

DISRUPTING CONSENSUS: THE ROLE AND NATURE OF MINORITY REPORTS OF COMMITTEES

MR JOHN ALIFERIS AND DR ANITA MACKAY

OVERVIEW

1. Minority Reports as institutionalised dissent
2. Nuanced dissent:
 - A taxonomy for classifying minority reports (developed based on reports of Victorian Joint Investigatory Committees)
 - Illustrations of 4 types of Minority Reports from Victoria
3. Minority Reports as a barometer of health in a democratic system?

INSTITUTIONALISED DISSENT – AN INTRODUCTION

- Joint Parliamentary committees deal with contested inquiry areas on behalf of the whole of Parliament
- The party in government usually controls the membership of committees, therefore there is the spectre of bias towards government-friendly findings
- Ways to address this bias are set out in legislation, standing orders/custom

MINORITY REPORTS AND DISSENT

- Minority reports are one of two paths to deal with conflict – representing a unique form institutionalised dissent
- A Committee minority (single member or a group of members) can write their own ‘report’ on the Inquiry topic.
 - MR deal with any matter raised during the Inquiry and can, and usually do, include alternate findings and recommendations.

WHY DO MINORITY REPORTS MATTER?

- Consensus norm in committees
 - Unanimous committee reports seen as preferred
- Minority reports seen as a sign of Committee/parliamentary disfunction
 - Particularly among overseas and commonwealth researchers
- Our research finds that dissent in the form of minority reports is nuanced, positive and plays an important role
 - But MR motivation is important
 - Political motives are more closely aligned with ideas of dysfunction

WHY DO MINORITY REPORTS MATTER?

- Minority reports represent broad parliamentary and democratic principles at play
 - Plurality: Providing a means to capture multiple views/voices (insiders and outsiders)
 - Normative influence (generating reaction from government or from civil society)
 - Canary and sentinel function: deal with gerrymander and committee abuses of power

MINORITY REPORTS IN ACTION

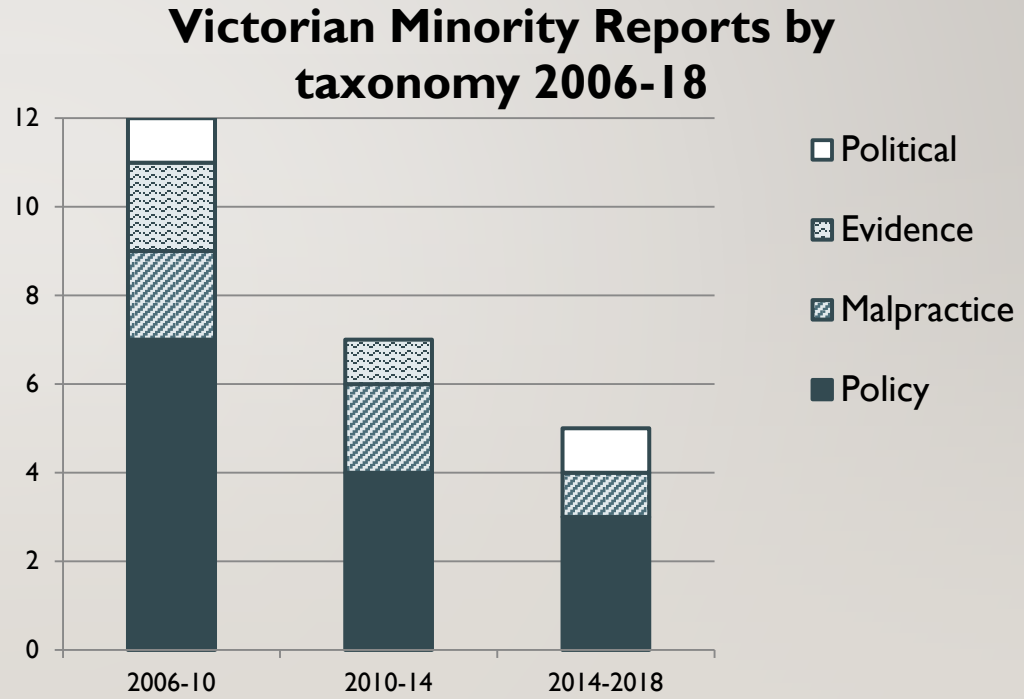
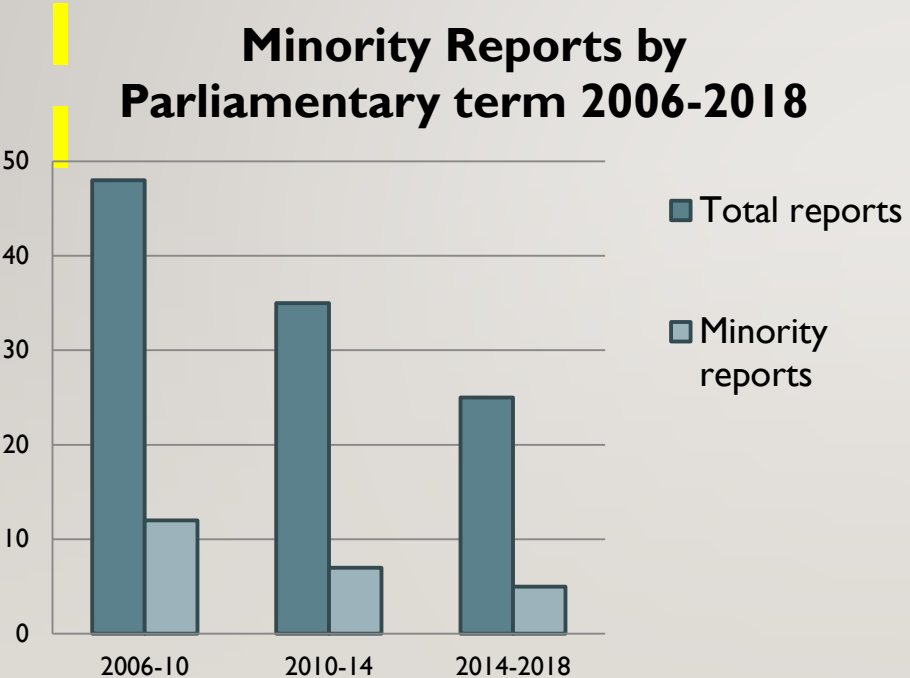
THE VICTORIAN EXPERIENCE

- Minority Reports a stable, and very consistent element of Victorian Joint Committees
 - Consistency over time, different political parties in power and government/non-government control of committees
- Dissent captured in MR almost always focused on ‘real’/‘valid’ motivations (evidence/policy debate/abuse of process/power)
- Analysis shows they are almost never used as an extension of House tactics –political attacks



MINORITY REPORTS IN ACTION

THE VICTORIAN EXPERIENCE 2006-18




TAXONOMY

Image: "HMS Beagle in the Galapagos" by John Chancellor.



4 CATEGORIES OF MINORITY REPORTS

- Policy (most common)
 - Malpractice/malfeasance
 - Evidence
 - Political (least common)
- 

IDENTIFIERS

- Objective/purpose
- Structure
- Language
- Evidentiary basis (reliance and use of evidence)

➤ Classification makes appropriate responses to different categories of reports conceivable

POLICY:
ALTERNATIVE DISPUTE
RESOLUTION AND
RESTORATIVE JUSTICE
(LAW REFORM CTTEE) (2009)



Colourful marine iguana

- Highlights several recommendations in the main report that the minority do not support; detailed reasons
- Uses quotes from experts as supporting evidence
- Report is structured formally; with headings
- Language is rational and dispassionate
 - E.g. “it is premature to reach that conclusion on the basis of the evidence available to date”

MALPRACTICE / MALFEASANCE: ARRANGEMENTS FOR SECURITY INFORMATION (LAW REFORM CTTEE) (2010)



Yellow land iguana

- Raises concerns about Committee processes, including that no public hearings were held, submissions were not made public and an important report was not made available to the Committee
- Report is structured formally; headings; logical flow
- Language is critical and conspiratorial
 - E.g. “the consequent gagging of the minority members of this Committee is unprecedented”

EVIDENCE: APPROACHES TO HOMEWORK IN VICTORIAN SCHOOLS (EDUCATION & TRAINING CTTEE) (2014)



Grey marine iguana

- Short report, focusing on perceived lack of attention on one issue
- Refers to evidence of a student that the minority considers was overlooked in the main report
- Report is informal and short (2 pages)
- Language is accusatorial and conspiratorial
 - E.g. “the Government has removed the very financial assistance that is designed to help”

POLITICAL:
PROVISIONS OF THE
ELECTORAL ACT 2002
RELATING TO POLITICAL
ADVERTISING (ELECTORAL
MATTERS CTTEE) (2010)



Christmas iguana

- Objective of the report is to criticise the position taken by the Labor Party during the inquiry
- It is a short report (1.5 pages) that quotes submissions and extracts from transcripts of public hearings
- The language used is antagonistic and critical
 - E.g. “the position adopted by the ALP could be categorised as ... in the words of Les Tentyman ‘a debasement of the political system’”

MINORITY REPORTS AS A MEASURE OF PARLIAMENTARY HEALTH

1. Parliamentary politics domestically and internationally are seen by some to be 'dysfunctional'
 - Minority Reports could be an extension of the 'dysfunction'
2. We suggest minority reports are a good measure/barometer of parliamentary and political health
 - Consistent trend in numbers and types between parliamentary terms/change in government, a proxy for good health
 - Statistically significant changes in types or numbers may indicate dysfunction (not just more minority reports but also fewer)
3. Tracking minority reports should be seen as a way of measuring the health of a parliamentary democracy