Parliaments' reputation as the 'pre-eminent' institution for defending rights: Do parliamentary committees always enhance this reputation?

(draft paper for APSG conference, October 2016)

Laura Grenfell

Introduction

In 1610, James Whitelocke, a politician and future Justice of the Court of King's Bench, asserted that 'the Parliament is the storehouse of our liberties' and he argued on this ground that the Westminster parliament was superior to that of other nations. His son Bulstrode Whitelock later described parliaments as 'the defenders of [the people's] liberties'.[1] In line with the theme of this conference, the restoration and enhancement of parliament's reputation, this paper examines the performance of parliament as a rights defender and as 'a storehouse of our liberties'. Reputation is clearly contingent on performance and for parliament, what is at stake in terms of its reputation as a rights defender is its ability to maintain primary responsibility for defending rights. Unless parliament adequately performs its role of defending rights in a manner which is explicit, accessible and transparent to the public, bill of rights advocates in many Australian jurisdictions may generate stronger public support for their call for the courts to formally share responsibility for defending rights.

In considering parliament's performance in protecting rights, my paper focuses on parliamentary committees. The aims of these committees broadly have been set out as acting as 'parliamentary watchdogs', 'safeguards', a forum for 'unprejudiced' nonpartisan discussion and also 'a means for enhancing the standing of members of Parliament .. for their informed contribution'.[2] In this paper I do not consider how parliamentary committees enhance the reputation of individual members but how, and whether, parliamentary committees, particularly rights-scrutiny committees for bills, enhance the reputation of parliament as a whole. I argue that rights-scrutiny committees at the state level can do more to enhance parliamentary reputation for rights protection[3] through increased public engagement which parliament itself must encourage and facilitate.

'Perceptions of Parliament'

In the absence of empirical research which could help shed some light on how the community perceives the reputation of parliament, I draw on John Warhust's view:

> Perceptions of parliament are mixed and often contradictory. They are often based on *ignorance* and are just as likely to be *subjective* as *objective*. They can be mere opinions, sometimes with a political purpose. In other words, they can be true or false; they can be media constructs for the purpose of selling newspapers; .. Nevertheless, they must be recognised and assessed.[4]

Warhust continues that 'perceptions can be manufactured to make a political point' and as an example he offers an analysis of parliament's reputation in relation to rights protection:

> When a [federal] Bill of Rights was mooted [in 2009/2010] .. it was suggested … that *parliament was the pre-eminent defender of rights and freedoms above any other institution.* … parliament retains an image as defender of the rights of the community. .. [This perception] relies on the belief that parliament is free of executive control.[5]

In 2010 both major parties rejected the 2009 recommendation made by the Brennan Committee to enact a federal Human Rights Act and in part this was on the premise that parliament adequately protects human rights. At the same time they agreed that parliamentary mechanisms could be strengthened through the establishment of the Parliamentary Joint Committee on Human Rights (PJCHR). At the federal level, both major parties have been involved in manufacturing the perception of parliament as the 'pre-eminent' rights defender for the community. And it is clearly in their interest to do so.

Drawing on Warhust's analysis of public perception, we need to consider various possibilities to explain how parliament has succeeded in building a reputation for being a rights defender:

- Ignorance – There is some evidence that many Australians are ill informed about rights protection in Australia: a 2006 survey indicated that over 60% of Australians believed we already had a federal bill of rights.[6]
- Subjective – Arguably many politicians would like to be seen as the pre-eminent rights defenders and possibly this motivates some to stand for election. For example, in 2011 the current Attorney-General Senator George Brandis, then in opposition, claimed: 'For us in the Liberal Party, the protection of human rights is core business. It is why we were formed. It is why we come to parliament every day. It is who we are. .. We are the human rights party.'[7]

- Objective – A factual basis for believing that the pluralistic membership of parliaments means they are best placed to systematically defend rights and that they are well informed on rights implications and regularly exercise their powers to defend rights.

Once again, Brandis is a well-known political proponent of this last view. In 2009 he asserted that 'Parliaments are the proper institutions under our system to decide what rights should be further developed or qualified by competing interests. Parliaments are the proper institutions to decide when free speech becomes pornography, the circumstances when security agencies should be able to limit an individual's liberty, or the circumstances when public assemblies jeopardise public order.'[8] Like other politicians such as Bob Carr, Brandis is concerned that political decision making should not be transferred from the Parliament to the judiciary. While he describes Parliament as an 'open forum', 'elected and accountable', he does not elaborate on how this institution makes decisions that have serious rights implications or whether these decisions should always be openly justified.[9] However, it is likely that he shares the view of former Prime Minister Menzies that the doctrine of responsible government is 'the ultimate guarantee of justice and individual rights'[10] which obviates the need for any formal bill of rights.

John Uhr observes: 'Traditionally, leading politicians in systems of responsible government held that parliaments were the most reliable protectors of rights, but over recent decades this presumption has been challenged by judicial and other-extra-parliamentary authorities'.[11] In 1955 future Prime Minister Whitlam asserted that 'Parliament alone can give equality of opportunity and thereby increase liberty for all. .. The forum which Parliament provides is the best guardian of our liberties.'[12] Like Menzies, Whitlam articulated an orthodox view at the time before this view became contested in the common law world. In unpacking these views, Uhr helpfully dissects what is meant by parliament and he persuades that it is difficult to pin down what is meant by this term because parliament cannot be understood in a monolithic sense. In Uhr's view, the dispersed and diverse nature of parliament prevents power from being consolidated which protects against arbitrary government and this in turn, protects civil liberty. Uhr argues that 'Parliament has a key role in maintaining civil liberty' and furthermore he asserts that, 'the parliamentary contribution to a regime of civil liberty *is or should be* quite fundamental'.[13] I share his view that the parliamentary contribution to a regime of civil liberty should be fundamental and hence this paper considers how this contribution can be enhanced.

'Parliamentary rights-protectors'

At the federal level Uhr identifies two 'parliamentary rights-protectors'.[14] The first is the Senate which he believes has had some success in securing accountable government. It does this through demanding that the Lower House openly demonstrate that executive decisions and government bills are informed and justified, as opposed to being arbitrary.

The second related group of 'parliamentary rights-protectors' are the senate rights-scrutiny committees, namely the Senate Standing Committee on Regulations and Ordinances (SSCRO) founded in 1932 and the Senate Standing Committee for the Scrutiny of Bills (SSCSB) set up in 1982 with almost the same remit as the SSCRO. These mechanisms perform pre-enactment legislative scrutiny. Uhr refers to these two committees with the label 'rights watchdogs'[15] even though the remit of the SSCRO was written before the 'age of human rights', the post WWII era, which means that neither committee has a remit that specifically refers to human rights. These remits are interpreted to cover traditional common law rights and at various times this interpretation has been expanded to cover human rights.[16] My paper looks at this second group of 'parliamentary rights-protectors' but it examines those operating in state parliaments, which receive little academic attention, in a bid to understand their connection to the reputation of parliament as a rights defender. Some of these committees are closely modelled on and influenced by the SSCSB and its remit even though none of them are upper house committees like the SSCSB. In four state/territory parliaments (ACT, NSW, Qld and Victoria) these scrutiny committees are empowered to systematically scrutinise all bills for their rights implications but it is important to note that these mechanisms are non-existent in four Australian states/territories (South Australia, Western Australia, Tasmania and Northern Territory).

These scrutiny committees are considered to sit at the heart of our 'democratic culture of justification'.[17] Where parliament introduces laws that limit long-held and fundamental rights and freedoms, scrutiny committees are aimed at placing pressure on parliament to be transparent in its justification for such limitations and to publicly debate these justifications. Scrutiny committees contribute to parliamentary protection by scrutinising bills for their rights implications and by attempting to moderate any rights limitations through making recommendations for amendments or simply 'alerting' parliament to an issue. Critically this scrutiny process is effective when it is systematic and thus it should ideally include highly contentious bills that are likely to impact most heavily on rights and freedoms.

Uhr's work helps us to consider the multifaceted nature of parliamentary reputation and the interplay between internal and external reputation. In his scrutiny of the SSCRO, he argues that the Committee's systematic work has improved the work and reputation of the Senate, in particular in its relationship with parts of government. He explains that the SSCRO's rigorous standards have been supported by central agencies of government, such as the Attorney General's Department, which in turn have come to broadcast and defend the standards across government.[18] Thus within government the SSCRO has developed a reputation for defending rights standards, albeit ones based on common law rights, and in doing so it has enhanced the rights-defending reputation of the Senate and Parliament as a whole. In this manner the two 'parliamentary rights protectors' identified by Uhr are closely intertwined. But in itself the SSCRO enjoys a very low public profile even though it is considered the 'foundation stone' or 'pioneer'[19] of the senate committee system which, in turn, has influenced the establishment of parliamentary committee systems across Australian parliaments.

Few Australians working outside government and parliamentary circles are likely to be aware of the existence of these committees. The media shows minimal interest in these committees; even in the most recently established PJCHR.[20] Scrutiny committees rarely engage directly with the public. For some committees such as the SSCRO this lack of public engagement makes sense as it performs the highly technical task of examining regulations and ordinances. But for committees scrutinising bills for their rights implications, which are the focus in my paper, I argue that they need to reconsider the level to which they engage with the public if parliaments are to enhance their reputation as rights defenders.

Parliamentary Committees and Rights-scrutiny as a means of Restoring and Enhancing Parliamentary Reputation

While parliamentary committees, particularly scrutiny committees, enjoy a low public profile, they are often called on in times of crises when government integrity or competence comes under fire. Parliamentary committee systems are often regarded as a means of restoring the reputation of parliament because they are understood as integral to parliament's ability to keep the Executive accountable. In these situations parliaments have used the establishment or strengthening of parliamentary committees as a means of assuring the public that Parliament is in control and not a mere rubber stamp. The state of Queensland where government corruption became endemic in the 1980s offers a strong example. One of the findings of the 1987–1989 Fitzgerald Inquiry[21] was that the ad hoc parliamentary committees in Queensland's unicameral

parliament had not been operating to provide an effective and independent check on the Executive (in part because they were non-statutory bodies with no resources). It recommended that a rigorous system of parliamentary committees be established though legislation, including a committee with a rights-scrutiny mandate, the Scrutiny of Legislation Committee (SLC), to oversee the pre-legislative process involving a new set of legislative standards, the Fundamental Legislative Principles (FLP), introduced in 1993. These FLPs are similar to the rights remit of the SSCSB in that they invoke common law rights and do not specifically refer to 'human rights' but at the same time they are more expansive than the SSCSB remit.

This focus on parliamentary committees as a means of restoring the reputation of parliament was also seen in South Australia after the State Bank collapse as well as Western Australia as part of the recommendations made by the WA Inc Inquiry report. However, in these two parliaments no move was made to establish a rights-scrutiny committee and to this day neither parliament has a committee that systematically scrutinises all bills for their rights implications.

Defending the Rights Reputation of State Parliaments

When the rights-reputation of parliament has come under question, some state parliaments have used rights-scrutiny committees as a means of rejecting calls for a bill of rights. This can be seen in both Queensland and NSW.

In Queensland, a 1998 Inquiry was held into a recommendation made in 1993 that the state adopt an enforceable bill of rights. The 1998 Inquiry concluded that such a path was not necessary in part because Parliament had strengthened its committee system and set up a pre-legislative process involving the FLPs. The Inquiry Report found:

> A new pre-legislative process which ensures, among other matters, that Queensland legislation has sufficient regard to individuals' rights and liberties is now an integral part of Queensland's legislative process. Additionally, Parliament's ability to scrutinise aspects of government policy and decision-making has been bolstered with a more developed and comprehensive parliamentary committee system.[22]

The logic here is that the operation of the parliamentary scrutiny committee (here the SLC), in conjunction with the pre-legislative process, alleviates the need for any other institution to share the responsibility for defending the rights of the community. The Inquiry Report did not

delve into whether there was any evidence that this scrutiny role was tangibly assisting parliament to be better informed of rights implications or whether the existence of the SLC meant that Parliament was better equipped than before to defend the rights of the community.

Queensland's pre-legislative rights-scrutiny process was again raised by non-government members this year in rejecting a call for a human rights act for Queensland as part of the 2016 Inquiry conducted by the Queensland Legal Affairs and Community Safety Committee (LACSC). In the 2016 Inquiry Report, non-government members of the LACSC described this mechanism as functioning 'well' and rated it as 'effective'[23] without offering any evidence in support. In contrast, proponents of a bill of rights described the FLP rights remit as 'relatively nebulous' and offering a 'thin' form of scrutiny in comparison to Victoria's *Charter of Rights and Responsibilities* and the ACT's *Human Right Act*.[24] In particular they argued that the FLPs are not widely understood in the community as a mechanism which assists Parliament in defending human rights because they do not specifically refer to 'human rights'.[25]

In NSW a 2001 Inquiry into whether the state should adopt a bill of rights led to the establishment of a rights-scrutiny committee, the Legislation Review Committee (LRC). The 2001 Inquiry of the Standing Committee on Law and Justice acknowledged that the NSW Parliament's reputation in defending rights was lacklustre within the community as well as with the executive:

> Parliament has a responsibility to protect human rights. This responsibility is not always exercised effectively. The NSW Parliament has at times been responsible for neglecting to address ongoing needs of disadvantaged groups and for passing legislation which breaches human rights standards. Legislation is prepared within bureaucracies without any measurement against human rights standards and then passes through parliament again without any, or at most ad hoc, discussion of such standards.

Clearly the view of the Committee was that a systematic process of rights scrutiny of all bills was the best means of enhancing parliament's reputation and also the best means of raising Parliament's awareness of its responsibility to observe and defend human rights.[26] Despite the Committee's understanding that parliamentary protection of human rights needed some enhancement in New South Wales, it recommended that the LRC be given the same common law rights remit as the federal SSCSB and thus failed to include any specific mention of 'human rights' into the new parliamentary process. Presumably the Inquiry believed that this traditional

common law mandate, described by one human rights expert as 'meaningless',[27] would nevertheless spell human rights to parliamentarians, government agencies and the public.

'An Entrenched Culture of Ignoring'

Given that politicians such as Bob Carr and George Brandis are generally quick to assert that parliament is the best institution to defend rights, and they are willing to set up rights-scrutiny committees to enhance or restore the rights-reputation of parliament, the question is why parliaments routinely underperform as rights-defending institutions.

The very mixed reputation of the NSW LRC as a rights defender is a good example. This reputation derives in part from the fact that both major parties, when in government, have strategically decided to fast-track certain controversial bills which have extensive rights implications. This timing has forced the LRC to perform its scrutiny *after* the bill has been enacted, undermining its moderate reputation with stakeholders and illuminating the paucity of its influence in parliament. In 2006 four bills with significant rights implications were passed without allowing time for committee scrutiny including the *Crimes (Serious Sex Offenders) Act 2006*[28] while in 2009 the Parliament fast-tracked its anti-bikie bill, the *Crimes (Criminal Organisations Control) Act 2009*.[29] Pointing to the fast-tracking of these two particular laws, the NSW Bar Association has criticised the rights-scrutiny process as being 'ineffective in influencing the amendment of legislation in a number of cases where the bill has been particularly politically contentious'.[30] While a number of controversial bills are fast-tracked, others are enacted without any acknowledgment of the concerns raised by the LRC or justification articulated on the floor of parliament for the limitation of common law rights. An example is the *Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009* which extended search and entry powers initially introduced in counter-terrorism laws.[31] The former Chair of the LRC, Allan Shearan MP, commented in 2009: 'Certainly it has been the NSW Legislation Review Committee's experience that bills are rarely changed by the parliament once they are introduced into the House as a result of the Committee's comments, even when criticisms made in its *Legislation Review Digest* are widely quoted in the media.'[32] This is supported by a study conducted by McNamara and Quilter which analysed the work of the LRC in regard to criminal law bills introduced from 2010 to 2012. Given the vast gulf between the LRC's reports and the paucity of parliamentary debate, they conclude that the

NSW Parliament has 'an entrenched culture of ignoring and deflecting the Committee's advice'.[33] Furthermore:

> The existence and work of the Committee creates the *appearance* of genuine pre-enactment scrutiny (.. generally the Committee does engage in high-quality and apolitical analysis of bills of the sort that a law-making process with integrity requires) but the appearance of scrutiny is rendered a façade by routine parliamentary disregard for the Committee's findings and recommendations.[34]

Thus we see that the NSW Parliament routinely undermines its own reputation by failing to uphold and respect a 'culture of justification'.

In regard to the LRC's reputation with the executive government, the LRC has repeatedly acknowledged that its own effectiveness 'largely rests on the extent to which it encourages the thorough consideration of the issues under its terms of reference *in the preparation of Bills*'.[35] Unfortunately Shearan's commentary on the role of the LRC and its Digest does not shed light on whether bills continue to be 'prepared within bureaucracies without any measurement against human rights standards' or whether the executive government assists the LRC in broadcasting and defending/implementing its standards.[36] However, there is a danger that the parliamentary 'culture of ignoring' the LRC and its 'routine parliamentary disregard' for the LRC's advice may spread to executive government.

Public Involvement in the Scrutiny Process

For a comparison, we now turn to Victoria's Parliament which in 2006 enacted the *Charter of Rights and Responsibilities* thus expanding the remit of its bill scrutiny committee, Scrutiny of Acts and Regulations (SARC), to include human rights. The Charter also instituted a compliance system within all parts of government so that both parliament and the executive observe the same human rights standards although the Victorian Parliament is not restricted by these standards. While Ministers introducing bills are required to furnish justifications of rights limitations via a statement of compatibility, these bills can be incompatible with Charter rights. In introducing a 'parliamentary based model' of rights protection, the Victorian Parliament intended the Charter to 'strengthen [the state's] democratic institutions'[37] and thus enhance the performance and reputation of the Victorian parliament as a rights-protecting institution. SARC has had some success in developing an active dialogue with the executive government by

regularly corresponding with responsible ministers in seeking further information.[38] It has also issued a consolidated Practice Note aimed at advising 'government legal and legislation officers' in the hope together with SARC reports these documents will be used in the preparation of bills and Statements of Compatibility.[39]

Unfortunately, while SARC reports are high quality and generally offer apolitical analysis of bills, similar to the NSW Parliament there is a wide gulf between these reports and the level of rights debate in parliament. Recent research conducted into parliamentary debates on anti-bikie bills revealed scant reference to SARC reports or consideration of rights implications, except by the Greens. A former Chair of SARC, Carlo Carli, has observed that: 'Rarely do Ministers consider charter issues or SARC comments in the parliamentary debate'.[40] An examination of Hansard alone does not indicate that the Charter has enhanced the 'democratic culture of justification' within the Victorian Parliament.

A 2015 review of the Charter argues that '[m]eaningful human rights scrutiny by SARC relies on the Committee members, but also on the broader culture of the Parliament, *public involvement in the scrutiny process (so it is relevant for members of Parliament)* and the engagement and responses of the Executive government.'[41] This connects to the point made by one of Australia's foremost proponents of parliamentary protection of rights, Tom Campbell, to the effect that parliamentary committees should engage with external bodies. Campbell has outlined a model of a 'democratic bill of rights' which involves 'the Parliament and its committees *working in cooperation with* quasi-autonomous government bodies, human rights organisations within civil society and the operations of political parties'.[42] In his view, a human rights committee should ideally be able to 'call witnesses, receive submissions and obtain expert advice' as well as 'receive petitions and hold hearings, and have powers to require the cooperation of government departments and ministers'.[43]

An external dynamic of engaging stakeholders and the community is far from being realised in Victoria. Unlike the NSW LRC,[44] Victoria's SARC has the power to receive public submissions on bills and to hold public hearings[45] but in practice it generally shows reluctance to do either. The 2015 Charter Review noted that there was a perception among stakeholders that making a submission to SARC had 'little purpose' because SARC did not actively consider community submissions on Bills in its reports to Parliament.[46] SARC does not appear willing to engage in discussion with stakeholders about potential human rights impact of bills or less rights-restrictive alternatives.[47] This reluctance to allow and facilitate public participation in

the scrutiny process has meant that stakeholders such as the Law Institute of Victoria often choose to communicate directly with the Attorney General, a channel of communication which is not public unlike submissions to SARC. Stakeholders are increasingly perceiving that they need to engage with the pre-legislative process, before a bill is introduced into parliament. This perception is supported by an observation made by Carlo Carli, a former SARC Chair, that 'SARC has had little influence over the content of legislation once the bills have been presented to Parliament. … [t]here is reluctance by the executive to amend bills once introduced.'[48] This impacts on Parliament's reputation, as the status of pre-eminent rights defender is transferred to the Executive. This is problematic as it means that the open, pluralistic and accountable forum offered by Parliament is bypassed and rights-debate takes place predominantly behind closed doors. While parliament certainly provides an open forum to debate rights implications, among the major parties there appears to be little political will to have this debate on the floor of Victoria's parliament. Strong party discipline and strong executive government mean such open debate is being muted.

The portfolio committees operating in Queensland's unicameral parliament have been more active than SARC and the NSW LRC in engaging the community in the rights-scrutiny process for bills. Like the LRC, these portfolio committees suffer from being bypassed when parliament decides that a controversial bill, such as an anti-bikie bill, must be fast-tracked. However, the Queensland portfolio committees, such as the Queensland Legal Affairs and Community Safety Committee, show a willingness to hold public hearings and to receive public submissions whenever possible.[49] Thus, unlike interstate counterparts, the default practice of these Queensland portfolio committees appears to be one of public engagement, possibly in a bid to compensate for its Parliament being unicameral. Arguably, over time, stakeholders may become accustomed to work with the short timeframes placed on scrutiny committees and be willing to engage with bill scrutiny nevertheless.

Conclusion

In the absence of bills of rights, Parliaments need to strengthen their reputations as pre-eminent 'rights defenders'. In the parliaments of South Australia, Western Australia, the Northern Territory and Tasmania, serious consideration needs to be given to establishing mechanisms for the systematic scrutiny of all bills for their rights implications. In the parliaments of NSW and Queensland, there needs to be strong awareness that this reputation is contingent on allowing rights scrutiny committees to properly perform their scrutiny role. Bypassing these

scrutiny committees whenever there is a controversial bill with rights implications clearly tarnishes the reputation of parliament as a rights defender. The 'culture of justification' to which rights-scrutiny committees aim contribute cannot be selectively upheld and respected. The Parliaments of Victoria as well as NSW need to encourage and/or empower their scrutiny committees to engage directly with the community on bills. If state and territory parliaments want to retain and strengthen their reputations as rights defenders, they need to ensure that the parliamentary process of rights scrutiny is systematic, open and engaged with the community.

---

[1] Quoted in Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (1999), 106.
[2] See CS Reid and M Forrest, *Australia's Commonwealth Parliament: 1901-1988 Ten Perspectives* (1988) p373 quoting the Parliamentary Standing Committee on Broadcasting, *First Report PP* 93/1940-43, 576-7.
[3] This paper takes an inclusive approach to the definition of 'rights' so as to cover common law rights, constitutional rights and international human rights.
[4] John Warhust, "Fifteen (Contradictory) Perceptions of Parliament: five good, five bad and five ugly' (2011) 26/1 *Australasian Parliamentary Review* 83, 83.
[5] As above, 83-4; emphasis added.
[6] Roy Morgan Research, *Anti-Terrorism Legislation Community Survey* (paper prepared for Amnesty International Australia, Queensland, 10 August 2006) 5. It is not clear whether the result would be the same if the survey were conducted in 2016 given the extensive national human rights consultation undertaken by the Brennan Committee.
[7] Commonwealth, *Parliamentary Debates*, Senate, 25 November, 2011, 9661-9662, (George Brandis).
[8] George Brandis, 'The Debate We Didn't Need Have to Have: The Proposal for an Australian Bill of Rights" in Julian Leeser and Ryan Hadrick (eds), *Don't Leave us with the Bill: The Case Against an Australian Bill of Rights* (Menzies Research Centre Limited, 2009) 27.
[9] As above, p19. See also, Brandis, *Submission by the Federal Opposition to the National Human Rights Consultation* (15 June 2009) (on file with author). In this 2009 submission, Brandis refers to the existing rights scrutiny committees.
[10] Robert Menzies, *Central Power in the Australian Commonwealth* (1967) p54.
[11] John Uhr, 'The Performance of Australian legislatures in protecting rights', in Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone (ed.), *Protecting Rights Without a Bill of Rights*, (Ashgate Publishing Ltd, Hampshire, England 2006) 41, 42.
[12] EG Whitlam, in The Australian Institute of Political Science, *Liberty in Australia* (1955) pp177-78.
[13] Uhr, 'The Performance of Australian legislatures' 47; emphasis added.
[14] As above, 54.
[15] As above, 48.
[16] To get a sense of the unevenness and political tensions in the interpretation of this remit, see Carolyn Evans and Simon Evans, 'Legislative Scrutiny Committees and Parliamentary Conceptions of Human Rights' (2006) *Public Law* 785, 794.
[17] Australian Law Reform Commission (2016), *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, Final Report No 129,
[18] Uhr, 'The Performance of Australian legislatures', 54
[19] John Uhr in Rosemary Laing and John Uhr, 'The Senate Committee System: Historical Perspectives' in Paula Waring (ed), *Senate Committees and Government Accountability Conference 2010* (Commonwealth Department of the Senate, Canberra 2010), 15.
[20] George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights', (2016) 41(2) *Monash University Law Review* 469, 496-498.
[21] GE Fitzgerald, *Report — Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Parliament of Queensland, 1989).
[22] Legal, Constitutional and Administrative Review Committee, Parliament of Queensland, *The Preservation and Enhancement of Individuals' Rights and Freedoms in Queensland: Should Queensland Adopt a Bill of Rights? (Report No 12)* (1998) 79.
[23] Parliament of Queensland, LACSC, *Inquiry into a Possible Human Rights Act for Queensland*, Report No 30, 55th Parliament (June 2016) pxix.
[24] As above, p8.

[25] As above, xix.
[26] NSW Parliament, Standing Committee on Law and Justice, *A NSW Bill of Rights*, Report 17, (October 2001) p126.
[27] As above, pp127-8.
[28] NSW LRC Annual Report 2005-2006, p3. Note that after this report, the LRC discontinued its practice of setting out how many bills had been fast-tracked in each parliamentary year.
[29] Another example is the *Housing Amendment (Registrable Persons) Act 2009* dealing with the housing of a convicted child rapist.
[30] NSW Bar Association, *Submission to the National Human Rights Consultation* (2009) p49.
[31] Andrew Byrnes, 'The Protection of Human Rights in NSW through the Parliamentary Process — A Review of the Recent Performance of the NSW Parliament's Legislation Review Committee' (2009) *University of NSW Faculty of Law Research Series* 1, 12.
[32] Allan Shearan, "The Role of the Legislation Review Digest in NSW", Paper Presented at the Australia-New Zealand Scrutiny of Legislation Conference: Scrutiny and Accountability in the 21st Century, 6-8 July 2009, Canberra, Australia, p1.
[33] Luke McNamara and Julia Quilter, 'Institutional Influences on the Parameters of Criminalisation: Parliamentary Scrutiny of Criminal Law bills in New South Wales' (2015) 27 *Current Issues in Criminal Justice* 21, 33, 35.
[34] As above, p35.
[35] See for eg, NSW Parliament, Legislation Review Committee, *Annual Review July 2005- June 2006*, Report No 5 (29 August 2006) p17.
[36] Shearan, "The Role of the Legislation Review Digest in NSW" p2.
[37] Victoria, *Parliamentary Debates*, Legislative Assembly (4 May 2006), 1292 (Rob Hulls); Victoria, *Parliamentary Debates*, Legislative Assembly (4 May 2006), 1290 (Rob Hulls).
[38] Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2015), 177.
[39] See http://www.parliament.vic.gov.au/sarc/publications#practice_notes
[40] Carol Carli MP, "Scrutiny and the Charter of Rights and responsibilities' (Paper presented at the Australia-New Zealand Scrutiny of Legislation Conference; Scrutiny and Accountability in the 21st Century, Parliament House, Canberra 6-8 July 2009.
[41] Michael Brett Young, *From Commitment to Culture*, 178, emphasis added.
[42] Campbell, Tom (2013) 'The Rule of Law and Human Rights Judicial Review: Controversies and Alternatives' in Imer B Flores and Kenneth E Himma (eds), *Law, Liberty, and the Rule of Law* (Springer Netherlands,) 135, 148; emphasis added.
[43] Tom Campbell, 'Human Rights Strategies: An Australian Alternative' in Campbell et al (eds), *Protecting Rights Without a Bill of Rights: Institutional Performance and Reform in Australia* (2006) Ch 14, pp334-5.
[44] This dynamic is absent in the SSCSB model used by the NSW Parliament to shape the LRC because neither the SSCRO nor the SSCSB were, at the time of their founding, envisaged as being committees that would engage with the community, although over time the SSCSB has successful sought the power to hold public hearings. This means that when it comes to bills introduced into parliament, NSW stakeholders such as the Law Society and Bar Association choose to communicate directly with the Attorney General rather than the LRC. While up until 2010 the LRC engaged with the public by issuing discussion papers for public consultation, it is hamstrung by its lack of formal power to receive public submissions on specific bills or to hold public hearings.
[45] *Parliamentary Committees Act 2003* (Vic) ss 279(1) and 28(8).
[46] Michael Brett Young, *From Commitment to Culture*, 182.
[47] As above, 182.
[48] Carol Carli MP, "Scrutiny and the Charter of Rights and responsibilities' (Paper presented at the Australia-New Zealand Scrutiny of Legislation Conference; Scrutiny and Accountability in the 21st Century, Parliament House, Canberra 6-8 July 2009.
[49] See, for eg, Parliament of Queensland, LACSC, *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013*, Report No 46, (November 2013). See Parliament of Queensland, Standing Orders 133 and 134.