canberra, p. 621.

<sup>11</sup> Halligan et al. (2007) *Parliament in the Twenty-first Century*, p. 220.

<sup>12</sup> Harris, I (ed.) (2005) *House of Representatives Practice*, p. 622.

- Health and Ageing
- Industry and Resources
- Legal and Constitutional Affairs
- Science and Innovation
- Transport and Regional Services.

The inquiry process generally involves an initial phase where a committee receives a reference from the House or a relevant Minister and advertises the inquiry, an evidence-gathering phase where submissions are received and witnesses are examined, and a reporting phase where the evidence is considered and the committee prepares a report which is then presented to the Parliament. After the conclusion of the inquiry process the report is distributed and the government prepares its response to the committee's recommendations.<sup>13</sup>

Standing Orders outline the formal rules for some of the main areas of committee activity including the appointment of members to committees, the election of Chairs and deputy Chairs, quorum requirements, the power to call for witnesses and documents, the publication of evidence, and report consideration and presentation to the House. Sources of guidance on committee practice and procedure include *House of Representatives Practice*, which provides comprehensive coverage of conventions, and unpublished guides for committee members and parliamentary staff. In June 2007 a number of roles previously governed by convention were clarified concerning the responsibilities of Chairs, Deputy Chairs and Secretaries.<sup>14</sup> It is the responsibility of a committee to manage its inquiry work according to the Standing Orders.

Most general purpose standing committees undertake investigative inquiries within their area of responsibility and conform to the inquiry process outlined above. These investigative inquiries typically focus on matters of national application - a focus which often necessitates consideration of matters at the state level as well such as state legislative regimes. In conducting their inquiries committees may seek to review existing policy and programs, develop new areas of policy, identify policy gaps, or consider legislation.<sup>15</sup> The current Legal and Constitutional Affairs inquiry into older people and the law is an example of an investigatory inquiry. The Attorney-General has asked the Committee to 'investigate and report on the adequacy of current legislative regimes in addressing the legal needs of older Australians' in the areas of fraud, financial abuse, general and enduring 'power of attorney' provisions, family agreements, barriers to older Australians accessing legal services and discrimination. This inquiry involves the consideration of Commonwealth and state legislation as well as elements of policy review.

Committees are supported by secretariats staffed by parliamentary officers employed under the *Parliamentary Service Act 1999*. Secretariat staff are required to provide 'professional advice and support for the Parliament independently of the Executive Government of the Commonwealth'.<sup>16</sup> In contrast, Commonwealth public servants are employed under the *Australian Public Service Act 1999* and are required to be responsive to the government of the day and to work 'within the framework of

<sup>13</sup> The government has made an undertaking to respond to reports within three months of tabling.

<sup>14</sup> Liaison Committee of Chairs and Deputy Chairs (2007) *General principles for the administration of parliamentary committees*.

<sup>15</sup> Halligan et al. (2007) *Parliament in the Twenty-first Century*, pp. 62-63.

<sup>16</sup> *Parliamentary Service Act 1999*, s. 10 (1) (a)

Ministerial responsibility to the Government, the Parliament and the Australian public'.<sup>17</sup> Committee Secretaries usually have responsibility for two or three standing committees, and each committee has a staff allocation nominally consisting of the Secretary, an inquiry secretary, a research officer, and administrative support. While secretariat staff may not necessarily have broad-ranging policy evaluation expertise, they often have policy experience in government departments and skills in project management, research, analysis, written communication and relationship building – skills that are necessary for policy evaluation. Secretariats may not be experts in the particular subject matter under review, and some inquiries into particularly complex or specialist topics have involved the services of secondees who possess the necessary expertise (often from the departments whose activities are under review). A recent Legal and Constitutional Affairs Committee review of copyright legislation in relation to the Australia-United States Free Trade Agreement, for example, benefited from the input of a seconded advisor from the Commonwealth Attorney-General's Department.<sup>18</sup>

### **Policy evaluation**

A minimal working definition of policy evaluation is the 'careful assessment of the merit, worth and value of content, administration, output and effects of ongoing or finished government interventions, which is intended to play a role in future, practical action situations'.<sup>19</sup> Conventional understandings of policy evaluation usually focus on assessing the effectiveness of a particular program in delivering outcomes and determining the worth or value of the initiative according to the initial policy objective. Such outcome or impact evaluations involve custom purpose research designs, the collection and analysis of quantitative data, and are best applied after the full implementation of the program in question.<sup>20</sup> All new policies at the Commonwealth Government level are now required to include an evaluation strategy.<sup>21</sup> Investigative inquiries of general purpose standing committees are *evaluative* inquiries in that they are about the 'production of knowledge based on systematic inquiry to assist decision making'.<sup>22</sup> These inquiries, however, take a much broader approach than assessing the relationship between program outcomes and policy objectives. While committee inquiries can contribute to the various stages of the policy cycle, they do not neatly fit into the program evaluation paradigm of the conventional policy cycle.

The model of evaluative inquiry that best matches the objectives and processes of general purpose standing committees is that of proactive evaluation. The epistemological basis for proactive evaluation is the assumption that 'what is already known should influence action'.<sup>23</sup> Evaluators, according to this approach, have the task of harnessing the existing knowledge and research from a range of stakeholders

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<sup>17</sup> *Australian Public Service Act 1999*, s. 10 (e)

<sup>18</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs (2006) *Review of technological protection measures exceptions*, p. xi.

<sup>19</sup> Vedung, E. (2006) 'Evaluation Research', in Peters, B. G. & Pierre, J. (eds.) *Handbook of Public Policy*, Sage, London, p. 397.

<sup>20</sup> Owen, J.M. (2006) *Program evaluation: forms and approaches*, Allen & Unwin, Crows Nest, p. 254.

<sup>21</sup> Stewart, J. & Ayres, R. (2001) 'The public policy process', in Aulich, C., Halligan, J. & Nutley, S. *Australian Handbook of Public Sector management*, Allen & Unwin, Crows Nest, p. 28.

<sup>22</sup> Owen *Program evaluation: forms and approaches*, p. 18.

<sup>23</sup> Owen *Program evaluation: forms and approaches*, p. 61.

including academics, administrators, program staff and end-users. The approach particularly values the perspectives of practitioners in relation to how they understand the matters under review. The consideration of the evaluation material involves a synthesis of the mainly qualitative information that is gathered.<sup>24</sup>

Different evaluation techniques are required for different programs and policy areas and for different evaluation objectives (for example whether the evaluation aims to clarify program design and purposes, refine monitoring and accountability mechanisms, or learn about what works and why). Possible limitations on the effectiveness of committees as evaluators include:

- Differing levels of interest in an inquiry topic within a committee
- The potential for disagreement within a committee regarding evidence, conclusions or recommendations
- A lesser degree of knowledge, technical expertise or independence compared to professional practitioners
- A lack of access to relevant data or an incapacity to perform particular types of data analysis
- Obedience to political imperatives and allegiances.<sup>25</sup>

Any of these factors can mean that committee reports may not always reach the potential of work performed by skilled team policy evaluators. Committee inquiries also face an additional problem by lending themselves to the dominant paradigm of policy. This 'paradigm presents government as a process of authoritative problem solving: there are actors called governments, they confront problems and make choices, which are then enforced with the coercive power of the state'.<sup>26</sup> With broad terms of reference and the authority of the Australian Parliament, committee inquiries can raise the expectations of participants (witnesses) for policy change, when in fact they only have a somewhat limited power to make recommendations to the government.

Despite its potential limitations, however, the parliamentary committee approach to evaluation has a number of advantages, including that the evaluation takes a broad perspective of the policy landscape by undertaking wide consultation through a public submission process and public hearings. Some committees have encouraged the participation of members of the public through the use of 'community statements' sessions and 'public forums' at public hearings. Such public forums enable the public to have their say on the inquiry topic as 'interested' end users of policy. Public forums are often structured in a format that is less formal than the official public hearing proceedings. By using public forums, committees can hear personal stories and anecdotes from people who have not made a submission but have considered comments to make.<sup>27</sup> Witnesses are afforded the protection of parliamentary privilege,

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<sup>24</sup> Owen *Program evaluation: forms and approaches*, p. 169.

<sup>25</sup> Cash, G. (2007) 'Committees: Investigations, Privilege and related matters', Australia and New Zealand Association of Clerks-at-the-Table Professional Development Seminar Perth, Western Australia, 23 January.

<sup>26</sup> Colebatch, H. K. (2005) 'Policy analysis, policy practice and political science', *Australian Journal of Public Administration*, Vol. 64 (3), p. 14.

<sup>27</sup> For example, 40 people made statements in the 'community statements' sessions for a recent inquiry into breastfeeding, House of Representatives Standing Committee on Health and Ageing (2007) *The best Start: Report into the inquiry into the health benefits of breastfeeding*.

and submissions and transcripts of hearings are normally authorised for publication by committees.<sup>28</sup>

The protections and the transparency of parliamentary committee work is one of its strengths. Agencies whose activities are under review have access to committee evidence, and, in the case of public hearings, that access is concurrent with the access of the committee. Agencies need not wait until a report is tabled to respond to matters raised in an inquiry and can take immediate action where the evidence before the committee indicates that such intervention is warranted (the ‘rule of anticipated reactions’). The recent Joint Standing Committee on Migration report on arrangements for overseas skills recognition provides an example of a government department responding to issues raised in the inquiry evidence prior to the production of the Committee’s report.<sup>29</sup>

The evaluative inquiry model utilised by committees is also used by a number of other agencies conducting investigations including the Productivity Commission, Royal Commissions, Law Reform Commissions and policy reviews by government departments. For example, the Review of Settlement Services for Migrants and Humanitarian Entrants undertaken by the (then) Department of Immigration and Multicultural and Indigenous Affairs adopted the committee model of evaluation. Guided by an interdepartmental steering committee, the department received input by way of public consultations, attended by over 1000 people, and also from more than 140 written submissions.<sup>30</sup> The review made 61 recommendations and attracted a government response of a \$100.9 million package of measures to support the implementation of settlement initiatives. While recognised as a success, the review was also criticised for not being undertaken by a disinterested external evaluator, and for not providing an opportunity for refugees to contribute without the fear of the possible adverse consequences of speaking out.<sup>31</sup> Had a parliamentary committee conducted the inquiry, the interests of witnesses giving evidence would have been protected under the *Parliamentary Privileges Act 1987*.<sup>32</sup> The treatment of evidence and parliamentary privilege is discussed further below.

## Reflections on evidence

One of the special characteristics of parliamentary committees and their treatment of evidence is parliamentary privilege. Section 49 of the Australian Constitution provides that the ‘powers, privileges, and immunities’ of each House, Members and committees ‘shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom’. At the time of federation, the powers, privileges, and immunities of the House of Commons were based on Article 9 of the British Bill of Rights 1688 which provides that ‘the freedom

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<sup>28</sup> Committees have the ability however to receive submissions and oral evidence on a confidential basis where publication would be inappropriate.

<sup>29</sup> Joint Standing Committee on Migration (2006) *Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing*, p. xxxiv.

<sup>30</sup> Department of Immigration and Multicultural and Indigenous Affairs (2003) *Review of Settlement Services for Migrants and Humanitarian Entrants*.

<sup>31</sup> Phillips, M. (2005) ‘Refugee Settlement Services: Beyond the Settlement Services Review’, *Migration Action*, Vol. 27 (1), p. 23.

<sup>32</sup> Standing order 256 also states ‘Any witness giving evidence to the House or one of its committees is entitled to the protection of the House in relation to his or her evidence’.

of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. Following a Joint select committee inquiry on parliamentary privilege, the *Parliamentary Privileges Act 1987* was passed to formalise past practice and clarify the law in this area. Section 16 (2) of that Act defines committee activity as legal proceedings in Parliament:

**“proceedings in Parliament”** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee ...

The *Parliamentary Privileges Act 1987* also covers the protection of witnesses, unauthorised disclosure of evidence, immunities from arrest and attendance before courts, and parliamentary privilege in court proceedings. The Act further delineates the role of the parliament and courts in dealing with matters of parliamentary privilege while leaving some related issues to be resolved.<sup>33</sup> The Act clarifies the power of each House to resolve and impose penalties (imprisonment and fines) in relation to breaches of privilege - the only remaining judicial-type power of the Australian Parliament. The UK House of Commons itself has not undertaken judicial work since 1399 (aside from its power to punish for contempt of Parliament),<sup>34</sup> and in 2008 the House of Lords will relinquish its judicial role with the establishment of the new United Kingdom Supreme Court.<sup>35</sup>

The nomenclature common to both the Parliament and the courts - evidence, witnesses, hearings, privilege, contempt and so on - stems from many centuries of Westminster experience as documented by Erskine May in the nineteenth century.<sup>36</sup> Parliamentary committees however are not obliged to follow the formal law of evidence that applies to the courts and can use evidence that would be inadmissible in court proceedings. Committees can also compel answers from witnesses that could not be compelled in court.<sup>37</sup>

The treatment of evidence by parliamentary committees provides an interesting contrast to the use of evidence in the courts and in government policy formulation. In court proceedings, the law of evidence prescribes tight restrictions on the use of evidence in relation to the principles of relevance, admissibility and probative value. Evidence is assessed according to the legal principles of the treatment of evidence, the most fundamental principle being that 'legal fact finders should reason rationally'.<sup>38</sup>

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<sup>33</sup> Griffith, G. (2007) *Parliamentary Privilege: Major Developments and Current Issues*, NSW Parliamentary Library research Service, Background Paper No. 1/07.

<sup>34</sup> Lock, G. (1998) 'Statute law and case law applicable to parliament', in Oliver, D. & Drewry, G. (eds.) *The Law and Parliament*, Butterworths, London, p. 65.

<sup>35</sup> House of Lords (2005) 'The Judicial Work of the House of Lords' Briefing paper

<sup>36</sup> May, T. E. (1893) *A treatise on the law, privileges, proceedings and usage of Parliament*, 10<sup>th</sup> edition, Butterworths, London; Reid. & Forrest *Australia's Commonwealth Parliament 1901-1988*

<sup>37</sup> Campbell, E. (2003) *Parliamentary Privilege*, The Federation Press, Leichardt, p. 157.

<sup>38</sup> Gans, J. & Palmer, A. (2004) *Australian Principles of Evidence*, 2<sup>nd</sup> edition, Cavendish Australia, London, p. 2.

In 1972 the then Commonwealth Attorney-General and Solicitor General considered the application of the law of evidence in parliamentary committee practice and came to the following conclusion:

Our view is that to do this would unduly hamper the investigation of facts by committees. To require it, would, we think, over-legalise committee proceedings and lead to endless objections prompted by counsel.<sup>39</sup>

In the context of government policy, evidence in policy making gained prominence in the 1990s with the adoption of 'evidence based policy' as part of New Labour's pragmatic Third Way approach in the UK.<sup>40</sup> The Blair Government's *Modernising Government* White Paper emphasised learning from experience and 'policy making as continuous learning processes, with improved use of evidence and research, pilot schemes, evaluation and feedback'.<sup>41</sup> Evidence based policy is in fact a key approach within proactive evaluation that values systematic inquiry and qualitative interpretation of evaluation material.<sup>42</sup> Evidence based policy originally emerged from evidence based medicine in the UK, which attempts to use scientific standards of evidence to appraise research findings for employment in clinical practice. Evidence based policy is the application of the same scientific principles to policy making and evaluation in the social world.

Marston and Watt have identified a number of policy areas where evidence based policy has been adopted in Australian government practice including health, family services and education policy.<sup>43</sup> In Australia, evidence based policy is part of the broad framework of 'new public management' reforms which also include an increasing focus on enhancing managerial effectiveness and efficiency, whole-of-government coordination, contractualisation, budget outputs and outcomes and performance accountability.<sup>44</sup> Evidence tends to be viewed in the evidence based policy process as unproblematic, neutral and objective. Critics of evidence based policy warn that not all policy making can be reduced to the 'technical calculation of effectiveness'.<sup>45</sup> As agencies collect more evidence on 'what works and why' and refine policy approaches it is arguable that there has been a corresponding increase in what Uhr and Mulgan describe as the 'quantity of government accountability' in terms of the performance and operations of government.<sup>46</sup> However, the 'quality of government accountability' resulting from the proliferation of 'evidence' is questionable. Parliamentary committees have voiced concern about the usefulness of

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<sup>39</sup> Greenwood, I. J. & Ellicott, R. J. (1972) *Powers over and Protection Afforded to Witnesses Before Parliamentary Committees*, Commonwealth of Australia, Canberra, p. 178.

<sup>40</sup> Sanderson, I. (2002) 'Making Sense of 'What Works': Evidence Based Policy Making as Instrumental Rationality?' *Public Policy and Administration*, Vol. 17 (3) Autumn, pp. 63.

<sup>41</sup> Cabinet Office (1999) *Modernising Government*, Cm 4310, The Stationary Office, London.

<sup>42</sup> Owen *Program evaluation: forms and approaches*, p. 175-177.

<sup>43</sup> Marston & Watts, 'Just the facts Ma'am': A critical appraisal of evidence based policy'

<sup>44</sup> Gregory, R. & Painter, M. (2003) 'Parliamentary Select Committees and Public Management Reform in Australasia: New Games or Variations on an Old Theme?' *Canberra Bulletin of Public Administration*, No. 106, p. 63.

<sup>45</sup> Marston & Watts, 'Just the facts Ma'am': A critical appraisal of evidence based policy', p. 44.

<sup>46</sup> Uhr, J. & Mulgan, R. (2006) 'Reframing the debate of accountability under the Howard government', draft paper prepared for the conference on 'John Howard's Decade' ANU Canberra, 3-4 March 2006, p. 4-5.

such performance accountability measures of the new public management budget reforms.<sup>47</sup>

The House of Representatives Standing Orders refer to evidence as:

...the information (whether or not confidential) provided by witnesses (whether or not under oath or affirmation) and inquiry contributors, to the House or a committee. It includes:

- (i) oral or written information provided by a witness in response to questions of the House or a committee, as relevant; and
- (ii) written submissions from inquiry contributors which address the terms of reference of a committee's inquiry and which have been formally accepted by the committee.<sup>48</sup>

In the case of written submissions it is up to a committee to determine what should be received as evidence in reference to its inquiry terms of reference. A committee may authorise evidence for publication in full, in part or retain the whole or part of the evidence as confidential. Under Standing Order 242 all evidence, committee documents including proceedings and reports must remain confidential until they are reported to the House or authorised for publication by a committee. What is defined and accepted as evidence by a committee can potentially be very broad, ranging from documents to photographs to electronic media.

The treatment of evidence, once it has been received as such by a committee, is subject to the will of the committee. Committees generally recognise that a rational treatment of evidence will produce the most reasoned and credible conclusions (the conventions of evidence based policy). The most useful evidence is that which is relevant to the terms of reference of the inquiry provided by disinterested and authoritative sources. The evidence of interested parties is also very useful although it is important for interested parties to disclose their interests. It is up to the committee secretariat to advise the committee on the best range of potential witnesses to an inquiry; a good sampling of witnesses typically includes academics with different views, service provision agencies, government departments, clients, industry lobby groups and recognised experts.

There is a general lack of guidance on the issue of relevance from the committee practice publications (noted above). House of Representatives *Practice* refers to relevance in its opening section on committees by stating that it is part of the principal purpose of committees to draw up 'reasoned conclusions'.<sup>49</sup> Generally evidence should be relevant to the terms of reference. Questions should be relevant to the terms of reference in order to compel an answer where an answer is not forthcoming. Committee findings and recommendations should be relevant to evidence to maintain the credibility of a report. Under the direction of committee Chairs, secretariats produce draft reports through a 'logical-synthesis' treatment of evidence consistent with the evidence based policy approach of proactive evaluation.

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<sup>47</sup> Gregory, R. & Painter, M. (2003) 'Parliamentary Select Committees and Public Management Reform in Australasia, p. 69.

<sup>48</sup> House of Representatives (2006) *Standing and Sessional Orders as at 29 March 2006*, House of Representatives, Canberra, p. 6.

<sup>49</sup> Harris, I (ed.) (2005) *House of Representatives Practice*, p. 621.

## Contribution to public policy

Following an analysis of the 3,220 committee reports produced by the Parliament between 1970 – 1999, Halligan, Miller and Power contend that an attempt to quantify, disaggregate and evaluate the impact of the work of parliamentary committees would produce ‘ambiguous and inconclusive’ findings.<sup>50</sup> This is due to the political environment in which committees form conclusions, the scope and range of recommendations (from the broad to the technical), the ‘rule of anticipated reactions’ and the more intangible influence of reports on experts and policy debates. Aside from the question of the impact on government policy, committees perform a function in engaging the community in the policy process, particularly in terms of agenda setting, policy administration and performance review.

The investigative function of general purpose standing committees dominates the committee work of the House. Of the 307 reports produced by House committees between 1970 - 1999, 288 have been investigative, whereas scrutiny and legislative appraisal have characterised the majority of Senate committee reports. House committees generally appear to have a stronger record of consensus than Senate committees, although there is debate about the advantages and disadvantages of disagreement in committees. The Senate scrutiny and legislative appraisal reports tend to have a higher rate of dissent. The investigative inquiries of Senate committees tend to be overshadowed by their scrutiny and legislative appraisal work.<sup>51</sup>

House standing committees typically receive references from the relevant Minister. References from Ministers are more likely to be on non-controversial policy or administrative areas.<sup>52</sup> These references can make it easier for members to take a more non-partisan approach and focus on improving the status quo. In undertaking inquiries referred by Ministers, general purpose standing committees of the House have the basis for a ‘committee ethos’ of complementing the work of the executive by refining and adding value to existing policy. Such an ethos is the first criteria of what Marsh describes as a ‘strong’ committee system.<sup>53</sup>

A recent example of a major House committee inquiry was the Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation, the report of which, *Every picture tells a story*, was tabled in December 2003. Referred by the Attorney-General and Minister for Youth Affairs, the inquiry built on a previous report by the Family Law Pathways Advisory Group and was tasked with investigating post-separation parenting, contact with other persons and the existing child support formula. The committee undertook inspection visits, received 1,716 submissions to the inquiry - one of the highest volumes of submissions ever recorded for a House committee - and questioned 166 witnesses at public hearings in major regional and metropolitan centres across Australia.

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<sup>50</sup> Halligan et al. (2007) *Parliament in the Twenty-first Century*, p. 222.

<sup>51</sup> As Halligan et al. (2007) observe, ‘significant reports’ listed on the Senate’s website does not include a standing committee report post 1987. See:

<http://www.aph.gov.au/Senate/committee/history/index.htm> (accessed 7 August 2007).

<sup>52</sup> ‘Innocuous’ inquiries are also more likely to be undertaken by Senate committees now that the government has the majority in the Senate. See Evans, H. (2006) ‘The government majority in the Senate: A nail in the coffin of responsible government?’ Australasian Study of Parliament Group Victorian Chapter General Meeting 3 October 2006, p. 3.

<sup>53</sup> Marsh, I. (1995) *Beyond the two party system*, p. 262.

A further 188 people contributed to the inquiry in 'community statements' sessions. The *Every picture tells a story* report made a total of 29 recommendations.<sup>54</sup> In its response to the report, the government announced the most significant range of family law reform measures in 30 years. Subsequent to this inquiry the government referred an exposure draft of the resulting family law legislation to the House Standing Committee on Legal and Constitutional Affairs. The legislation was also referred to a Senate committee prior to its passage. Overall, the process led to the establishment of the new Family Relationship Centres and a range of other law reform measures in a \$397 million government commitment.

## **Conclusion**

Twenty years on from the establishment of a comprehensive committee system in the House of Representatives, general purpose standing committees of the House have made a contribution in their approach to review and strategic investigations and in adding value to the work of the executive. The evaluation methodology of these committees also has the potential to provide a sound broad-based assessment of the policy landscape. Possible areas for further investigation include:

- The treatment of evidence once it has been received by committees and whether there should be stronger guidance regarding the use of evidence in formulating conclusions
- The value of evidence from 'interested' witnesses such as members of the public who contribute 'community statements' and participate in 'public forums'
- Whether House of Representatives committees have particular strengths in investigating/understanding policy and legislative outcomes at the practical day to day level in the community
- Whether the three phase inquiry process can predispose committees to certain types of findings
- What is the value of the more intuitive approach to the assessment of evidence which Members of Parliament might employ
- Whether there is a stronger case for using the rules of evidence in committee proceedings given the longstanding establishment of the committee system and the potential for the politicisation of committee work
- Whether the current Standing Orders provide sufficient coverage for the informal activities of committees and enough flexibility for committees to move away from the conventional inquiry process and utilise other methodologies.

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<sup>54</sup> House of Representatives Standing Committee on Family and Community Services (2003) *Every picture tells a story*, Canberra.