



FROM DISRUPTION TO DELIBERATION

Improving the Quality and Impact of Community Engagement with Parliamentary Law Making

DR SARAH MOULDS

UNISA LAW SCHOOL, SEPT 2019

Why should we care about parliamentary committees?

- ▶ REFLECT AND FEED INTO KEY VALUES IN OUR PARLIAMENTARY CULTURE
- ▶ HAVE A MEASURABLE IMPACT ON THE CONTENT AND QUALITY OF LAW MAKING
- ▶ PROVIDE AN OPPORTUNITY TO IMPROVE ENGAGEMENT BETWEEN THE PARLIAMENT AND THE COMMUNITY

ATTRIBUTES OF PARLIAMENTARY COMMITTEES

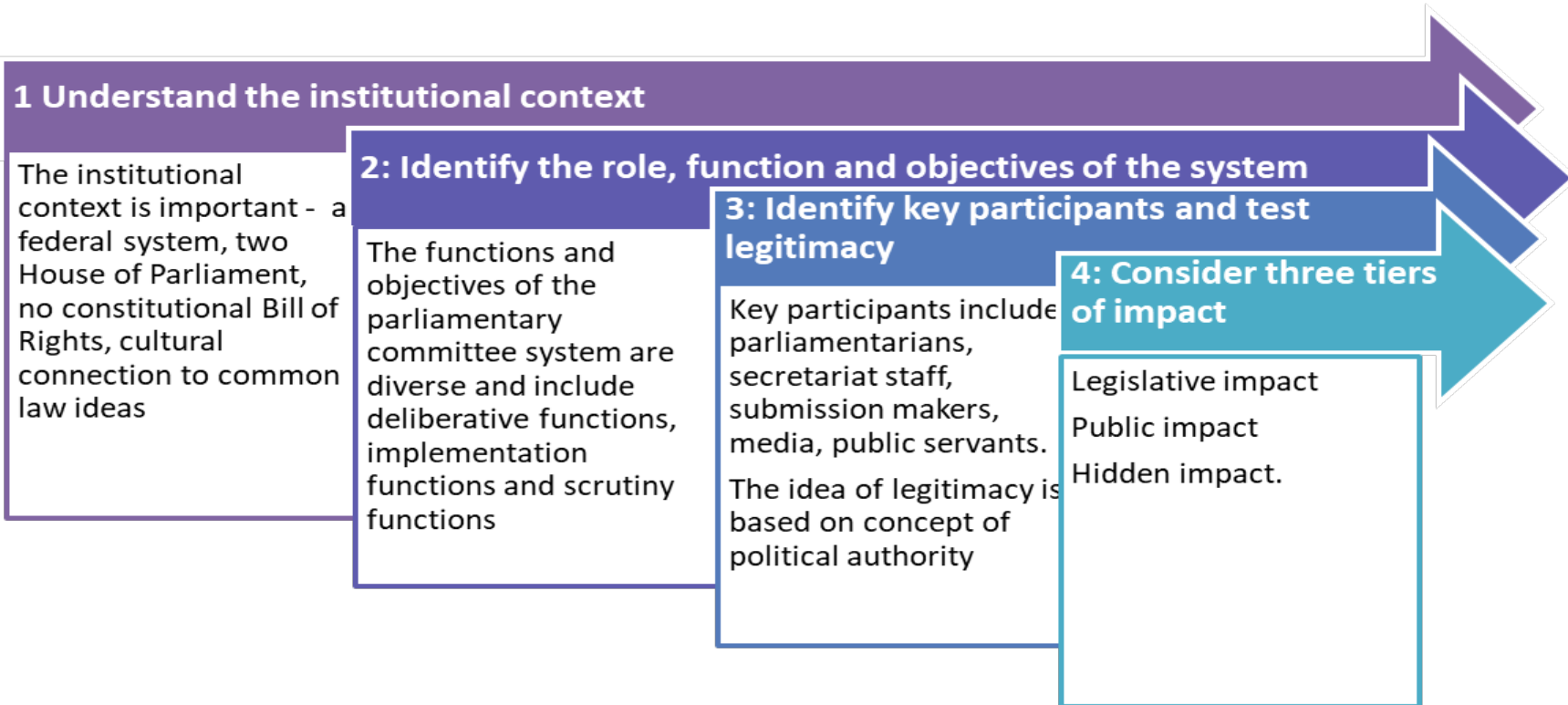
DELIBERATIVE

- ▶ Forum for experts and members of the community to share their views on a proposed policy or law
- ▶ Forum for parliamentarians to listen and reflect on evidence and views provided by the community
- ▶ Forum for key decision makers to make changes to proposed laws to improve quality, remove unintended consequences or reconsider merits or objectives

AUTHORITATIVE

- ▶ Scrutinise content of proposed law or policy against a set of prescribed criteria
- ▶ Provide 'technical advice' on content, operation and effect of proposed law or policy
- ▶ Engage directly with proponents of a Bill or experts, statutory bodies or government officials
- ▶ Capacity to generate political support for legislative or policy change

HOW CAN WE MEASURE THE IMPACT OF PARLIAMENTARY COMMITTEES?



The case studies

- ▶ Counter-terrorism law making 2001-2018
 - ▶ 14 case study Acts
 - ▶ Rights engaging laws
 - ▶ Engaged wide range of participants and committees
 - ▶ Engaged with post enactment scrutiny /oversight bodies
- ▶ Marriage equality laws 2004-2017
 - ▶ multiple attempts at legislative amendment
 - ▶ Rights engaging laws
 - ▶ Engaged wide range of participants and committees
 - ▶ engaged with range of other mechanisms such as voluntary postal vote

Bill	Recommendations = legislative amendments
Australian Citizenship Amendment (Allegiance to Australia) Bill 2015	PJCIS 100%
Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014	PJCIS 100%
Counter-Terrorism Legislation Amendment Bill (No 1) 2014	PJCIS 100%
Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015	PJCIS 100%
National Security Legislation Amendment Bill 2010	LCA Committees 0%
Independent National Security Legislation Monitor Bill 2010	SFPAC 100%
Anti-Terrorism Bill (No 2) 2005	LCA Committees 85%
National Security Information (Criminal Proceedings) Bill 2004	LCA Committees 30%
Anti-terrorism Bill 2004	LCA Committees 65%
ASIO Legislation Amendment (Terrorism) Bill 2003	LCA Committees and PJ ASIO 100%
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002	PJC ASIO 75% LCA Committees 65%
Security Legislation Amendment (Terrorism) Bill 2002 (No 2) and Other Bills	LCA Committees 60%

Legislative Impact

- ▶ narrowed the scope of key definitions eg 'terrorist act';
- ▶ removed absolute liability and reverse onus of proof provisions;
- ▶ inserted defences within the terrorist act offences for the provision of humanitarian aid;
- ▶ ensured the power to proscribe terrorist organisations is subject to parliamentary review;
- ▶ subjected each new power to detailed reporting requirements and oversight
- ▶ re-instated the court's discretion to ensure that a person receives a fair trial when certain national security information is handled in 'closed court',
- ▶ ensured people subject to control orders and preventative detention orders can understand and challenge the material relied upon to make the order; and
- ▶ narrowed the circumstances in which a dual national can have their citizenship 'renounced' by doing something terrorist-related overseas

Public Impact



▶ Counter-terrorism

- ▶ Language matters in parliamentary debates
- ▶ Scrutiny of bills language (rather than human rights language) much more popular
- ▶ Strong engagement between PCs and other post enactment review bodies
- ▶ Points to emerging scrutiny culture at federal level



▶ Marriage Equality

- ▶ Record breaking levels of participation
- ▶ Need to take a long term view of public impact
- ▶ PCs provide parliamentarians with meaningful forum to hear from experts and from everyday people
- ▶ PCs provide a safe space for MPs to 'change their position' and identify political pathway for change

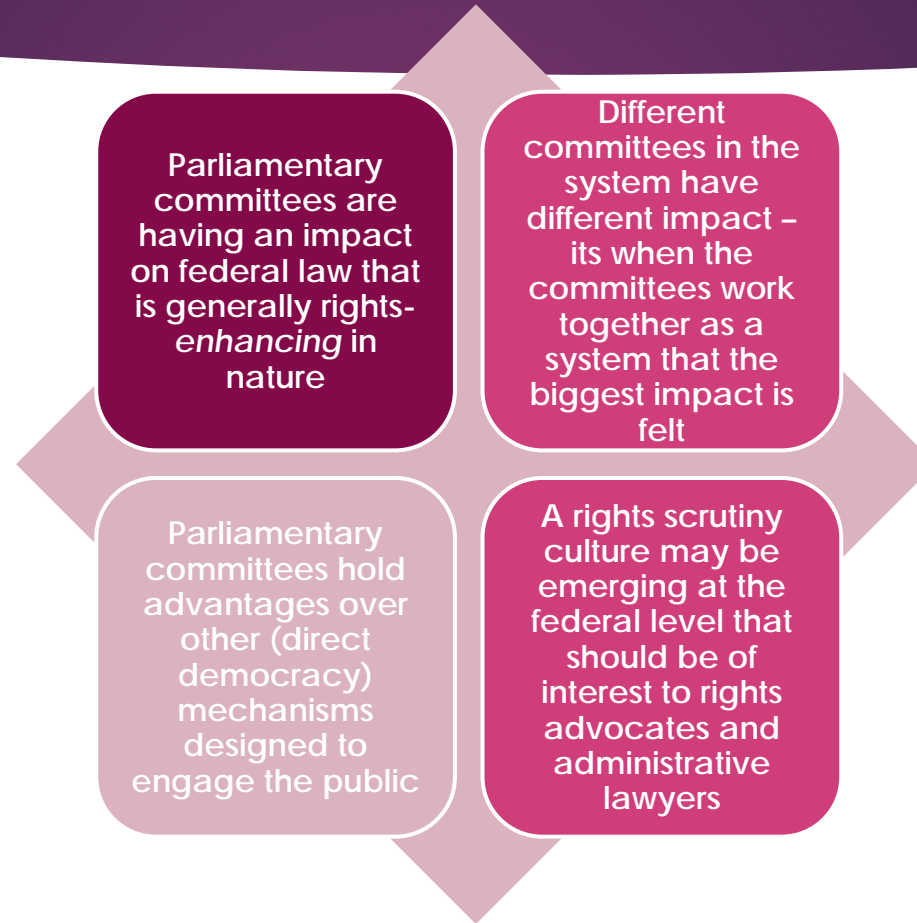
Hidden Impact

Those responsible for drafting and developing laws utilise and anticipate parliamentary scrutiny

Some scrutiny criteria resonates more strongly than others and is incorporated into practical guidance

This means that the work of PCs can have a long term impact on the shape of the law – but language and scrutiny culture matters

Key Findings from the Case Studies



SIGNIFICANCE OF THE FINDINGS FOR IMPROVED PUBLIC ENGAGEMENT

- ▶ The two case studies suggest that the federal system of parliamentary committees has distinct benefits when it comes to improving the deliberative quality of parliamentary law making in Australia.
 - ▶ Parliamentary committees can facilitate deliberative law-making and consideration of rights issues beyond binary positions; and
 - ▶ Parliamentary committees can provide a beneficial supplement to direct democracy mechanisms.

Examples of Novel forms of Online Engagement

- ▶ 'survey monkey' surveys as part of the LCA Legislation Committee's inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018;
- ▶ ABS 2017 voluntary postal vote on the question of marriage equality;
- ▶ House Standing Committee on Social Policy and Legal Affairs in its inquiry into two cross-party Marriage Equality Bills in 2012
- ▶ the use of online survey and public hearings in remote and regional locations by the Joint Select Committee on Aboriginal Constitutional Recognition
- ▶ the use of an online survey by the Joint Select Committee on Cyber Security in 2012
- ▶ the use of an online questionnaire as part of the House Standing Committee on Social Policy and Legal Affairs 2014-15 *From conflict to cooperation* Inquiry into the Child Support Program
- ▶ the promotion of the 2007, the House of Representatives' Committee on Health and Ageing inquiry into breastfeeding on several parenting websites with online forums, inviting people to make a submission directly to the Committee

DELIBERATIVE LAW-MAKING

- ▶ Parliamentary committees facilitate deliberative law-making by:
 - ▶ providing a central, independent collection point for a range of views, expert opinions and comparative data about the social and legal implications of reform
 - ▶ documenting and summarising diverse submissions in an accessible format for the Parliament to reflect upon when considering reform
 - ▶ providing a practical forum for parliamentarians to evaluate the merits of the different positions presented with reference to supporting evidence, and reflect upon previously held views in light of new information
 - ▶ explore rights and policy issues beyond binary positions
 - ▶ identify common ground and provide a safe space for key decision makers to change their minds about a policy or law

BENEFICIAL SUPPLEMENT TO DIRECT DEMOCRACY MECHANISMS

- ▶ Beneficial supplementation = parliamentary committees using online tools to:
 - ▶ improve the quality and accuracy of information available to parliamentary committees
 - ▶ ameliorating some of the key concerns levelled at direct democracy mechanisms, particularly when applied to complex policy issues or minority rights
- ▶ Eg by:
 - ▶ Using online polling as a persuasive indicator of the appetite for reform within the community
 - ▶ highlighting the particular views held by electorates across the country, and providing political incentives for particular members to follow the views of their electorate rather than the views of their party
 - ▶ Using the committee process to signal to the community that policy-making is about selecting features from a dynamic continuum of options, rather than 'choosing a side' and sticking with it regardless of the changing context or social environment
 - ▶ Using the committee process to provide a safe space for key DMs to change position on the basis of supporting evidence

Practical recommendations



This Photo by Unknown Author is licensed under [CC BY-NC-ND](#)

Enhance the deliberative quality of the inquiry process

Eg going beyond the 'usual suspects' when selecting witnesses and supporting new witnesses

Embracing online technologies for advertising inquiries and supplementing cee deliberation



This Photo by Unknown Author is licensed under [CC BY-SA](#)

Increasing cee resources and mandating responses

Eg amending Standing Orders to require tabling of Cee report prior to commencement of Second Reading Speeches



This Photo by Unknown Author is licensed under [CC BY-SA](#)

Document cees contribution to establishing a common rights-scrutiny culture

Eg Encouraging individual committees to more clearly and specifically document the impact they have on the development and debate of proposed new laws