

From Disruption to Deliberation: Improving the Quality and Impact of Community Engagement with Parliamentary Law Making

Dr Sarah Moulds
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ABSTRACT

Around the world, parliamentary democracies are facing a daunting mix of challenges, including an implosion of trust among citizens in democratic institutions, disruption of traditional political processes and the need to respond to increasingly complex policy questions. In response to these challenges parliaments have begun to experiment with new ways of engaging with the communities they represent, and new ways of obtaining expert advice on complex policy issues, with varied levels of success. In the Australian context, this has given rise to the use of direct democracy techniques such as online questionnaires, social media and postal surveys to gauge the views of the community, and reliance upon expert advisors or committees to help inform policy or legislative agendas.

My research into the role parliamentary committees play in law-making and rights protection in Australia offers a unique insight into the risks and opportunities associated with these new forms of community and expert engagement. By focusing on two very different case studies - counter-terrorism lawmaking and marriage equality reform - my research suggests that adopting a combination of direct democracy techniques and more traditional forms of community engagement has the potential to enhance the *deliberative* quality of parliamentary law making,¹ whilst avoiding the risks associated with poll-driven responses to complex policy questions or issues involving the rights or interests of minority groups. My research suggests that a combination of traditional and innovative techniques offers new opportunities for parliaments to respond effectively to the institutional and policy challenges confronting modern democracies without abandoning the deeply-entrenched practices and principles that underpin Westminster parliaments. In my presentation I will explore these themes with reference to the findings of my PhD research² and offer practical suggestions for those currently working within the parliamentary environment in the Australasian region.

¹ The concept of 'deliberative law making' has been explored in detail by Ron Levy and Graeme Orr, *The Law of Deliberative Democracy* (2016, Routledge).

² Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia's Counter-Terrorism Laws* (PhD Thesis, University of Adelaide). Components of this research have also been published in Laura Grenfell and Sarah Moulds, 'The Role of Committees in Rights Protection in Federal and State Parliaments in Australia', (2018) 41(1) *University of New South Wales Law Review* 40 and Sarah Moulds 'Committees of Influence: Parliamentary Committees with the capacity to change Australia's counter-terrorism laws', (2016) 31(2) *Australasian Parliamentary Review* 46.

Introduction

Around the world, parliamentary democracies are facing a daunting mix of challenges, including an implosion of trust among citizens in democratic institutions, disruption of traditional political processes and the need to respond to increasingly complex policy questions. In response to these challenges parliaments have begun to experiment with new ways of engaging with the communities they represent, and new ways of obtaining expert advice on complex policy issues, with varied levels of success. In the Australian context, this has given rise to the use of direct democracy techniques such as online questionnaires, social media and postal surveys to gauge the views of the community, and reliance upon expert advisors or committees to help inform policy or legislative agendas. Each of these techniques gives rise to new opportunities, but also raise new questions. For example, how should the parliament interpret the value of anonymous online survey responses? Should parliamentarians be bound to vote in accordance with the views of the majority of their electorates? These questions are not easily resolved, but the answers can begin to emerge by looking carefully at the current role parliamentary committees play within the Australian Parliament, and their potential to provide a meaningful deliberative forum for new sources of information to be evaluated and explored, and to act as a safeguard against some of the concerns associated with these types of direct democracy mechanisms. These important attributes of the parliamentary committee system are explored in this Paper.

Part 1 of the Paper describes the importance of evaluating the impact of parliamentary committees on law making in Australia. It offers a pathway forward in the form of a three-tiered evaluation framework that is designed to guard against some of the short comings identified by other scholars in this field. Part 2 introduces two case studies - counter-terrorism lawmaking and marriage equality reform – to explore the existing role parliamentary committees play in improving the quality of federal law making and community engagement with parliament. Part 3 of the Paper identifies the key themes emerging from the case studies, which suggest that a combination of traditional and innovative techniques offers new opportunities for parliaments to respond effectively to the institutional and policy challenges confronting modern democracies. This Part of the Paper also offers practical suggestions for how to capitalise on these new opportunities for those currently working within the parliamentary environment in the Australasian region.

Part One: The Importance of Evaluating the Impact of Parliamentary Committees on Law Making in Australia

For many, parliamentary committees are not inherently interesting institutions. They conjure banal images of harrowed public servants answering endless questions about stationary expenditure or cab charge receipts. However, a closer look reveals that parliamentary committees both reflect and feed into the key values underpinning our parliamentary culture, including values associated with rule of law, accountability and relationships between the governors and the governed. Parliamentary committees also give practical effect to key aspects of our parliamentary democracy. They provide a forum for all parliamentarians to play a role in the legislative process and generate reports containing information about the purpose, effectiveness and impact of proposed and existing laws and policies.³ They also provide a forum for experts and members of the community to share their views on a proposed policy or law and raise matters critical to the lives and rights of Australians. In this way, parliamentary committees have both *deliberative* attributes (facilitating forums for the public to engage in the law-making process) and *authoritative* attributes (the capacity to generate political support for legislative or policy change).

At the federal level, there is a sophisticated system of parliamentary committees that includes standing committees in both Houses, joint committees with members from both the House of Representatives and the Senate, and select committees established for particular purposes.⁴ Within this system, there are committees with a broad mandate to conduct public inquiries into Bills and other matters (described as ‘inquiry-based committees’) and committees that scrutinise proposed laws with reference to certain prescribed criteria (described as the ‘scrutiny-committees’).

Whether specifically assigned a rights-protecting role (such as the Parliamentary Joint Committee on Human Rights),⁵ or performing a broader inquiry function (such as the Senate

³ See e.g. K Barton, (1999) ‘Community Participation in Parliamentary Committees: Opportunities and Barriers’, *Department of the Parliament Library Research Paper* No. 10; Ian Marsh, (2004), Australia’ Representation Gap: A Role for Parliamentary Committees?, 5; P Lobban, Who cares wins: parliamentary committees and the executive, (2012) 27(1) *Australasian Parliamentary Review*,190

⁴ For an overview of the parliamentary committee systems at the State and Territory level see Laura Grenfell, ‘An Australian Spectrum of Political Rights Scrutiny: Continuing to Lead by Example?’ (2015) 26(1) *Public Law Review* 19.

⁵ The Parliamentary Joint Committee on Human Rights is established by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) The scrutiny criteria applied by the Human Rights Committee is outlined in s3 of the Act and includes the human rights and freedoms contained in seven core human rights treaties to which Australia is a party.

Legal and Constitutional Affairs References Committee),⁶ parliamentary committees are a key aspect of Australia's parliamentary model of rights protection.⁷ Within this model, parliamentary committees 'sound the alarm' about laws that might impact on individual rights, and provide the forum for interested members of the community to express their views on how Parliament should respond. Many committees also provide a source of concrete recommendations for legislative or policy change that can have the effect of improving the rights-compliance of proposed federal laws.⁸

When engaging in an analysis of this type, it is important not to overstate the role parliamentary committees play in the law making process in Australia. Often the recommendations of inquiry-based committees are rejected or ignored by the government of the day,⁹ and sometimes the scrutiny committee reports are issued too late to be of any direct influence on parliamentary debate on the Bill.¹⁰ However, as the counter-terrorism and marriage equality examples show, when considered over time, the role these committees play in collecting, presenting, and analysing different views on the merits of proposed changes to the law can be significant. This makes studying the impact of parliamentary committees on the development the case study laws particularly relevant to contemporary debates surrounding the quality of parliamentary law making and public engagement with and trust in political and legal institutions.

⁶ Senate Legal and Constitutional Affairs References Committee is established by Standing Senate, Parliament of Australia, *Standing Order 25* (2000). The Committee has an Opposition Senator as Chair and a majority of non-government members. The current membership of the Committee can be seen at <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/References_Committee_Membership>.

⁷ Under this model, judicial contribution to the conversation on rights is restricted and, provided it stays within its constitutional limits, Parliament is the branch of government with the 'final say' on how to protect and promote individual rights. See e.g. George Williams and Lisa Burton, 'Australia's Parliamentary Scrutiny Act: An Exclusive Parliamentary Model of Rights Protection' in Murray Hunt, Hayley Jane Hooper and Paul Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart Publishing, 2015) 258.

⁸ For examples of the rights-enhancing effect of parliamentary committees see Laura Grenfell and Sarah Moulds, 'The Role of Committees in Rights Protection in Federal and State Parliaments in Australia', (2018) 41(1) *University of New South Wales Law Review* 40; Sarah Moulds 'Committees of Influence: Parliamentary Committees with the capacity to change Australia's counter-terrorism laws', (2016) 31(2) *Australasian Parliamentary Review* 46.

⁹ See e.g. Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2009*, (2009).

¹⁰ The issue of delayed reporting (and in particularly the problem of tabling reports *after* the second reading debate on the particular Bill has ended) has been a particular concern raised with respect to the Parliamentary Joint Committee on Human Rights, Parliament of Australia. For further discussion of how this issue may impact on the overall effectiveness of the Parliamentary Joint Committee on Human Rights see Adam Fletcher in Chapter # and Williams and Reynolds in Chapter #.

The complex and dynamic nature of parliamentary committees and other legislative scrutiny bodies means evaluating their performance is not always straightforward.¹¹ Many scholars have grappled with these challenges when seeking to evaluate the performance of parliamentary committees in a range of different areas.¹² The evaluation framework applied in this research aims to address these challenges. The four key steps of the evaluation framework employed are summarised below.

- Step 1: Set out the institutional context in which the scrutiny takes place
- Step 2: Identifying the role, functions and objectives of the scrutiny body
- Step 3: Identifying key participants¹³ and determining legitimacy¹⁴
- Step 4: Measuring the impact of the scrutiny system

Step 4 is the most intensive and detailed step in the evaluation framework. It aims to determine what impact a particular component of the scrutiny system is having on the development and content of the law. It includes consideration of the following three ‘tiers’ of impact¹⁵ (a)

¹¹ Meg Russell and Meghan Benton, ‘Assessing the Policy Impact of Parliament: Methodological Challenges and Possible Future Approaches’ (Paper presented at the Public Service Association Legislative Studies Specialist Group Conference, London, United Kingdom, 24 June 2009), cited in Aileen Kavanagh, ‘The Joint Committee on Human Rights: A Hybrid Breed of Constitutional Watchdog’ in Murray Hunt, Hayley Jane Hooper and Paul Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart Publishing, 2015) 111, 131; Michael C Tolley, ‘Parliamentary Scrutiny of Rights in the United Kingdom: Assessing the Work of the Joint Committee on Human Rights’ (2009) 44(1) *Australian Journal of Political Science* 41; Carolyn Evans and Simon Evans, ‘Legislative Scrutiny Committees and Parliamentary Conceptions of Human Rights’ (2006) *Public Law* 785; J Smookler, ‘Making a Difference? The Effectiveness of Pre-Legislative Scrutiny’ (2006) 59 *Parliamentary Affairs* 522. See also 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.

¹² See, eg, Aileen Kavanagh, ‘The Joint Committee on Human Rights: A Hybrid Breed of Constitutional Watchdog’ in Murray Hunt, Hayley Jane Hooper and Paul Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart Publishing, 2015) 111; Gareth Griffith, ‘Parliament and Accountability: The Role of Parliamentary Oversight Committees’ (Briefing Paper No 12/05, Parliamentary Library Research Service, New South Wales, 2005); John Halligan, ‘Parliamentary Committee Roles in Facilitating Public Policy at the Commonwealth Level’ (2008) 23(2) *Australasian Parliamentary Review* 135; Michael C Tolley, ‘Parliamentary Scrutiny of Rights in the United Kingdom: Assessing the Work of the Joint Committee on Human Rights’ (2009) 44(1) *Australian Journal of Political Science* 41.

¹³ For example, the key participants in the Australian parliamentary committee system include parliamentarians, elected members of the executive government, submission makers and witnesses to parliamentary committee inquiries, public servants and government officers, independent oversight bodies and the media.

¹⁴ A wealth of literature exists on the topic of political legitimacy and the meaning attributed to this term has been contested and developed over time. See, eg, David Beetham, *The Legitimation of Power* (Palgrave, 2002); Allan Buchanan, ‘Political Legitimacy and Democracy’ (2002) 112(4) *Ethics* 689; Immanuel Kant, *Practical Philosophy* (Mary J Gregor ed, Cambridge University Press, 1999); Jack Knight and James Johnson, ‘Aggregation and Deliberation: On the Possibility of Democratic Legitimacy’ (1994) 22 *Political Theory* 277; Bernard Manin, ‘On Legitimacy and Political Deliberation’ (1987) 15 *Political Theory* 338.

¹⁵ Philippa Webb and Kirsten Roberts, ‘Effective Parliamentary Oversight of Human Rights: A Framework for Designing and Determining Effectiveness’ (Paper presented at the Dickson Poon School of Law, King’s College

legislative impact (whether the scrutiny undertaken has directly changed the content of a law); (b) public impact (whether the work of the scrutiny has influenced or been considered in public or parliamentary debate on a Bill, or in subsequent commentary or review of an Act); and (c) hidden impact (whether those at the coalface of developing and drafting counter-terrorism laws turn their mind to the work of legislative scrutiny bodies when undertaking their tasks).¹⁶

Part Two: Evaluating the existing role and impact of parliamentary committees in parliamentary law-making through two case studies

This Part provides a brief snapshot of how the evaluation framework applies in practice by investigating the impact of the parliamentary committee system on a selection of counter-terrorism laws introduced between 2001-2018¹⁷ and amendments to the *Marriage Act 1961* (Cth) between 2004-2017.¹⁸ As discussed further in Part Three, these two case studies provide an opportunity to reflect upon the different roles individual committees play within the broader

London, University of London, June 2014) 3 <<https://www.kcl.ac.uk/sspp/policy-institute/projects/government/assets/Human-Rights-Policy-DocumentV5.pdf>>.

¹⁶ Collecting evidence of the hidden impact of parliamentary committees can be challenging due to the need to look beyond documentary sources and consider more subjective material including interviews but, as Evans and Benton and Russell have shown in their empirical-based work it is not impossible. In Australia at least, much publicly available material exists that points to the hidden impacts of scrutiny, including training manuals, published guidelines, information in annual reports, and submissions and oral evidence given at parliamentary and other public inquiries and hearings. This material can then be tested against a range of targeted individual interviews conducted with key participants in the scrutiny process. Meg Russell and Meghan Benton, 'Assessing the Policy Impact of Parliament: Methodological Challenges and Possible Future Approaches' (Paper presented at the Public Service Association Legislative Studies Specialist Group Conference, London, United Kingdom, 24 June 2009); See e.g. Carolyn Evans and Simon Evans, 'Evaluating the Human Rights Performance of Legislatures' (2006) 6 *Human Rights Law Review* 546.

¹⁷ The 14 case study Acts considered are the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* (Cth); *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth); *Counter-Terrorism Legislation Amendment Act (No 1) 2014* (Cth); *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth); *National Security Legislation Amendment Act 2010* (Cth); *Independent National Security Legislation Monitor Act 2010* (Cth); *Anti-Terrorism Act (No 2) 2005* (Cth); *National Security Information (Criminal Proceedings) Act 2004* (Cth); *Anti-terrorism Act 2004* (Cth); *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* (Cth); *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2002* (Cth); *Security Legislation Amendment (Terrorism) Act 2002* (Cth) (and related Acts) *Criminal Code Amendment (High Risk Offenders) Act 2016* (Cth); *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth). One of the case study 'Acts', the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* (Cth), is more correctly described as a 'Bill' as it was not enacted into legislation.

¹⁸ For a comprehensive overview of the legislative history of the marriage equality reforms see Shirleene Robinson and Alex Greenwich, *Yes Yes Yes: Australia's Journey to Marriage Equality* (2018, NewSouth Books); D McKeown, *A chronology of same-sex marriage bills introduced into the federal parliament: a quick guide*, Research paper series, 2016-17, Parliamentary Library, Canberra, updated February 2018.

committee system and how some of these committees¹⁹ seek to engage with Australian community.

1. Participation and legitimacy

This research found that rates and diversity of participants in formal parliamentary scrutiny can be an important indicator of effectiveness and impact.²⁰ This is because a diverse range of participants in inquiries into proposed or existing laws provides ‘an opportunity for proponents of divergent views to find common ground’²¹ or, as Dalla-Pozza has explained, for parliamentarians to make good on their promise to ‘strike the right balance’ between safeguarding security and preserving individual liberty when enacting counter-terrorism laws.²² A good example of a scrutiny body with these strengths are the Senate Legal and Constitutional Affairs Legislation Committee (the LCA Legislation Committee) and the Senate Legal and Constitutional Affairs Legislation Committee (the LCA References Committee) and House Standing Committee on Social Policy and Legal Affairs (the House Committee).²³ These of inquiry-based committees have a high overall participation rate, engaging a broad range of parliamentarians, public servants and submission makers.²⁴ For example, in two

¹⁹ This Paper focuses on the work of a pair of Committees, the Senate Legal and Constitutional Affairs Legislation Committee (the LCA Legislation Committee) and the Senate Legal and Constitutional Affairs Legislation Committee (the LCA References Committee), as well as the Parliamentary Joint Committee on Intelligence and Security (the Intelligence Committee) and House Standing Committee on Social Policy and Legal Affairs (the House Committee). These inquiry-based committees work closely with the scrutiny-based committees in the federal system, which include the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) and the Parliamentary Joint Committee on Human Rights (the Human Rights Committee). The work of these scrutiny committees is also relevant to the findings in this Paper, and to the more detailed research. See Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia’s Counter-Terrorism Laws* (PhD Thesis, University of Adelaide).

²⁰ This finding is consistent with the discussion in Kelly Paxman, *Referral of Bills to Senate Committees: An Evaluation*, Parl Paper No 31 (1998) 76.

²¹ Harry Evans (ed), *Odgers’ Australian Senate Procedure* (Commonwealth of Australia, 10th ed, 2001) at 366; see also Anthony Marinac, ‘The Usual Suspects? “Civil society” and Senate Committees’ (Paper submitted for the Senate Baker Prize, 2003) 129 <<http://www.aph.gov.au/binaries/senate/pubs/pops/pop42/marinac.pdf>>; See also Pauline Painter ‘New kids on the block or the usual suspects? Is public engagement with committees changing or is participation in committee inquiries still dominated by a handful of organisations and academics?’ (2016) 31(2) *Australasian Parliamentary Review*, 67-83

²² Dominique Dalla-Pozza, ‘Refining the Australian Counter-terrorism Framework: How Deliberative Has Parliament Been?’ (2016) 27(4) *Public Law Review* 271, 273.s

²³ The House Standing Committee on Social Policy and Legal Affairs is established by House of Representatives, Parliament of Australia, *Standing Order* 215 and 229 (2017). The Committee has a government Chair and a majority of government members. The current membership of the Committee can be seen at <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Committee_Membership>

²⁴ See Senate, Parliament of Australia, *Standing Order* 25 (2000); House of Representatives, Parliament of Australia, *Standing Order* 215 and 229 (2017).

counter-terrorism Bill inquiries, the LCA Committees attracted over 400 submissions and heard from well over 20 witnesses.²⁵ This relatively high participation rate was dwarfed by the rates of participation experienced by the House Committee²⁶ in its inquiry into two cross-party Marriage Equality Bills in 2012,²⁷ which received 276,437 responses to its online survey, including 213,524 general comments and 86,991 comments on the legal and technical aspects of the bills.²⁸ Never before had the Parliament provided a deliberative forum of this scale or attracted so many responses from interested members of the community.²⁹ Unlike some other parliamentary committees, both the LCA Committees and the House Committee were able to attract participation from a broader cross section of the community, rather than rely on ‘the usual suspects’ (such groups or individuals who are already aware of the bill’s existence, or who are contacted by politicians or their staff, or by the committee secretariat).³⁰

This suggest that high rates of participation are indicators of effectiveness when it comes to parliamentary committees. However, committees that focus on preserving and strengthening relationships with a smaller, less diverse group of decision makers can also have a strong influence and impact on the content of federal laws, particularly when those relationships were with government agencies or expert advisers. This is illustrated by the influential nature of the

²⁵ Senate Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 (No 2) and Related Matters* (2002). In this inquiry, the Senate Standing Committee on Legal and Constitutional Affairs References Committee received 431 submissions and heard from 65 witnesses. See also Senate Committee on Legal and Constitutional Affairs References Committee, Parliament of Australia, *Inquiry into the Australian Security and Intelligence Organisation Amendment (Terrorism) Bill 2002 and Related Matters* (2002). In this inquiry the Committee received 435 submissions and heard from 22 organisations.

²⁶ Like the LCA Legislation Committee, the House Committee has a government Chair and majority of government members. It also has broad powers to conduct public hearings into proposed legislation or other thematic issues referred to it by the House of Representatives, and can include ‘participating members’ who can participate in proceedings without having a formal vote.

²⁷ The Marriage Equality Amendment Bill 2012 (Cth) was introduced into the House of Representatives by Adam Bandt MP and Mr Andrew Wilkie MP. The Marriage Equality Amendment Bill 2012 (Cth) was introduced into the House of Representatives by Stephen Jones MP on 13 February 2012. Both of these Bills sought to amend the Marriage Act to remove reference to ‘man and woman’ and permit same sex couples to marry. The Marriage Amendment Bill 2012 (Cth) also included proposed provisions that would have the effect of ensuring that authorised celebrants and ministers of religion are not required to solemnise a marriage where the parties to the marriage are of the same-sex). [Both Bills were](#) referred to the House Standing Committee on Social Policy and Legal Affairs, which delivered its report on 18 June 2012. See House Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012*, (2012).

²⁸ House Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012*, (2012) [1.1]-[1.7] and [33]-[37].

²⁹ *Ibid*, 34.

³⁰ Paxman, Kelly, *Referral of Bills to Senate Committees: An Evaluation*, Parl Paper No 31 (1998) at 81.

recommendations made by the specialist the Parliamentary Joint Committee on Intelligence and Security (the Intelligence Committee),³¹ which works closely with staff from law enforcement and intelligence agencies when inquiring into proposed or existing national security laws.³²

This reveals an important tension in the role and impact of different types of parliamentary committees. On the one hand, the ability to attract and reflect upon a diverse range of perspectives when inquiring into a particular law has positive deliberative implications for the capacity of the committee system to improve the overall quality of the law making process, and to identify rights concerns or other problems with the content and implementation of the law. On the other hand, other attributes, such as specialist skills and trusted relationships with the executive, can also lead to a consistently strong legislative impact, which can also have important, positive results.

The extent to which key participants consider the parliamentary committee to play a *legitimate* role within the broader institutional landscape is also critical to determining effectiveness and impact. At the federal level a spectrum of experiences emerges. At one end are the parliamentary committees with tightly prescribed mandates and controlled membership (such as the Intelligence Committee and the Scrutiny of Bills Committee), which are attributed high levels of legitimacy by almost all categories of participants, and particularly by those directly involved in the law-making process. At the other end of the 'legitimacy spectrum' is the Human Rights Committee, a much newer committee with an international human rights law inspired mandate and broader policy focus, which is struggling to gain legitimacy in the eyes of a wide range of participants. In the middle of the spectrum are those committees such as the LCA Committees, whose legitimacy is sometimes questioned by the government of the day, but whose relatively broad and diverse range of participants consistently attribute at least moderate levels of legitimacy across a wide range of functions.

³¹ *Intelligence Services Act 2001* (Cth) pt 4, s 28 (2). The Intelligence Committee has some particular attributes that set it apart from the other Committees considered and relate to its specialist intelligence and national security functions. For example, it has a statutory framework, its government-majority membership is tightly controlled and generally limited to the two major political parties, and it has access to information, expert briefings and powers that are generally broader in scope than other committees established for other purposes. See *Intelligence Services Act 2001* (Cth) pt 4. See also Sarah Moulds 'Forum of choice? The legislative impact of the Parliamentary Joint Committee of Intelligence and Security' (2018) 29(4) *Public Law Review* 41.

³² For further discussion of the role and impact of the Parliamentary Joint Committee of Intelligence and Security see Sarah Moulds 'Forum of choice? The legislative impact of the Parliamentary Joint Committee of Intelligence and Security' (2018) 29(4) *Public Law Review* 41.

2. Legislative Impact

One of the most surprising findings arising from these two cases studies is the significant legislative impact different components of the committee system were able to have on the content of federal laws. In the context of the counter-terrorism cases study, many of the recommendations for legislative change made by parliamentary committees were implemented in full by the Parliament in the form of amendments to the Bill or Act.³³ In addition, the types of changes recommended by these committees were generally rights-*enhancing*. In other words, at least in the counter-terrorism context, legislative scrutiny resulted in improvements in terms of the compliance with human rights standards. This is not to say that legislative scrutiny *removed* or *remedied* the full range of rights concerns associated with counter-terrorism laws (many rights concerns remained despite this scrutiny) - but the legislative changes made as result of scrutiny were significant and positive from a rights perspective. For example, this research suggests that the work of parliamentary committees directly contributed to amendments that:

- narrowed the scope of a number of key definitions used in the counter-terrorism legislative framework, including the definition of ‘terrorist act’;³⁴
- removed absolute liability and reverse onus of proof provisions from the terrorist act related offence;³⁵
- inserted defences within the terrorist act offences for the provision of humanitarian aid;³⁶

³³ Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia’s Counter-Terrorism Laws* (PhD Thesis, University of Adelaide, 2018) Chapter 5 and Table 5.1.

³⁴ Supplementary Explanatory Memorandum, Security Legislation Amendment (Terrorism) Bill 2002 [No 2] (Cth) and Related Bills, Items 5 and 8; in response to Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 [No 2] and Related Matters* (2002) Recommendation 2.

³⁵ Supplementary Explanatory Memorandum, Security Legislation Amendment (Terrorism) Bill 2002 [No 2] (Cth), Items 11, 13, 14; in response to Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 [No 2] and Related Matters* (2002) Recommendation 3.

³⁶ Supplementary Explanatory Memorandum, Security Legislation Amendment (Terrorism) Bill 2002 [No 2] and (Cth), Item 4, in response to Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 [No 2] and Related Matters* (2002) Recommendation 1.

- ensured the power to proscribe terrorist organisations is subject to parliamentary review;³⁷
- subjected each new law enforcement and intelligence agency power to a raft of detailed reporting requirements and oversight by independent statutory officers;³⁸
- ensured persons detained under questioning and detention warrant have access to legal representation, are protected against self-incrimination and have access to judicial review of detention at regular intervals;³⁹
- ensured that pre-charge detention of people thought to have information relevant to terrorist investigations is subject to judicial oversight and maximum time limits;⁴⁰
- 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', and limited the potential to exclude relevant information from the defendant in counter-terrorism trials;⁴¹
- ensured people subject to control orders and preventative detention orders can understand and challenge the material relied upon to make the order and limited the regime to adults only;⁴² and
- narrowed the circumstances in which a dual national can have their citizenship 'renounced' by doing something terrorist-related overseas, including by narrowing the

³⁷ See e.g. Supplementary Explanatory Memorandum, Security Legislation Amendment (Terrorism) Bill 2002 [No 2] (Cth). See also Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 [No 2] and Related Matters* (2002).

³⁸ Ibid, see also Supplementary Explanatory Memorandum, Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 (Cth).

³⁹ See Supplementary Explanatory Memorandum, Australian Security Intelligence Organisation Amendment (Terrorism) Bill 2002 (Cth) and Parliamentary Joint Committee on ASIO, ASIS and DSD, Parliament of Australia, *An Advisory Report on the Australian Security Intelligence Organisation Amendment (Terrorism) Bill 2002* (2002) Recommendations at viii-ix. See also ASIO Amendment (Terrorism) Bill 2003 (Cth).

⁴⁰ See e.g. Supplementary Explanatory Memorandum, Anti-Terrorism Bill 2004 (Cth) Items 4, 5, 6, 7 and 8 which implement Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Anti-Terrorism Bill 2004*, (2004) Recommendations 1-4.

⁴¹ Supplementary Explanatory Memorandum, National Security Information (Criminal Proceedings) Bill 2004 (Cth), 'General Outline' and Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Provisions of the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004* (2004).

⁴² See Supplementary Explanatory Memorandum, Anti-Terrorism Bill (No. 2) 2005 Bill and Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Provisions of the Anti-Terrorism Bill (No 2) 2005*, (2005).

range of conduct that can trigger the provisions; and making it clear that the laws cannot be applied to children under 14.⁴³

These findings are surprising because they challenge the orthodox view that governments generally resist making changes to legislation that they have already publicly committed to and introduced into Parliament.⁴⁴ Interestingly, the strength of this legislative impact varied from committee to committee. For example, the Intelligence Committee was a particularly strong performer when it came to translating recommendations into legislative change (achieving an 100% strike rate during the period from 2013-2018) and improving the rights compliance of the law.⁴⁵ The committees with broader mandates and more open membership, such as the LCA Committees, had a less consistent legislative impact but were particularly active in the early period of counter-terrorism law making, generating popular and influential public inquiries that had important, rights-enhancing legislative outcomes.⁴⁶ These observations are also apposite in the context of the marriage equality reforms, where there is also evidence that different parliamentary committees working together over time had a strong legislative impact. For example:

- the Marriage Legislation Amendment Bill 2015 supported by a cross-party group of parliamentarians,⁴⁷ directly incorporated the three key reforms supported by previous committee inquiries undertaken in 2009 and 2010,⁴⁸ and became the legal template and

⁴³ See Supplementary Explanatory Memorandum, Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) amended clause 33AA(1); see also Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth), and Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Advisory Report on the Provisions of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* (2015).

⁴⁴ As discussed below, this orthodox view suggests that within Westminster systems, parliamentary committees, and in particular government-dominated committees, will be seriously compromised as a form of rights protection, especially when scrutinising laws that affect electorally unpopular groups, such as bikies and terrorists. See e.g. Janet Hiebert, 'Governing Like Judges' in Tom Campbell et al (eds), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press, 2011) 40, 63; Janet Hiebert, 'Legislative Rights Review: Addressing the Gap Between Ideals and Constraints' in Murray Hunt, Hayley Jane Cooper and Paul Yowell, *Parliament and Human Rights: Redressing the Democratic Deficit* (Hart Publishing 2015) 39 at 52.

⁴⁵ Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia's Counter-Terrorism Laws* (PhD Thesis, University of Adelaide, Chapter 5 and Table 5.1).

⁴⁶ Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia's Counter-Terrorism Laws* (PhD Thesis, University of Adelaide, Chapter 5 and Table 5.1).

⁴⁷ This group was comprised of Warren Entsch MP (Lib); Teresa Gambaro MP (Lib); Terri Butler MP (ALP); Laurie Ferguson MP (ALP); Adam Bandt MP (Australian Greens); Cathy McGowan MP (Independent) and Andrew Wilkie MP (Independent).

⁴⁸ This group was comprised of Warren Entsch MP (Lib); Teresa Gambaro MP (Lib); Terri Butler MP (ALP); Laurie Ferguson MP (ALP); Adam Bandt MP (Australian Greens); Cathy McGowan MP (Independent) and Andrew Wilkie MP (Independent). This Bill was proceeded by the Marriage Amendment (Marriage Equality)

political litmus test for the reforms that were ultimately passed by the Parliament in early 2017.

- the Exposure Draft Marriage Amendment (Same-Sex Marriage) Bill,⁴⁹ also contained the three key legislative features previously recommended by the parliamentary committees, including a range of protections for religious freedoms.⁵⁰ This Draft Bill was later examined by specially established Senate Select Committee,⁵¹ which in turn directly influenced the content of the legislative amendments enacted in 2017.
- the Marriage Amendment (Definition and Religious Freedoms) Bill 2017, introduced by Liberal Senator Dean Smith,⁵² contained the key legal features considered in detail by successive parliamentary committees,⁵³ including provisions that redefined marriage as ‘a union of two people’ regardless of gender, enabled same-sex marriages

Bill 2015 (Cth) which was introduced into the House of Representatives on 1 June 2015 by Opposition Leader Bill Shorten MP.

⁴⁹ This Bill was introduced by the Hon George Brandis QC ahead of the failed attempt to establish a plebiscite. Following the defeat of the Plebiscite Bill, the Government announced that the Australian Bureau of Statistics (ABS) would be directed to conduct a voluntary postal survey of all Australians on the electoral roll as to their views on ‘whether or not the law should be changed to allow same-sex couples to marry’. D McKeown, *A chronology of same-sex marriage bills introduced into the federal parliament: a quick guide*, Research paper series, 2016-17, Parliamentary Library, Canberra, updated February 2018.

⁵⁰ For example, the Exposure Draft would insert a new definition of marriage into the Marriage Act to mean: ‘the union of two people, to the exclusion of all others, voluntarily entered into for life’ and it would repeal the existing ban on the recognition of same-sex marriages solemnised overseas. The Exposure Draft would also provide exemptions for marriage celebrants (both religious and civil) who may have religious or conscience objections to solemnising same-sex marriages. Religious bodies and religious organisations would also be able to refuse to provide facilities, goods or services for the purpose of solemnisation of a same-sex marriage. See Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill, Parliament of Australia, *Inquiry into Commonwealth Government’s exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill*, (2016), Executive Summary.

⁵¹ On 30 November 2016, the Senate resolved to establish the Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill to inquire into the Commonwealth Government’s exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill. The Select Committee had a Government Chair, and three other government members, two Opposition Senators and two cross-bench Senators, and attracted more than 20 Senators as participating members..

⁵² This Bill was introduced immediately following the outcome of the voluntary postal vote where 79.5 per cent of Australians had answered the survey and the majority indicated that the law should be changed to allow same-sex couples to marry, with 7,817,247 (61.6 per cent) responding ‘Yes’ and 4,873,987 (38.4 per cent) responding ‘No’. Australian Bureau of Statistics (Cth), ‘Australian Marriage Law Postal Survey, 2017’ (Media Release, 1800.0, 15 November 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/1800.0>>.

⁵³ The Marriage Amendment (Definition and Religious Freedoms) Bill 2017 was described by Senator Penny Wong as ‘a bill based on the consensus report of a cross-party Senate select committee, a committee which undertook extensive consultations with groups supportive of and opposed to marriage equality, and its recommendations sought to balance these interests’. Commonwealth, *Parliamentary Debates*, Senate, 16 November 2017, 18619 (Penny Wong). See also See D McKeown, *A chronology of same-sex marriage bills introduced into the federal parliament: a quick guide*, Research paper series, 2016-17, Parliamentary Library, Canberra, updated February 2018.

that have been, or will be, solemnised under the law of a foreign country to be recognised in Australia, and enabled ministers of religion, religious marriage celebrants, chaplains and bodies established for religious purposes to refuse to solemnise or provide facilities, goods and services for marriages on religious grounds.⁵⁴ This Bill was ultimately enacted in to law on 7 December 2017, reflecting a culmination of over a decade of intensive parliamentary engagement with the issue of marriage equality.

When taken together, these findings suggests that when multiple components of the scrutiny system work together to scrutinise and review an existing or proposed law, a more significant legislative impact is felt.⁵⁵

3. Public Impact

For the purpose of the evaluation framework used in this research, ‘public impact’ refers to the impact of parliamentary committee work on the way laws are debated in the parliament and the community. Looking for this type of impact is particularly important for understanding how parliamentary committees contribute to the deliberative relationship between lawmakers and the broader Australian community. This is because parliamentary committees can help establish a ‘culture of scrutiny’ by providing a forum for parliamentarians to share their views on a proposed or existing law, including pointing out what they consider to be the negative or unintended consequences of the proposed law. This can help identify any unintended or unjustified implications arising from a proposed law, and generate new, less rights-intrusive, legislative or policy options. Parliamentary committees can also help parliamentarians to weigh competing arguments or different policy options,⁵⁶ either through the public process conducted

⁵⁴ This included making amendments contingent on the commencement of the proposed *Civil Law and Justice Legislation Amendment Act 2017* (Cth) and *Sex Discrimination Act 1984* (Cth) to provide that a refusal by a minister of religion, religious marriage celebrant or chaplain to solemnise marriage in prescribed circumstances does not constitute unlawful discrimination.

⁵⁵ This is evident in both the early cases of the Control Order Bill and ASIO Bill 2002, which were considered by the Senate Standing Committee for the Scrutiny of Bills, Parliamentary Joint Committee on ASIO and the Senate Standing Committee on Legal and Constitutional Affairs Committees, and in the post-2013 Bills which were considered by the Parliamentary Joint Committee on Intelligence and Security, Senate Standing Committee for the Scrutiny of Bills, and the Parliamentary Joint Committee on Human Rights. See also Moulds, Sarah, ‘Committees of Influence: Parliamentary Committees with the Capacity to Change Australia’s Counter-Terrorism Laws’ (Paper presented at the Australasian Parliamentary Study Group’s Annual Conference, ‘The Restoration and Enhancement of Parliaments’ Reputation’, Adelaide, October 2016)

⁵⁶ John Uhr, *Deliberative Democracy in Australia: The Changing Place of Parliament* (CUP, 1998) 25; Dominique Dalla-Pozza, ‘Refining the Australian Counter-terrorism Framework: How Deliberative Has Parliament Been?’ (2016) 27(4) *Public Law Review* 271, 274

by the inquiry-based committees, or through the consideration of written analysis provided by the technical scrutiny committees.

The strong public impact of the parliamentary committee system is particularly evident in the marriage equality case study, which demonstrates the potential capacity for parliamentary committees to provide a meaningful deliberative forum for community debate on contested rights issues that is subsequently reflected in (or reflects) the broader parliamentary and community debate on these matters. For example, almost immediately after the enactment of *Marriage Amendment Bill 2004*, legislative efforts began reverse or modify the changes to the definition of marriage, usually advanced in the form of Private Members' or Private Senators Bills. These Bills attracted the support of many of the sophisticated submission-makers to the 2004 LCA Legislation Committee inquiry.⁵⁷ These sophisticated submission-makers include legal groups (such as the Castan Centre for Human Rights Law), human rights groups (such as Liberty Victoria) and religious groups (such as the Australian Christian Lobby), all of which have access to powerful and influential members and allies, as well as experience engaging with the media and implementing advocacy campaigns.

By attracting and engaging with these types of submission-makers, parliamentary committees can provide both a platform for these organisations to express their views and a source of information from which to launch future advocacy campaigns. This in turn can have an influence on how the relevant policy issues are debated in the media, and provide incentives for parliamentarians to improve the deliberative quality of the law-making process. For example, the next year, Senator Hanson-Young introduced a similar Bill (the 2010 Bill), which was again referred to the LCA Legislation Committee for inquiry and report.⁵⁸ The Committee received approximately 79,200 submissions: approximately 46,400 submissions in support of the 2010 Bill, and approximately 32,800 submissions opposed.⁵⁹ The sheer volume of

⁵⁷ See e.g. those submission-makers quoted extensively by the Committee in Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2009*, (2009) Chapters 3 and 4, which include: Dr Paula Gerber from the Castan Centre for Human Rights Law; Mr Gardiner, Vice President of Liberty Victoria; Law Council of Australia; Australian Coalition for Equality; Catholic Dioceses of Sydney and Melbourne; Australian Christian Lobby and Family Voice Australia.

⁵⁸ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012). The Bill was referred to Committee on 8 February 2012. The Committee issued its report on 25 June 2012.

⁵⁹ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) [1.32]. The committee received approximately 75,100 submissions by midnight on 2 April 2012 (the closing date for submissions): of these 43,800 supported the bill and 31,300 opposed it. The committee received an additional 4,100 submissions, of which 2,600 supported the

submissions received (regardless of the existence of 'form letter' style submissions) made this inquiry a powerful indicator of a shift in public support in favour of marriage equality.⁶⁰

In addition to providing a forum for citizens to share their views directly with parliamentarians, the numerous public hearings held in Sydney and Melbourne⁶¹ provided an important opportunity for the media to hear directly from individuals with experiences of discrimination on the grounds of sexual orientation,⁶² as well as those with strong views on the need to preserve marriage as a heterosexual institution.⁶³ These personal stories would also play an important role in advancing the case for legislative change in the lead up to the 2017 reforms.⁶⁴

The inquiry process also allowed for legal experts and rights advocates - both proponents and opponents of marriage equality - to articulate their arguments with reference to evidence and the experiences of other jurisdictions.⁶⁵ This proved to be particularly significant for the development of concrete legislative proposals designed to address both the growing public demand for marriage equality, with concerns associated with the impact of reform on religious rights and freedoms.⁶⁶ These issues became the defining features of the future marriage

bill and 1,500 opposed it. This amounts to 79,200 submissions in total: 46,400, or approximately 59 per cent, supporting Senator Hanson-Young's Bill; and 32,800, or approximately 41 per cent, opposing it.

⁶⁰ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) [4.5].

⁶¹ A list of witnesses who appeared at the hearings is at Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) Appendix 3, and copies of the *Hansard* transcripts are available through the committee's website.

⁶² For example, Mr Justin Koonin from the NSW Gay and Lesbian Rights Lobby, Mr Malcolm McPherson from Australian Marriage Equality and Mrs Shelley Argent OAM, representing Parents and Friends of Lesbians and Gays, as quoted in Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) [2.3]-[2.6].

⁶³ For example, Australian Christian Lobby, Rabbinical Council of Victoria, Episcopal Assembly of Oceania, and Presbyterian Church of Queensland as quoted in Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) [2.57]-[2.61].

⁶⁴ See e.g. 'MP stands with son on same-sex marriage' *AAP Australian National News Wire* (Canberra) 10 October 2016; Sarah Whyte, 'Footballer's 10-minute challenge to change MPs' views on same-sex marriage' *The Sydney Morning Herald*, (Sydney) 22 July 2015; Dan Harrison, 'Parents of gays make TV pitch to Abbott on same-sex marriage vote' *The Sydney Morning Herald*, (Sydney) 30 January 2012; Nina Lord, 'In rainbow families, the kids are all right' *The Age* (Melbourne) 28 September 2017.

⁶⁵ At that time, marriage equality was recognised in the Netherlands, Belgium, Canada, Spain, South Africa, Norway, Sweden, Portugal, Iceland and Argentina, as well as several states in the United States and Mexico City. Legalisation of marriage equality was also under consideration in Denmark, the United Kingdom, Ireland, Brazil, Mexico, Colombia, Finland, Nepal, Slovenia, France, and Paraguay, see Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) [2.52].

⁶⁶ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2010*, (2012) [3.1]

equality debate, and influenced the shape and content of the legislative amendments passed in 2017.

4. Hidden Impact

In addition to looking for ‘legislative’ and ‘public’ impact, the evaluation framework is designed to gather information from those working 'behind the scenes' in the law making process.⁶⁷ This type of impact is described as ‘hidden’ as it often occurs prior to a Bill or amendment being introduced into Parliament and concerns the activities of public servants and parliamentary counsel, outside of the public gaze.⁶⁸

Investigations into the hidden impact of legislative scrutiny on Australia's counter-terrorism laws suggest that committees with high participation rates are in the minds of those responsible for developing and implementing legislation, and prudent proponents of Bills will adopt strategies to anticipate or avoid public criticism by such bodies. In this way, the inquiry-based parliamentary committees (like the LCA Committee) can have a strong ‘hidden impact’ on the development of laws. The ‘technical scrutiny’ committees,⁶⁹ (such as the Scrutiny of Bills Committee) may also generate a strong hidden impact – not because of their capacity to generate public interest, but rather because the 'technical scrutiny' criteria these bodies apply is entrenched in the practices of public servants and parliamentary counsel. For example, written handbooks and other materials designed to assist parliamentary counsel and public servants to develop and draft proposed laws and amendments contains frequent references to the work of the 'technical' scrutiny bodies (such as the Scrutiny of Bills Committee) and some of these

⁶⁷ As part of this research, I interviewed public servants who were directly responsible for developing or drafting the case study Bills, including those from the AGD, Department of Immigration and Border Protection (DIBP), AFP and OPC. I also conducted interviews with current and past parliamentarians and parliamentary staff. Although not statistically representative, these interviews provide a useful insight into the role parliamentary committees play in the development of proposed laws from the perspective of a broad range of players in the legislative development and drafting process. Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia's Counter-Terrorism Laws* (PhD Thesis, University of Adelaide) Appendix A.

⁶⁸ The political Party Room also plays a central role in this behind-the-scenes lawmaking process but remains ‘off-limits’ to almost all researchers, due to its highly politically charged and confidential nature. This work focuses particularly on the role of public servants, parliamentary counsel and parliamentary committee staff and gathers evidence and insights from interviews with these key players in the process.

⁶⁹ These scrutiny-based committees are required to review every single Bill (and in the case of the Human Rights Committee, all legislative instruments) for compliance with a range of scrutiny criteria, including criteria that relates to individual rights and liberties. The Parliamentary Joint Committee on Human Rights is established by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) The scrutiny criteria applied by the Human Rights Committee is outlined in s3 of the Act and includes the human rights and freedoms contained in seven core human rights treaties to which Australia is a party. The Senate Standing Committee on Regulations and Ordinances is also a scrutiny-based committee, with a mandate to scrutinised delegated legislation.

documents, in particular the *Legislation Handbook*, Drafting Directions and Guide to Commonwealth Offences, translate the abstract principles underpinning the scrutiny bodies' mandates into practical checklists to be applied during particular stages of the legislation development process. In this way, these documents may help create a 'culture of rights compliance' within the public service. Over time, they also give rise to the shared view that the scrutiny criteria applied by these bodies reflect 'best practice' when it comes to developing laws.

Understanding these different forms of 'hidden impact' helps uncover new opportunities to improve the effectiveness and impact of the scrutiny system, in addition to exposing some of the system's key challenges and weaknesses. In particular, these findings warn against reforms that radically alter the features of the scrutiny system that currently resonate strongly with those responsible for developing and drafting proposed laws. This suggests, for example, that instead of relying on one particular committee, such as the Human Rights Committee, to generate a culture of rights compliance among law makers in Australia, it may be more useful to consider how the *system* of legislative scrutiny could be adjusted or changed to encourage rights considerations at the pre-introduction phase.

The interview material also reveals that the rights-enhancing hidden impact of parliamentary committees remains vulnerable to a number of dynamic factors, including the degree to which the policy officers are able to present alternative policy and legislative options to the Minister for consideration and the expertise and experience of the policy officers and parliamentary counsel involved in the development and drafting of the Bill. When taken together, these findings suggests that understanding the hidden impact of the parliamentary committee system should be of central interest to anyone interested in understanding the overall impact of the parliamentary committee system on the quality of federal law making in Australia.

Part Three: Identifying new opportunities for parliamentary committees to improve the quality of parliamentary law-making and the relationship between parliament and the people

As noted at the beginning of this Paper, in recent years parliaments have begun to experiment with new ways of engaging with the communities they represent, and new ways of obtaining expert advice on complex policy issues, with varied levels of success. This trend is apparent at the federal level in Australia, with examples of the parliament engaging in:

- the use of online ‘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;⁷⁰
- the use of online survey and public hearings in remote and regional locations by the Joint Select Committee on Aboriginal Constitutional Recognition;⁷¹
- the use of an online survey by the Joint Select Committee on Cyber Security in 2012;⁷²
- 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;⁷³
- 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.⁷⁴

These examples have similarities to some of the techniques employed by parliamentary committees in the above two case studies, which included the use of online surveys, polling data and the voluntary postal vote on the question of marriage equality.

The increasing use of these types of ‘direct democracy’ techniques (that seek to engage directly with members of the public on matters relevant to the parliament) gives rise to opportunities

⁷⁰ Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into Citizenship Bill 2018* (2018) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Citizenshipbill2018/Online_survey>; For commentary on the use of this survey, see Emily Baker, ‘Parliament’s use of survey monkey slammed by students, Hanson’ *The Canberra Times* (27 April 2018) <<https://www.canberratimes.com.au/story/6018443/parliaments-use-of-surveymonkey-slammed-by-students-hanson/>>

⁷¹ Parliament of Australia, Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples *Report* (2018) <<https://www.aph.gov.au/constitutionalrecognition>>.

⁷² Parliament of Australia, Joint Select Committee on Cyber-Safety, *Issues Surrounding Cyber-Safety for Indigenous Australians* (2013), <https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsc/c/index.htm>

⁷³ Parliament of Australia, House Standing Committee on Social Policy and Legal Affairs, *From conflict to cooperation Inquiry into the Child Support Program* (2015) https://www.aph.gov.au/Child_Support_Program_Report_fullreport

⁷⁴ Parliament of Australia, House Standing Committee on Health and Aging, *Inquiry into Breastfeeding* (2007) <https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=haa/breastfeeding/report.htm> see also Beverly Duffy and Madeleine Foley ‘Social media, community engagement and perceptions of parliament: a case study from the NSW Legislative Council’(2011) 26(1) *Australasian Parliamentary Review*, 198, 198-199 referring to Baczynski J, ‘Opportunities for Greater Consultation? House Committees use of information and communication technologies,’ Parliamentary Studies Paper 8, Crawford School of Economics & Government, ANU, Canberra, 2009, 1.

and challenges when it comes to determining (a) their value and impact on federal law making and (b) whether they have any unintended negative consequences and (c) how they can be integrated into the work of more conventional forms of community engagement with parliamentary processes.

The research explored in Part Two of this paper suggest that parliamentary committees might be particularly well placed to provide a meaningful deliberative forum for new sources of information to be evaluated and explored, and to act as a safeguard against some of the concerns associated with these types of direct democracy mechanisms. In particular, the findings arising from the two case studies discussed in Part Two suggest that the federal system of parliamentary committees has the potential to provide a beneficial supplement to direct democracy mechanisms and to improve the deliberative quality of parliamentary law making in Australia by capitalising on these new and emerging public engagement techniques. These themes will be discussed briefly below. This Part of the Paper also offers practical suggestions for how to capitalise on these new opportunities for those currently working within the parliamentary environment in the Australasian region.

1. Facilitating deliberative decision-making

The idea of ‘deliberative decision making’ requires that decision makers have access to accurate and relevant information, consider of a diversity of voices and different positions, reflect on the information received, and reach conclusions on the basis of evidence.⁷⁵ When applied to law making, it requires lawmakers to go beyond the idea of ‘trading off’ values or interests of one group against another, and instead engage in an active search for a common ground between different values or interests.⁷⁶ This in turn sees decision-makers engaging in reflection and sometimes, changing their mind.⁷⁷

The parliamentary experience of the marriage equality reforms suggests that the parliamentary committee system has the capacity to facilitate the occurrence of this type of law-making. There are three indications of this. First, the process supported deliberative decision-making by providing a central, independent collection point for a range of views, expert opinions and

⁷⁵ James Fishkin, *When the People Speak : Deliberative Democracy and Public Consultation* (Oxford University Press, 2009) 39.

⁷⁶ Ron Levy and Grahame Orr, *The Law of Deliberative Democracy* (Routledge, 2016) 76-80.

⁷⁷ *Ibid*, 80, 197. While Orr and Levy’s work focuses on what they call ‘second order’ issues in deliberative democracy, such as the role the judiciary and lawyers play in the design and operation of the electoral system, their analysis of how deliberative democratic values can improve the quality of public decision making holds lessons for the work of parliamentary committees, see 197-200.

comparative data about the social and legal implications of reform in this area. It also provided a forum for parties to exchange of views, present arguments and evidence in order to convince decision makers of the merits of their claims.⁷⁸ Secondly, the early committee inquiry processes paved the way for the development of future legislative and policy solutions to the marriage equality issue by documenting and summarising tens of thousands of submissions in an accessible format for the Parliament to reflect upon when considering reform in this area.⁷⁹ These committee inquiry processes also provided 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.⁸⁰ Thirdly, the deliberative features of committee decision-making allowed the parliamentary committee system to explore rights and policy issues beyond binary positions. The case studies suggest that when parliamentary committees listen to competing views and reflect on the rights and interests of a broad cross-section of the community, they can identify common ground and provide a safe space for key decision makers to change their minds about a policy or law. For example, the LCA Legislation Committee's early success in attracting large numbers of participants to its inquiries had a 'snowballing' effect on the work of other Committees, such as the House Committee in its inquiry into the 2015 Bill; and provided a strong, meaningful connection between the work of these committees and the shifting views of the community on the issue of marriage equality.

This can be contrasted with the experience of the postal survey which framed the policy debate on marriage equality in binary terms, and asked the Australian community to 'pick a side' rather than 'tell their story' when it comes to marriage equality. By narrowing the policy choices down to essential 'yes' or 'no' questions, these mechanisms provide far more limited opportunities for decision-makers to state reasons or demonstrate reflection, and if relied upon exclusively to resolve complex issues of social policy, can hamper efforts to develop nuanced

⁷⁸ Ron Levy and Grahame Orr, *The Law of Deliberative Democracy* (Routledge, 2016) 76-80. For an example of this type of exchange of views see Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2009*, (2009) [5.11].

⁷⁹ House Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012*, (2012) 49 [5.1]. However, the Committee offered some minor textual amendments suggested by the evidence taken during the course of the inquiry," for example by recommending that the Bandt Bill be amended to 'ensure equal access to marriage for all couples who have a mutual commitment to a shared life', at 49 [5.3].

⁸⁰ This aligns with what Fishkin, Levy and Orr consider to be vital features of deliberative decision making. Ron Levy and Grahame Orr, *The Law of Deliberative Democracy* (Routledge, 2016) 4, 22-23; James Fishkin, *When the People Speak : Deliberative Democracy and Public Consultation* (Oxford University Press, 2009) 39.

responses or to provide meaningful protection for minority rights.⁸¹ Under this approach, advocacy groups and media outlets have incentives to frame the policy issue in clear binary terms, attracting support for their preferred option by sensationalising the risks of the alternative or overstating the benefits of their position. This can be seen in the marriage equality example, where the use of direct democracy mechanisms, such as plebiscites or postal surveys, brought strong criticism from those concerned by the prospect of allowing for majoritarian views to determine the legal protection of rights held by vulnerable minority groups.⁸² Concerns were also raised about the impact of a largely unregulated postal survey on the rights and wellbeing of non-heterosexual Australians, who could (and in fact did) face campaigns from opponents that incite intolerance and bigotry.⁸³

While the adoption of a binary approach to rights issues or contested social policy can also occur within any political environment, including within parliamentary committees, elected representatives generally play an important role in mediating the most extreme voices within the community, either through self-reflection on the interests of their electorate, or by commitment to policy positions or values ascribed by their respective political parties. Even when parliamentarians reflect the views of the popular or a powerful majority, they have political incentives to frame their views in inclusive or conciliatory terms in order not to isolate sections of their own electorate or their own political party who may disagree with their position.

2. Direct democracy mechanisms as a beneficial supplement to parliamentary committee processes

These advantages of parliamentary committees over direct democracy mechanisms should not be read as implying that public surveys or online polls have no place in representative

⁸¹ Paul Kidrea. 'Constitutional and Regulatory Dimensions of Plebiscites in Australia' (2016) 27 *Public Law Review* 290, 292-293.

⁸² ABC Radio National 'The Problem with Plebiscites: The Limits of Democracy and the Nature of Representation' *Religion and Ethics* 2 September 2016 (Waleed Aly) <<https://www.abc.net.au/religion/the-problem-with-plebiscites-the-limits-of-democracy-and-the-nat/10096592>> Pettit, Philip 'Deliberative Democracy and the Case for Depoliticising Government' (2001) 24(3) *University of New South Wales Law Journal* 724, [24]-[27].

⁸³ See e.g. Professor Patrick McGorry, Professor of Youth Mental Health at Melbourne University and former Australian of the Year Quoted in Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Matter of a Popular Vote in the Form of a Plebiscite or Referendum, on the Matter of Marriage in Australia* (2015) 12-13 J Massola and M Koziol, 'Mental health leader warns of suicide danger with plebiscite', *The Age*, 4 October 2016, 6. See also 'A year on, the scars of the Gay Marriage plebiscite remain open wounds' *The New Daily* (online) 16 November 2018; Josh Butler 'Bittersweet Memories A Year After The Marriage Equality Vote' *Ten Daily*, (online) 15 November 2018.

democracies.⁸⁴ As Baker has observed, the issue is not whether plebiscites, postal surveys or opinion polls are ‘superior to (and should therefore perhaps replace) representative democracy’, but rather ‘whether direct democracy is a beneficial *supplement* to representative lawmaking processes.’⁸⁵ This suggests that rather than avoiding direct democracy mechanisms altogether, Australian law-makers should look to incorporate these mechanisms into the existing parliamentary committee system where appropriate. This would have the dual benefit of improving the quality and accuracy of information available to parliamentary committees and ameliorating some of the key concerns levelled at direct democracy mechanisms, particularly when applied to complex policy issues or minority rights. The marriage equality journey is an example of this type of beneficial supplementation, and can be used to demonstrate the benefits of combining parliamentary committee processes with direct democracy mechanisms, such as public surveys and postal surveys.

The House Committee’s use of a voluntary online survey as part of its submission process is one example of how a traditional parliamentary decision-making process can engage successfully with efficient and innovative new ways of encouraging individuals to engage with complex or contested rights issues.⁸⁶ The results of the survey were not binding on the Committee, and were analysed and discussed with reference to other relevant information, including information about the impact of the proposed change on the rights of minorities in the community. However, because the survey results engaged hundreds of thousands of Australians, they provided a persuasive indicator of the appetite for reform within the community.

⁸⁴ As Kidrea explores, when handled with care, these types of direct democracy mechanisms can ‘confer legitimacy’ on a government’s plans to ‘overcome a longstanding parliamentary stalemate’. Paul Kidrea. ‘Constitutional and Regulatory Dimensions of Plebiscites in Australia’ (2016) 27 *Public Law Review* 290, 292. See also Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (OUP, 2012)

⁸⁵ Lynn A Baker, ‘Preferences, Priorities and Plebiscites’ (2004) 13 *Journal of Contemporary Legal Issues* 317, 318

⁸⁶ Another example is the 2007 inquiry into breastfeeding in Australia, see Parliament of Australia, House Standing Committee on Health and Aging, *Inquiry into Breastfeeding* (2007) <https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=haa/breastfeeding/report.htm> see also Beverly Duffy and Madeleine Foley ‘Social media, community engagement and perceptions of parliament: a case study from the NSW Legislative Council’(2011) 26(1) *Australasian Parliamentary Review*, 198 ;Baczynski J, ‘Opportunities for Greater Consultation? House Committees use of information and communication technologies,’ Parliamentary Studies Paper 8, Crawford School of Economics & Government, ANU, Canberra, 2009.

These results motivated individual parliamentarians to reflect upon, and even shift, their position and in this way they assisted the process of deliberative lawmaking. They may also have paved the way for both major parties to allow their members to exercise a conscience vote on the issue of marriage equality. This may have occurred, for example, by 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. While the House Committee ultimately resisted the popular support for legislative reform, its presentation of a persuasive material from a range of sources, including the survey, provided the basis for cross-party legislative proposals to be introduced in both Houses of Parliament. The presentation of this detailed and diverse information in the committee's report also signals 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. This reflects the deliberative ideal of reflection and contentiousness in decision-making, and a preparedness to change position on the basis of supporting evidence.⁸⁷

3. Practical suggestions for how to capitalise on these new opportunities for improved engagement and impact

The research that has informed this Paper contains a list of practical reform suggestions for individual committees within the federal committee system, and at the system as whole.⁸⁸ While it is beyond the scope of this Paper to repeat each of those recommendations here, it is useful to summarize in general terms the changes that could be made to similar committee systems in Australia and in comparative jurisdictions to improve the quality of public engagement with law making, having regard to the key themes explored above. These suggestions share many aspects in common with previous reform recommendations made by those working directly within the Australian parliamentary committee system.⁸⁹

⁸⁷ See James Fishkin, *When the People Speak : Deliberative Democracy and Public Consultation* (Oxford University Press, 2009) 38-40.

⁸⁸ Sarah Moulds, *The Rights Protecting Role of Parliamentary Committees: The Case of Australia's Counter-Terrorism Laws* (PhD Thesis, University of Adelaide).

⁸⁹ Eg Joshua Forkert 'Parliamentary Committees: Improving public engagement' (APSG Conference 27-30 September 2017 Hobart); Hendriks and Kay 'From 'Opening Up' to Democratic Renewal: Deepening Public Engagement in Legislative Committees' *Government and Opposition* 7 August 2017, 7-8. 20-21; Beverly Duffy and Madeleine Foley 'Social media, community engagement and perceptions of parliament: a case study from the NSW Legislative Council' (2011) 26(1) *Australasian Parliamentary Review*, 198, Baczynski J, 'Opportunities for Greater Consultation? House Committees use of information and communication technologies,' Parliamentary Studies Paper 8, Crawford School of Economics & Government, ANU, Canberra, 2009; House of Representatives Standing Committee on Procedure, Parliament of Australia, *Building a modern committee system: An inquiry into the effectiveness of the House committee system* (2010) Dr P Larkin, *Transcript of evidence*, 22 October 2009, 2010 'Agreement for a Better Parliament' made between the Australian Labor Party and the independent members (Mr Tony Windsor and Mr Rob Oakeshott) on 7 September 2010, in particular para 10.6. For more information

- **Enhance the deliberative quality of the inquiry process by:**
 - Formalising and actively building upon existing databases of potential submission makers and processes for selecting witnesses for public inquiries to guard against unconscious bias or preference for ‘usual suspects’.
 - Investing in online materials and secretariat staff capacity to support submission makers and witnesses, particularly new witnesses, for example by providing regular workshops for regular and new submission makers and witnesses and a modest hardship fund to support non-government witnesses travelling from regional or remote locations to attend public hearings in person.
 - Embracing the use of online surveys, social media distribution of information and targeted polling on issues relevant to parliamentary committee work as a beneficial supplement to conventional written submission and public hearing processes. These techniques should be supported by qualitative research into their impact on decision-making by parliamentary committee members;
 - Investing in reliable video communication technologies in capital cities and regional centres to facilitate remote access public hearings. This could be supported by the interim use of video conferencing facilities provided by ‘host’ organisations, such as local councils or public libraries.

- **Improve communication between committees and key participants by:**
 - Documenting and reporting on the government response to and legislative implementation of the committees’ recommendations, for example through annual reports and more instantaneous platforms including social media and direct email through a subscription alert service.

on this agreement see Parliament of Australia, ‘The Hung Parliament: procedural changes in the House of Representatives’ (Parliamentary Research Papers 2013–2014 Parliamentary Library, Parliament of Australia, 2013)

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/HungParliament#_ftn6 Ian Marsh, ‘Australia’s Representation Gap: A Role for Parliamentary Committees?’ (Speech delivered at the Department of the Senate Occasional Lecture Series, Parliament House, Canberra, 26 November 2004). See also John Halligan, ‘Parliamentary Committee Roles in Facilitating Public Policy at the Commonwealth Level’ (2008) 23(2) *Australasian Parliamentary Review* 135, 153 see also House of Commons Modernisation Select Committee, *Connecting Parliament with the Public: First Report of Session 2003–04*, HC 368, accessed 9 July 2010 www.publications.parliament.uk/pa/cm200304/cmselect/cmmodern/368/36802.htm> 9 House of Representatives Standing Committee on Procedure, *Building a modern committee system — An Inquiry into the effectiveness of the House Committee System*, June 2010

- Improving communication between committees and those responsible for developing and drafting legislative proposals. This could involve committee secretariat staff liaising with public servants to develop subject-specific Guidance Notes and Drafting Directions.
 - Developing and delivering specific training to assist in the facilitation of respectful, deliberative public hearings, that could include strategies to promote a culture of respect and support for a diverse range of witnesses and processes to update and expand ‘invited submission maker’ lists.
 - Requiring government responses to all Legislation Committee reports before the conclusion of second reading debate on the Bill, and to all Reference Committee reports within six months of tabling (for example, by amending the relevant Standing Orders).
- **Increase committee resources and address high workloads to ensure timely tabling of reports by:**
 - Providing additional funding for the general staffing pool that services parliamentary committees. The amount of additional funding should be determined following a work analysis to determine the nature and level of secretariat support necessary for future demands on the committee system.
 - Encouraging the use of responsive staffing practices, such as shared secretariats and flexible staffing pools, which enable parliamentary staff to move between committees in response to changing workloads.
 - Encouraging the appointment of high-quality, politically independent, part-time specialist advisors to support parliamentary committees over a fixed period, or for particularly complex or lengthy inquiries.
 - Encourage the use of departmental or agency secondee arrangements to support parliamentary committees over a fixed period, or for particularly complex or lengthy inquiries
 - Supporting parliamentarians in their involvement in parliamentary committees, including through improving training programs for parliamentarians’ staff, and profiling high-quality contributions from individual committee members.

- Promoting parliamentary committees as part of the policy and legislative development process amongst the broader public service, including by pointing out the efficiency gains to be made by anticipating and addressing parliamentary scrutiny issues at the pre-introduction stage.
- **Document committees' contribution to establishing a common rights-scrutiny culture within the Parliament by**
 - Investing in research to track the rights language used in parliamentary debates and parliamentary committee reports across a wide range of subject areas to evaluate the level of acceptance of the rights and scrutiny principles listed.
 - Encouraging individual committees to more clearly and specifically document the impact they have on the development and debate of proposed new laws, particularly those committees with specific rights-scrutiny mandates.
 - Facilitating workshops and forums to discuss, document and debate the contribution of parliamentary committees to law making in Australia.

Conclusion

This Paper has described the importance of evaluating the impact of the parliamentary committee system on the quality of parliamentary law making in Australia, as well as highlighting the challenges associated with seeking to evaluate a dynamic institution such as a parliamentary committee. By adopting a three-tiered approach to identifying and evaluating 'impact', this research aims to address the challenges identified during previous studies of parliamentary committees, whilst at the same time providing new, more holistic insights into how different components of the committee system work together, and what is occurring 'behind the scenes' when it comes to legislative scrutiny at the federal level.

The two case studies explored in Part Two of the Paper demonstrate the evaluation framework in action, and uncover the contribution the parliamentary committee system has made to the content and process of counter-terrorism law making, and to the marriage equality reforms. The case studies reveal that it was parliamentary committees working together as a system that played an important role in securing the political commitment and identifying the legal options needed to advance the marriage equality reforms, and made a significant contribution to improving the rights compliance of Australia's counter-terrorism regime. As explored in Part Three of the Paper, the case studies also suggest that that parliamentary committees may hold

many advantages over other mechanisms for resolving contested issues of social policy and minority rights. This is because parliamentary committees have the characteristics of constraint that are needed to enable deliberative decision-making and a nuanced consideration of competing rights and interests to take place. Parliamentary committees can also temper and moderate the findings of direct democracy mechanisms such as postal surveys and plebiscites by utilising the information gained from such exercises to test, challenge or question other evidence and considerations as part of a broader deliberative process. They also provide a ‘safe space’ for parliamentarians to adjust or even shift their public position on a Bill or amendment. For these reasons, the role parliamentary committees played in the two cases studies holds important lessons for those interested in improving Australia’s parliamentary model of rights protection, and for those interested in improving the quality of law-making at the federal level. It suggests that there may be some ‘unsung heroes’ in our current parliamentary landscape that have the potential to provide the foundations for innovative and new ways for rights issues and other contested areas of social policy to be explored and resolved in the future.