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Editor - Rodney Smith, Professor of Australian Politics, University of Sydney

Toxic Parliaments

Electoral Reform in Western Australia

Citizen Participation and Engagement

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The APR is the official journal of ASPG, which was formed in 1978 for the purpose of encouraging and stimulating research, writing and teaching about parliamentary institutions in Australia, New Zealand and the South Pacific (see back page for Notes to Contributors to the journal and details of AGPS membership, which includes a subscription to APR). To know more about the ASPG, including its Executive membership and its Chapters, go to www.aspg.org.au

AUSTRALASIAN PARLIAMENTARY REVIEW

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* Indicates that the article has been double-blind reviewed.

From the Editor

Rodney Smith

Professor of Australian Politics, University of Sydney

The articles in this issue of the *Australasian Parliamentary Review* continue its strong tradition of bringing critical and well-informed perspectives to bear on recent and current matters of importance to Parliaments in our region, scrutinising problems and drawing on Australasian and broader parliamentary experiences to suggest potential reforms.

The first two articles in this issue address different examples of toxic behaviour in Parliaments. Marian Sawer considers responses to the February 2021 revelation that a young female member of staff had been raped in a Minister's office in the Australian Parliament House. This revelation provoked a wave of public protest against women's experiences of Parliament as an unsafe workplace, experiences which matched those of many women in Parliaments around the world. Sawer argues that the unique structure and nature of parliamentary employment, coupled with dynamics of partisan competition, have often promoted silence when such abusive behaviour has occurred. The Parliament of Australia has lagged behind reforms in comparable Parliaments, including those in Canada, New Zealand and the United Kingdom, to address this issue. Sawer assesses steps taken by other Parliaments to deal with gender-based bullying and sexual harassment and concludes with some specific recommendations drawn from international experience.

In the second article, David Clune discusses the aftermath of the surprise resignation of the President of the NSW Legislative Council in February 2021. A deadlock between the Government and most of the non-Government MLCs meant that a replacement could not be elected. The Council could not function without a President, nor could the Parliament legislate without the Council. The article outlines the increasing partisanship surrounding the election of the President that has developed since 1991. It also analyses the more immediate controversy over the status of informal votes and the meaning of 'a majority' in the election of the new President in 2021. While the immediate crisis was eventually resolved, Clune concludes that none of the MLCs involved can escape blame for an unedifying spectacle likely to damage the standing of the NSW Parliament.

Partisan imperatives also feature in the third article by Martin Drum, Sarah Murray, John Phillimore and Benjamin Reilly, which provides critical commentary on four aspects of Western Australia's Electoral Act: district malapportionment, ticket voting, political financing and postal voting. The authors argue that WA lags behind best, or at

least better, practice found in other Australian jurisdictions, outline specific concerns in each of the four areas, discuss some potential solutions available to WA legislators and comment on their prospects of success in WA. This is another timely article, given the WA Ministerial Expert Committee review of the electoral system for the Legislative Council currently being undertaken.

As John Aliferis and Anita Mackay note in their article, scholars and practitioners have generally valued consensus in parliamentary committee reports and viewed minority reports as a sign of committee failure. Their article questions that view via an examination of minority reports generated by joint investigatory committees of the Parliament of Victoria between 2006 and 2018. The article presents an original taxonomy of minority reports, with four major categories relating to whether minority reports are motivated by a policy focus, political considerations, alleged malpractice or malfeasance in the committee process, or evidential concerns. They conclude that minority reports in Victoria generally serve constructive purposes and are mostly focused on policy issues. They suggest further research applying the taxonomy to other jurisdictions could expand our understanding of committee reports.

The last two articles in this issue both address public engagement with Parliament. Josephine Moa asks how referring petitions to parliamentary committees can best increase citizen participation. She draws on Arnstein's Ladder of Participation to evaluate the different models for handling petitions used in the ACT Legislative Assembly, the Scottish Parliament and the New Zealand Parliament. The core of the article presents detailed evidence on petitions presented to the ACT Legislative Assembly between 2008 and 2018. Moa argues that reforms to the ACT Standing Orders, which mean that petitions with 500 or more signatories are now referred to a standing committee, have not improved the quality of citizen participation. Nonetheless, they have the potential to do so if some additional steps are adopted.

Finally, Sarah Moulds reports on an international conference on *Public Engagement and its Impact on Parliaments* that was organised by the International Parliamentary Engagement Network and held as an online event on 26 March 2021. The conference had two 'hubs'—one based in Australia that Moulds convened, and one based in Europe convened by Professor Cristina Leston-Bandeira of the University of Leeds. The article introduces some of the latest theorising around public engagement, as well as some of the key practical approaches to deeper engagement that were discussed at the conference.

Articles

Dealing with Toxic Parliaments: Lessons from Elsewhere

Marian Sawer[1]

Emeritus Professor, School of Politics and International Relations, Australian National University.

Abstract In February 2021, Brittany Higgins set in motion a wave of protest in Australia concerning women's experience of Parliament as a workplace. The way her claim of rape in a Minister's office was treated made it clear the Parliament of Australia was lagging behind reforms taking place elsewhere. In the wake of the 2017 #MeToo movement, women have been emboldened to reveal their experience of Parliament as an unsafe workplace. The problems are widespread due to the unique structure and nature of parliamentary employment coupled with partisan dynamics. This article examines steps taken by other Parliaments, including those in Canada, New Zealand and the United Kingdom, to deal with issues of bullying and sexual harassment and the pitfalls encountered. It ends with some recommendations flowing from lessons learned.

INTRODUCTION

In 2003, the Australian Senate amended its Standing Orders so that breastfeeding Senators could be present in the chamber and their babies would no longer be treated as 'strangers'. For a while it looked as though the Parliament of Australia might be taking a lead in creating a more inclusive workplace. But 16 years later, when an alleged rape took place in a Minister's office, it was clear that Australia had lagged behind reforms taking place in other Parliaments.

[1] An early, shorter version of this article appeared in *Inside Story*, 1 March 2021.

This article will address the new international norms concerning Parliament as a workplace and examine the ways in which comparable Parliaments are addressing problems such as sexual harassment, now found to be ubiquitous. For the purposes here, sexual harassment will be taken to include all forms of unwelcome conduct in the workplace that is of a sexual nature. Such conduct is now widely understood to create a hostile work environment and to interfere with work performance. The naming of this conduct as sexual harassment and its identification as a form of sex discrimination for which a legal claim can be made dates from the 1970s and an influential book by the American legal scholar Catherine A. MacKinnon.[2]

Australia was a pioneer in explicitly including sexual harassment as unlawful conduct under its 1984 *Sex Discrimination Act* and it became the most common ground of complaint under the Act. The most recent national survey by the Australian Human Rights Commission has found that one in three people had experienced workplace sexual harassment in the past five years.[3] However, politicians appeared to be exempt from the provisions of the federal Act because they were not technically the employers of staff, although they had hire and fire powers.

The 1994 Griffiths scandal in NSW, when nine former staff of the Police Minister made allegations of sexual harassment against him, led to a Commission of Inquiry which recommended a similar loophole in the NSW *Anti-Discrimination Act* be closed. The inquiry regarded it as essential that Members of Parliament (MPs) be covered by the same workplace rules as other employers and the NSW Act was amended in 1997 to 'prohibit sexual harassment, to ensure that Ministers and other Members of Parliament are liable for their own acts of sexual harassment; and for other purposes'.[4]

In South Australia, similar moves took place to close the loophole exempting MPs, judges and local councillors from prosecution for sexual harassment under the *State Equal Opportunity Act*. Sexual harassment has been found to be particularly prevalent

[2] Catherine A. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination. New Haven: Yale University Press, 1979.

[3] Australian Human Rights Commission, Respect@Work: Sexual Harassment National Inquiry Report, 2020, p.17. Accessed at: https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020

[4] Carmel Niland, Report of the Independent Commission of Inquiry into Matters Relating to the Resignation of the Former Minister for Police and Minister for Emergency Services, Terry Griffiths MP. Sydney: The Committee, 1994, p. 27. See Anti-Discrimination Act 1977 (NSW), s22B.

when women have entered traditionally male industries such as construction or mining. However, when women entered the traditionally male institutions of Parliament and the courts and were treated as 'space invaders', they lacked the legal remedies available elsewhere. A woman Minister in the South Australian Government, the Hon Jennifer Adamson, took up the issue of sexual harassment after personal experience of being humiliated when she was a new MP. She was pinched on the bottom, not only once but again after she objected, by a male MP in the Members' Dining Room.[5]

The Parliament of Australia, however, failed to follow initiatives at the state level to ensure that judges and Members of Parliament were personally liable for sexual harassment, despite recommendations from the Australian Human Rights Commission. This was painfully exposed in early 2021 when former ministerial staffer Brittany Higgins made her explosive allegations. Higgins' courage in speaking out inspired revelations by other women MPs and staffers and demonstrations by some 100,000 women and men around Australia, bringing the issue firmly onto the policy agenda. In response, Independent MP, Zali Steggall, introduced a Private Member's Bill, The Sex Discrimination Amendment (Prohibiting all Sexual Harassment) Bill 2021, seconded by another Independent MP, Dr Helen Haines. The Prime Minister, however, responded that the Government would await the findings of an independent review of the parliamentary workplace before assessing the issues raised in the Bill.[6]

There is a long history in Australia of devoting a stage in the policy development process to the study of how other countries have addressed a problem that has arrived on the policy agenda. The introduction of old-age pensions is a good example. Learning from other jurisdictions can be extremely helpful and is my focus in this article.

THE NATURE OF THE PROBLEM

In the 1990s, the representation of women in Parliament became a priority issue on many international agendas and the under-representation of women became accepted as an indicator of democratic deficit. The global movement for candidate quotas

[5] Bunty Parsons, 'Drunken MP and a Pinch Triggered Her Crusade'. *The Advertiser*, 4 August 1980.

[6] Scott Morrison, *Commonwealth Parliamentary Debates*, House of Representatives, 23 March 2021, p. 22.

contributed to an increased presence of women in Parliament but by the second decade of the 21st century it was being discovered that increased presence did not necessarily amount to equal rights at work for either women MPs or staff.

The increased presence of women MPs, has sometimes meant that long-standing traditions of parliamentary behaviour, including aggressive debating styles and personalised attacks, have taken on newer sexist forms, whether in *sotto voce* commentary in the chamber or sexualised images and threats in social media. Failure by the Parliament of Australia to uphold non-sexist standards and denounce the circulation of sexually explicit material about Julia Gillard while she was Prime Minister has been described as an attack on her rights at work.[7] Online sexual harassment and trolling has become a common experience of women MPs and one that is difficult to deal with.[8] Inside the Parliament, one Senator remarked there was behaviour one might expect in a nightclub rather than in a workplace.[9]

Apart from parliamentary culture, another longstanding tradition, that of parliamentary privilege, is also a possible constraint on action to deal with offensive speech and behaviour. It was invoked in a court case brought by Senator Sarah Hanson-Young after she was told by another Senator at the conclusion of a vote that she should stop shagging men. Parliamentary privilege was also raised in Canada as one of the main obstacles to a new code of conduct to combat harassment between Members of the Canadian House of Commons.[10]

For women staffers, the precarious and very unequal nature of employment relationships, high pressure, long hours and the demands of party loyalty have made workplace bullying and harassment a common feature of the parliamentary workplace.

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[7] Anne Summers, 'Her Rights at Work: The Political Persecution of Australia's First Female Prime Minister'. *The Economic and Labour Relations Review* 23 (4) 2012, pp. 115–126.

[8] Kate Ellis, *Sex, Lies and Question Time*. Melbourne: Hardie Grant Books, 2021, Ch.5.

[9] Katina Curtis, 'Senator Thorpe Tells of Harassment by MPs'. *The Age,* 24 March 2021, p. 4.

[10] Cheryl N. Collier and Tracey Raney, 'Understanding Sexism and Sexual Harassment in Politics: A Comparison of Westminster Parliaments in Australia, the United Kingdom and Canada'. *Social Politics: International Studies in Gender, State and Society* 25(3) 2018, p. 439. See also Tracey Raney and Cheryl N. Collier, 'Privilege and Gendered Violence in the Canadian and British Houses of Commons: A Feminist institutionalist Analysis'. *Parliamentary Affairs* 2021. doi: 10.1093/pa/gsaa069

[10] House of Commons, Canada, *Members of the House of Commons Workplace Harassment and Violence Prevention Policy*, 28 January 2021.

Surveys of staffers repeatedly find that a significant number report experience of bullying or harassment. For example, a large survey of workers in the Scottish Parliament, found that 30 percent of female respondents and six percent of male respondents reported having experienced sexual harassment, a figure similar to that found in surveys of the New Zealand and South Australian parliamentary workplaces.[11] Regardless of who is the legal employer, Members of Parliament generally have the right to hire or fire their staff, creating a huge power imbalance. On top of this, many newly elected MPs have little or no previous experience as an employer.

The New Zealand parliamentary survey found that, in the perception of many respondents, the power imbalance is not only between parliamentarians and their staff but also between parliamentarians and the human resources (HR) area of the legal employer of these staff, the parliamentary Service. For example: 'HR said to me, "at the end of the day, MPs don't change. We can't tell them how to treat their staff because they're elected"'.[12]

In Australia, a February 2021 survey conducted by the Community and Public Sector Union of Members of Parliament (Staff) employees found similar beliefs about the reluctance of HR in the Department of Finance, the legal employer, to stand up to MPs guilty of misbehaviour. Over 80 percent of survey respondents said they didn't know if the Department of Finance, 'would support them if they reported bullying or harassment in the workplace'.[13]

Unlike others with responsibility for employees, politicians are elected representatives who cannot generally be dismissed for bad behaviour. Accountability is largely left to

[11] Scottish Parliament, Sexual Harassment and Sexist Behaviour Survey, Final Report, February 2018, p. 3. Accessed at: https://archive2021.parliament.scot/StaffAndManagementResources/10130_Sexual_Harassment__Sexist_Behaviour_Survey_-_Final_Report_260218.pdf; Debbie Francis, Bullying and Harassment in the New Zealand Parliamentary Workplace, External Independent Review, May 2019, p. 37. Accessed at: https://www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/corporate-documents/independent-external-review-into-bullying-and-harassment-in-the-new-zealand-parliamentary-workplace-final-report/ ; Government of South Australia, Equal Opportunity Commission, Review of Harassment in the South Australian Parliament Workplace, February 2021, p. 23. Accessed at: https://eoc.sa.gov.au/review-harassment-south-australia-parliament-workplace

[12] Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace*, p. 17.

[13] Shannon Jenkins, 'Political Staffers Don't Trust Their Bosses to Investigate Sexual Harassment Reports Impartially'. *The Mandarin* 26 February 2021. Accessed at: https://www.themandarin.com.au/150166-political-staffers-dont-trust-their-bosses-to-investigate-sexual-harassment-reports-impartially-cpsu-survey-finds/

their parties or to their constituents at election time. This is true not only of national and subnational Parliaments but also of transnational Parliaments such as the European Parliament, where MEPs may employ three or sometimes four 'accredited parliamentary assistants', who often travel with them and whose contracts may be terminated at any time if there is a loss of trust.[14]

The after-hours networking that is often part of political work, together with receptions, travel and the use of alcohol, may blur professional and personal boundaries and lead to unsafe work conditions for women. While young women are particularly vulnerable, women in positions of power are not immune; subordinates or colleagues may resort to harassment as a 'power equalizer'.[15]

The consumption of alcohol, reflecting the persistence of a 'men's club' culture in Parliament, is frequently mentioned as aggravating the risks for women. After-hours drinks or functions form an extension of the parliamentary workplace. Survey respondents have called for policy limits around alcohol consumption in the parliamentary precinct and also while travelling offsite with MPs.[16]

The structural problems of the parliamentary workplace are exacerbated by the relatively large numbers of political staff to be found in the Australian Parliament. For example, at the beginning of 2019 the Australian Government had over 450 publicly funded staffers (not counting electorate staff) compared with the UK Government's 99 'special advisers', despite the UK's population being two and a half times larger.[17] Within Australian political staff, women have been under-represented in senior policy roles and more likely to be allocated support roles, contributing to vulnerability.[18]

[14] Valentine Berthet and Johanna Kantola, 'Gender, Violence and Political Institutions: Struggles over Sexual Harassment in the European Parliament'. *Social Politics* 28(1) 2021, p. 147.

[15] Heather McLaughlin, Christopher Uggen, Amy Blackstone, 'Sexual Harassment, Workplace Authority, and the Paradox of Power'. *American Sociological* Review 77(4) 2012, pp. 625–647. https://journals.sagepub.com/doi/10.1177/0003122412451728

[16] For example, Government of South Australia, *Review of Harassment in the South Australian Parliament Workplace*, pp. 33–34.

[17] Marian Sawer, 'The Concept of the Level Playing Field: Assessing Fairness in Electoral Competition'. *Australian Journal of Public Administration*, 2020, p. 9. DOI: 10.1111/1467-8500.12458

[18] Marija Taflaga and Matthew Kerby, 'Who Does What Work in a Ministerial Office: Politically Appointed Staff and the Descriptive Representation of Women in Australian Political Offices, 1979–2010'. *Political Studies* 68(2) 2020, pp. 463–485.

Adversarial political cultures, such as those found in Westminster systems, are sometimes singled out for blame for the gendered harms experienced by women in Parliament. Those who wish to complain about treatment in the workplace are likely to find that protecting the party against criticism from political opponents trumps commitment to any kind of equality in the workplace.

The issue of partisanship is not just a matter of parties regarding harassment complaints as a political problem. It is also a matter of party loyalty on the part of the staffer. The 2018/19 New Zealand parliamentary survey of bullying and harassment found that personal party affiliation and the risk of a complaint being used against their party often provided 'a disincentive to disclose'.[19] The 2019 UK inquiry into bullying and harassment of parliamentary staff found similar concern that making a complaint would damage the staffer's political party or their MP's chance of re-election.[20]

Separately, making a complaint was seen as damaging the career prospects of a staffer because of the need to be seen by the party as a 'team player'.[21] Many staffers have political ambitions and increasingly political employment is the most common pathway to elected office.[22] The fact that the parliamentary workplace can be so problematic for women has direct implications for political careers and may result in a retreat from politics or foregoing career opportunities.

The culture of silence induced by partisan considerations extends beyond Westminster Parliaments. staffers often echo a response recorded in an IPU survey: 'I didn't want to make the incident public. I didn't want to damage my party'.[23] The European Union

[19] Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace*, p. 32.

[20] Gemma White QC, Bullying and Harassment of MPs' Parliamentary Staff. Independent Inquiry Report, July 2019. https://www.parliament.uk/globalassets/documents/conduct-in-parliament/gwqc-inquiry-report-11-july-2019_.pdf See also, Government of South Australia, *Review of Harassment in the South Australian Parliament Workplace*, pp. 62–63.

[21] White, *Bullying and Harassment of MPs' Parliamentary Staff*, p. 29.

[22] Tom McIlroy, 'Australia's Career Political Class: Rising Number of Australian MPS are Former Staffers and Ministerial Advisers'. *Sydney Morning Herald*, 25 March 2017. https://www.smh.com.au/politics/federal/australias-career-political-class-rising-number-of-australian-mps-are-former-staffers-and-ministerial-advisers-20170323-gv4ne9.html

[23] IPU, Sexism, Harassment and Violence against Women in Parliaments in Europe, 2018, p. 10. Accessed at: https://www.ipu.org/resources/publications/issue-briefs/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe

has had since 2002 a legally binding Directive on Equal Treatment that defines sexual harassment as sex discrimination. However, while the European Parliament has had an Anti-Harassment Committee from 2014, five years later not a single case of sexual harassment had been investigated.[24]

From 2017, the #MeToo movement and the number of women speaking out about their workplace experiences has emboldened women MPs and staffers around the world to reveal their own experiences of sexual harassment and gender-based violence. In the European Parliament, elected Members shared their own experiences in a debate on sexual harassment, displaying signs with #MeToo in their respective languages such as #moiaussi. Soon there was also a staff-led MeTooEP group. This published 30 anonymous testimonies of sexual harassment including harassment of young interns (https://metooep.com). Partisan constraints mean that it is often easier for former politicians and staffers to provide this testimony. Those still in Parliament may experience violent backlash for speaking out, including online threats and abuse.

By 2020, when the South Australian Equal Opportunity Commission undertook a review of harassment in the South Australian Parliament workplace, it was able to draw on seven international reports on harassment in parliamentary environments.[25] When critics dismissed such reports as 'the cost of doing politics', the Washington-based National Democratic Institute launched a global #NotTheCost campaign. While women from ethnic and LGBTI minorities and young and feminist women have been particular targets of gender-based violence, it acts as a more general deterrent to women's political participation.[26] The effects on legislative recruitment and performance of elected representatives have motivated the Inter-Parliamentary Union (IPU) to set new standards for Parliament as a workplace.

NEW INTERNATIONAL STANDARD

The adoption in 1979 by the UN General Assembly of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) signalled the beginning of a

[24] Berthet and Kantola, 'Gender, Violence and Political Institutions', p. 148.

[25] Government of South Australia, Equal Opportunity Commission, *Review of Harassment in the South Australian Parliament Workplace*, p. 3.

[26] IPU, *Sexism, Harassment and Violence against Women in Parliaments in Europe*, p. 13.

new era of global and regional commitments to the advancement of gender equality. A large array of both intergovernmental bodies and specialised international agencies have worked to translate the normative framework created by CEDAW into standards and codes of practice, including those on the prevention of sexual harassment.

Among regional intergovernmental bodies, as we have seen, the EU extended the scope of its Directive on Equal Treatment in 2002 to cover sexual harassment in the workplace. Among international intergovernmental bodies, the International Labor Organization (ILO) now has C190—the Violence and Harassment Convention, due to enter into force in June 2021. Its Preamble recognises the right of everyone to 'a world of work free from violence and harassment, including gender-based violence and harassment'.[27] Among the international agencies conducting the 'norm work' of translating CEDAW into governance standards have been the IPU, the Organization for Economic Cooperation and Development (OECD) and the International Institute for Democracy and Electoral Assistance (International IDEA).[28]

The goal of achieving gender equality in public decision-making has encompassed mechanisms for increasing the legislative recruitment of women. After legislated candidate quotas were pioneered by Argentina in 1991, this approach was soon disseminated both regionally and internationally. However, the gendered nature of the parliamentary institutions to which women were gaining entry meant there were still significant barriers to equal opportunity.

Even before the IPU took up the issue, the Commonwealth Parliamentary Association had prepared a 2001 report on *Gender Sensitizing Commonwealth Parliaments*. The report defined the goal as 'removing the barriers which inhibit the fullest participation by women' and specified barriers including aggressive Westminster-style debating and disrespectful comments with sexual undertones.[29] The IPU began publishing its own

[27] International Labor Organization, C190—Violence and Harassment Convention, 2019. Accessed at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

[28] Sonia Palmieri and Julie Ballington, 'Tools of the Trade: Feminist Governance in the Field', in Marian Sawer, Lee Ann Banaszak, Jacqui True and Johanna Kantola (eds), *Handbook of Feminist Governance.* London: Edward Elgar, 2022.

[29] Commonwealth Parliamentary Association, Gender-Sensitizing Commonwealth Parliaments: The Report of a Commonwealth Parliamentary Association Study Group. London: Commonwealth Parliamentary Association Secretariat, 2001, ¶56. Accessed at: http://old.agora-parl.org/sites/default/files/Gender%20Sensitizing%20Commonwealth%20Parliaments.pdf

work on gender-sensitive Parliaments (GSP) a decade later. These standards include the responsibility of Parliaments to provide a non-discriminatory workplace and to eliminate gendered bullying and sexual harassment.

In 2012, the 127th IPU Assembly in Québec City unanimously adopted a GSP plan of action that included parliamentary staff as one of seven 'key action areas'. The actions recommended for parliamentary staff included development and implementation of 'anti-discrimination and anti-harassment policies applicable for all parliamentary staff, including the establishment of an independent body to which complaints can be submitted and addressed'.[30] This plan of action was adopted unanimously by IPU members. One member of the Australian delegation, Harry Jenkins MP, told the special session on GSP about how in the Australian Parliament the Members' Bar had become a childcare centre and about the arrangements [in the House of Representatives] for nursing mothers to vote by proxy.[31] Mentioning the replacement of a Members' Bar, with its men's club connotations, by the more inclusive childcare centre was perhaps meant to emphasise a shift in workplace culture. Nonetheless, Jenkins was unable to mention any anti-harassment policies adopted by the Australian Parliament or the need for them, despite examples given in the misogyny speech made by Australian Prime Minister Julia Gillard in the House of Representatives a few days earlier.

The IPU, the Commonwealth Parliamentary Association, the OECD and the European Institute for Gender Equality (EIGE) have all produced toolkits to assist in achieving gender equality norms in the parliamentary workplace, with examples of good practice and self-assessment methodology. Standards recommended include making explicit that sexism, sexual harassment and gendered bullying are 'unparliamentary behaviour' and ensuring that independent complaints mechanisms are available, whether for

[30] IPU Plan of Action for Gender-sensitive Parliaments. Geneva: IPU, 2012. Accessed at: http://archive.ipu.org/pdf/publications/action-gender-e.pdf

[31] Parliament of the Commonwealth of Australia, 127th Inter-Parliamentary Union Assembly in Quebec City, Canada: Report of the Australian Delegation, 2013, p. 6. Accessed at: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2FHSTP017761_2010-13%22 Note that Senators can vote in person, or indeed put forward a motion while breastfeeding, as did Senator Larissa Waters in 2017.

Members of Parliament, staff or visitors.[32] The EIGE toolkit makes explicit the link between equal opportunity to participate in parliamentary work and the need for a safe working environment with protection from sexual harassment.[33]

Parliaments have responded in different ways to these new international standards concerning Parliament as a workplace, as shown in surveys such as those conducted by the IPU in 2016 and 2018 and by EIGE in 2019. Numerous respondents to the 2018 IPU survey mentioned the importance of making responses to sexism and sexual harassment a non-partisan issue, to overcome the culture of silence mentioned earlier in this article. This meant the need to have codes of conduct and internal procedures within the political parties, so that complaints could be dealt with effectively without becoming partisan ammunition.[34]

Example of codes adopted by parties include the Australian Greens anti-sexual harassment policy, adopted in 2018, the Liberal Party's national code of conduct adopted in 2019 and the Australian Labor Party's national policy for sexual harassment prevention and response, adopted in February 2021. The latter includes provision for mandatory training of new MPs and senior staff, a register of those who have received this training, and a policy of active bystander intervention.[35] In 2018, a federal Labor MP faced at least 44 allegations from former staff and blamed her downfall in part on the absence of training in office management.[36] The Community and Public Sector Union, which has coverage of political staffers, has also asked for sexual harassment prevention training as well as improved complaint procedures to be covered in the

[32] Sarah Childs, Gender Sensitizing Parliaments Guidelines: Standards and a Checklist for Parliamentary Change. Commonwealth Parliamentary Association, 2020, p. 17. Accessed at: https://issuu.com/theparliamentarian/docs/cwp_gender_sensitizing_guidelines

[33] Tània Verge, Nazia Chowdhury and Irina Ulcica, Gender Equality in National Parliaments across the EU and the European Parliament. Vilnius: EIGE, 2019, p. 12. Accessed at: https://eige.europa.eu/publications/gender-equality-national-parliaments-across-eu-and-european-parliament

[34] IPU, *Sexism, Harassment and Violence against Women in Parliaments in Europe*, p. 16.

[35] ALP, National Policy for Sexual Harassment Prevention and Response, February 2021. Accessed at: https://www.alp.org.au/media/2348/alp-national-policy-for-sexual-harassment-prevention-and-response.pdf

[36] Kylar Loussikian, 'Former Staff Reignite Husar Row'. *The Age*, 3 December 2018, p. 8.

enterprise agreement being negotiated in 2020–21, in recognition of the 'unique risks and hazards' created by the asymmetrical structure of the parliamentary workplace.[37]

In Europe, the EIGE survey showed that out of the EU Parliaments surveyed, nine national Parliaments and the European Parliament had public information available about mechanisms to prevent gender discrimination, sexism and sexual harassment.[38] In Canada, Iceland and the European Parliament, MPs must sign a declaration committing them to contribute to a work environment free of sexual harassment. In the European Parliament, failure to do so disqualifies an MP from being appointed as a rapporteur or participating in official delegations.[39] The European Parliament also provides courses for parliamentarians on the management and staffing of their offices, something universally called for in reports on bullying and harassment in the parliamentary workplace.

While some Parliaments have adopted codes of conduct that explicitly prohibit sexual harassment, it has been observed that in general far less attention has been paid in parliamentary codes of conduct to gendered harms than to integrity issues such as conflict of interest.[40] Successive codes of conduct have been adopted to deal with integrity issues such as the cash-for-questions scandal in the UK House of Commons and the sponsorship scandal in Canada. The integrity focus is certainly true of Australia, where all Parliaments have registers of pecuniary interests of parliamentarians but none has a code of conduct specifying the prohibition of sexual harassment or an independent oversight body.[41] The Australian Government's Statement of Ministerial Standards, although largely concerned with integrity issues, does include a bald

[37] Sally Whyte, 'Govt Rejected Sexual Harassment, Bullying Clause in Staffer Agreement'. *Canberra Times*, 18 February 2021.

[38] Verge et al., *Gender Equality in National Parliaments across the EU and the European Parliament*, p. 25.

[39] Tània Verge, 'Too Few, Too Little: Parliaments' Response to Sexism and Sexual Harassment'. Parliamentary Affairs, 2020, pp. 8–9. https://academic.oup.com/pa/advance-article/doi/10.1093/pa/gsaa052/5917165?login=true

[40] Verge, 'Too Few, Too Little', p. 9.

[41] There are policies such as the Harassment Free Workplace Policy first adopted in 2013 in the NSW Parliament and the subject of mandatory training for parliamentary staff and staffers, but not apparently for Ministers or ministerial staff. See the Hon. Pru Goward, Review of Policies and Procedures for Ministerial Offices—Bullying, Harassment, and Sexual Misconduct, 19 April 2021, p. 45. Accessed at: https://www.dpc.nsw.gov.au/publications/reviews/review-of-policies-and-procedures-for-ministerial-offices-bullying-harassment-and-sexual-misconduct-by-the-hon-pru-goward/

statement (¶ 2.24) that 'Ministers must not engage in sexual relations with their staff'. This is commonly referred to as the 'bonk ban' introduced by Prime Minister Malcolm Turnbull in the context of a scandal involving the Deputy Prime Minister.

WESTMINSTER RESPONSES

To date the Australian Parliament has undertaken little action to address the standards adopted by the IPU concerning sexual harassment or bullying in the parliamentary workplace, despite sending delegations to IPU Assemblies twice a year. The delay does mean, however, that it is able to draw on the experience of comparable Parliaments in addressing this common problem. Most relevant to Australia are the policies, codes of conduct and complaints mechanisms recently adopted in Canada and the United Kingdom (UK). In both countries, staffers are publicly funded but in effect directly employed by MPs with the power to hire and fire, creating the same structural problem as in Australia. The Canadian House of Commons led the way in 2014 with a policy on preventing and addressing harassment of political staffers. The policy was criticised for lack of a fully independent grievance process; staffers were required to raise matters first with their employing MP regardless of the power dynamics when employment is largely dependent on the MP's good will.[42]

An updated version of the Canadian policy was approved in January 2021.[43] The Office of the Chief Human Resources Officer has primary responsibility for training on harassment and violence prevention and all new MPs and employees are required to receive such training within three months of starting their position and again every three years. The Office also handles complaints and provides an annual report to be found on the House of Commons website. In 2019–20, it handled two complaints of abuse of authority, two of harassment and one of sexual harassment. The Canadian House of Commons has a separate code of conduct dating from 2015, dealing with sexual harassment between MPs—said to be the first such code in the world.[44]

[42] Raney and Collier, 'Privilege and Gendered Violence', p. 10.

[43] House of Commons, Canada, Members of the House of Commons Workplace Harassment and Violence Prevention Policy, 28 January 2021. Accessed at:

https://www.ourcommons.ca/Content/Boie/pdf/policy_preventing_harassment-e.pdf

[44] Raney and Collier, 'Privilege and Gendered Violence', p. 9.

In the wake of the 2017 'Pestminster' scandal in the UK, an independent inquiry into bullying and harassment of staff was established, headed by Dame Laura Cox. Even before it reported, a behaviour code and complaints procedure were adopted by the UK House of Commons.[45] The behaviour code is now displayed widely through the UK Parliament, telling visitors, as well as those working in the Parliament, that if they have experienced bullying, harassment or sexual misconduct they are encouraged to report it.

An independent complaints and grievance scheme was also established, a process in which Cox recommended MPs should play no part. In a further development, an Independent Expert Panel was established in 2020 with power to recommend serious sanctions such as the suspension or expulsion of an MP. Recommendations need to be approved by the House of Commons, but without debate in the interests of the complainant's confidentiality

Another independent inquiry, by Gemma White QC, heard from over 220 people, most of whom worked or had worked for MPs in different roles, including as interns. It emphasised the uniquely vulnerable position of those working in MPs' offices: 'Their collective testimony provides a solid foundation for concluding that a minority of Members of Parliament have bullied and/or harassed staff in the past and continue to do so, despite the introduction of the new Parliamentary Behaviour Code'.[46]

White noted that until July 2018 any complaint about the behaviour of an MP or fellow staff member had to be made directly to the MP or the relevant political party and few complaints were made. The introduction of the independent complaints and grievance scheme was seen as a step forward but staffers expressed scepticism about the new procedures. Many considered complaints about bullying and harassment still to be career suicide.[47]

White recommended the extension of the complaints and grievance scheme to former staffers, the group more likely to take advantage of it. She anticipated that extending

[45] Richard Kelly, Independent Complaints and Grievance Scheme, Briefing Paper 08369, House of Commons Library, 27 April 2021. Accessed at: https://commonslibrary.parliament.uk/research-briefings/cbp-8369/

[46] White QC, *Bullying and Harassment of MPs' Parliamentary Staff*, p. 5.

[47] White QC, *Bullying and Harassment of MPs' Parliamentary Staff*, p. 6.

access to former staffers would influence MPs' behaviour and benefit current staff.[48] Access to the scheme for historic cases was duly extended in July 2019.

In the UK, as in Canada, all newly elected MPs and office managers are also now required to attend training sessions on preventing bullying, harassment and sexual misconduct. White found there were low expectations that British MPs would turn up for such training and suggested that the Independent Parliamentary Standards Authority might consider making staff allowances conditional on the MP completing it.[49]

In New Zealand, although staffers are employed centrally by the Parliament Service, many of the same dynamics are in play. While staff understand that their employment relationship is technically with the Parliamentary Service, 'in most practical respects their employer is actually their member'.[50] In 2018, Speaker Trevor Mallard launched an independent review of bullying and harassment of staff, which found serious bullying and bad behaviour, including sexual harassment and even sexual assault. A new code of conduct to create a safer workplace was drafted by a cross-party group of MPs and has been signed up to by all parties on a voluntary basis, leaving the Speaker and party whips to enforce it. There is no agreement yet on an independent commissioner to handle complaints but in 2020 the Speaker said he had begun requiring 'the worst-behaving MPs' to undergo workplace training before being allowed staff in their office. This link with the ability to have staff was the same incentive for training recommended by White in the UK the previous year.[51]

CONCLUSION

What can Australia learn from elsewhere? First, to acknowledge the problem of what many women regard as the toxic culture of Parliament.

[48] White QC, *Bullying and Harassment of MPs' Parliamentary Staff*, pp. 36–37.

[49] White QC, *Bullying and harassment of MPs' parliamentary staff*, p. 53.

[50] Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace*, p. 15.

[51] Craig McCulloch, 'Mallard Releases Code of Conduct Following Bad Behaviour in Parliament', RNZ, 24 July 2020. https://www.rnz.co.nz/news/political/421956/mallard-releases-code-of-conduct-following-bad-behaviour-in-parliament

Second, the need for an independent inquiry to assess the extent of bullying and harassment, including sexual harassment, and to make recommendations informed by the views of staffers themselves. At the federal level this is now under way in the form of the independent inquiry being conducted by Kate Jenkins, the Commonwealth Sex Discrimination Commissioner, which is due to report in November 2021. Optimally, there should be regular surveys to gauge the relationship between reported experience of sexual harassment and actual complaints made, an indication of confidence in complaint-handling procedures.

Third is the need to develop a code of conduct for both parliamentarians and staff explicitly addressing the issue of sexual harassment and clarifying what is unacceptable behaviour. In South Australia, a parliamentary committee was established in March 2021 with a brief to draft such a code. It was established the day after national protests (including in Adelaide) sparked by the allegations by Brittany Higgins of rape in a Minister's office when she was a junior staffer in the Australian Parliament.

Fourth is the need for an independent body with an oversight role and responsibility for supporting appropriate employment practices in parliamentary offices. This would include handling complaints—requiring amendment of the *Members of Parliament (Staff) Act*. As in the UK context, this body should be able to handle complaints from former staffers, those most likely to come forward. This process would not only serve the interests of justice but it might also modify the behaviour of those who could be subject to a future complaint.

Fifth, as in comparable Parliaments, training in office management and harassment prevention should be mandatory for new parliamentarians and senior staff.

Those working in Parliaments must have the same rights as employees in other workplaces and MPs should be accountable for their behaviour towards their staffers. Parliaments need to model good behaviour, not bad, if they are to earn respect. Above all, now that women are present in sizeable numbers both as parliamentarians and staffers, they need equal opportunity to perform well, without the career-limiting constraints imposed by bullying and harassment. Let us hope that this is the Australian Parliament's #MeToo moment.

An Unprecedented Election of a President

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Abstract The surprise resignation of the President of the NSW Legislative Council, Liberal John Ajaka, in February 2021, resulted in a critical situation when a deadlock between the Government and most of the non-Government MLCs meant that a replacement could not be elected. Eight MLCs lodged informal votes in the ballot to fill the vacancy, leaving the Government's candidate short of an absolute majority. The Council could not function without a President and the NSW Parliament could not legislate without the upper house. This article traces the increasing politicisation of the election of the President since 1991 that formed the background to this crisis. It sets out the controversy over the status of the informal votes and the meaning of 'a majority' in the Standing Orders relating to the election of the President. While the crisis was eventually resolved, none of the MLCs involved can escape blame for an unedifying spectacle likely to damage the standing of the NSW Parliament.

INTRODUCTION

The President of the NSW Legislative Council, Liberal John Ajaka, in a surprise move, announced in February 2021 that he was resigning. He stepped down as President on 24 March, having been in that office since 2017, and resigned as a Member of the Legislative Council on 31 March. What should have been a relatively smooth transition to a new presiding officer proved to be a bitter, unedifying and unprecedented conflict.

[1] I would like to thank Carl Green, Walter Hamilton, Malcolm Kerr, Andrew Tink and Greig Tillotson for their assistance. The responsibility for errors and omissions remains my own.

BACKGROUND

The office of President of the Legislative Council is one of the most venerable and distinguished in NSW politics. After the advent of responsible government, upper house Members were nominated by the Governor on the advice of the Premier. Similarly, the President was nominated, and could be removed, by the Governor. It was a non-political appointment and governments nominated presiding officers who commanded the respect of most MLCs. The list of occupants of the Chair reads like an honour role of distinguished parliamentarians: William Charles Wentworth, Terence Aubrey Murray, John Hay, John Lackey. Most Presidents served lengthy terms and were respected for their impartiality. From October 1862-May 1903, there were four Presidents. An indication of the status of the office is that Lackey at one point acted as Deputy Governor.[2]

When the Council was reconstructed into an indirectly elected house in 1933, MLCs elected the President. The tradition of selecting respected, impartial presiding officers who remained in office under succeeding governments continued. Between 1934 and 1978 there were only four Presidents: John Peden (1929-46), Ernest Farrar (1946-52), Bill Dickson (1952-66) and Harry Budd (1966-78). The Presidency was contested for the first and last time in this period in 1934.[3] Things changed little after the Council became directly elected in 1978. Labor's highly respected John 'Johno' Johnson served as President from 1978-91. He was elected unopposed in 1978 and the Coalition did not oppose his continuation in office after the 1981 and 1984 elections.

A significant development occurred when the incoming Greiner Government attempted to remove Johnson from the Presidency. While the first attempt in April 1988 failed, the Government succeeded in dislodging him in 1991. Moving the motion on 3 July 1991, the Leader of the Government in the Council, Ted Pickering, said: 'We believe it is in the best interests of the house and honourable members that the President be drawn from the ranks of the Government parties; we refute the suggestion that there is some law or convention that grants security of tenure to a

[2] D. Clune and G. Griffith, *Decision and Deliberation: The Parliament of NSW, 1856-2003*. Leichhardt: Federation Press, 2006, pp. 82-8.

[3] *NSW Legislative Council Practice*, 2nd ed, 2021, pp. 263-4.

presidential incumbent for his or her full parliamentary term'. Pickering denied it was a motion of no confidence in Johnson who had presided with 'scrupulous impartiality.'[4]

The Leader of the Opposition in the Council, Michael Egan, responded:

> What is at stake with this motion today is not the future of the Hon. John Johnson: what is at stake is the future of this house, the future of the office of Presidency, its impartiality, independence, integrity and standing. Whether it is intended or not, this motion, if successful, will destroy the impartiality, independence and standing of the Presidency. The position quite simply will be up for grabs whenever the numbers change. It will be reduced in stature. It will become no more than a mere job for the boys and girls. This house has a long tradition of-impartial Presidents, not of Presidents I would hasten to point out who have no political commitments or no political passions, but Presidents who, when they go into the chair or, indeed, perform any of the functions associated with the Presidency, completely put aside those partisan commitments and act as loyal servants of the whole house.[5]

The motion to remove Johnson was passed 22 votes to 19 with the support of Christian Democrats Fred and Elaine Nile. Veteran Liberal MLC Max Willis was then elected President.

The Government subsequently passed legislation to provide that the office of President became vacant before the first meeting of the house after an election. In effect, this gave the incoming Government an opportunity to elect its candidate—spoils to the victors. Opposing the change, the Leader of the Australian Democrats, Elisabeth Kirkby MLC, said:

> The Australian Democrats support the independence of the Parliament. We believe that the maintenance of a presiding officer who, as far as possible, is politically independent, will contribute to that. A presiding officer secure for the length of his term brings continuity and stability to the position of President and therefore minimises any possible accusations of political bias which have bedevilled Speakers in another place. It is our

[4] *NSW Parliamentary Debates (NSWPD)*, 3 July 199, p. 101.

[5] *NSWPD*, 3 July 1991, pp. 102-103.

> belief that this bill is unnecessary, in that a procedure is already in place to remove the President. It is obvious that the incumbent may be removed by a vote on the part of the majority of members, or the incumbent may resign. Thus the intention of the bill is clear. It provides a means for the squeamish to avoid having blood on their hands if they want to change the President.[6]

This was the beginning of the politicisation of the election of the President. Ironically, at this time the Liberal Speaker of the Legislative Assembly, Kevin Rozzoli, was, ultimately unsuccessfully, advocating a continuing, non-party Speaker along the lines of the House of Commons.[7]

Max Willis was forced to resign on 29 June 1998 after television cameras in the chamber showed him in the chair obviously affected by alcohol. The election of a successor demonstrated that the process had descended into an undignified political squabble. The Carr Government did not want to elect a Labor MLC as it would lose a crucial vote on the floor of the house (the President has a casting not deliberative vote). Instead, the ALP nominated Helen Sham-Ho, until the morning of the ballot a Liberal MLC. Sham-Ho had resigned from the Liberal Party on the grounds that it had not done enough to counter Pauline Hanson's One Nation Party. The National Party nominated popular Labor MLC Bryan Vaughan. Christian Democrat Fred Nile re-nominated Willis. The Liberal Party put forward one of its own, Virginia Chadwick, an MLC since 1978 and a former Minister, who won the ballot with 21 votes to Sham-Ho's 19 and Willis' one (there were no votes for Vaughan).[8]

In an indication of how the situation had changed, there were five Presidents between 1999 and 2020, all from the governing party: Labor's Meredith Burgmann (1999-2007), Peter Primrose (2007-09) and Amanda Fazio (2009-11); Liberals Don Harwin (2011-17) and John Ajaka (2017-21).

Although there was thus a trend towards politicisation in the Council, it did not descend to the level of overt partisanship that had long characterised the Speakership in the Assembly. There the office almost invariably went to a Government MP and was often

[6] *NSWPD*, 25 September 1991, p. 1712.

[7] Clune and Griffith, *Decision and Deliberation*, p. 559.

[8] *NSWPD*, 29 June 1998, pp. 6313-6317.

a consolation prize for a failed candidate for Cabinet. The Opposition regularly opposed the election or re-election of the Speaker as a political gesture. Well-regarded, even-handed presiding officers were a rarity, with Daniel Levy (1919-25, 1927-30, 1932-37), Kevin Ellis (1965-73) and Kevin Rozzoli (1988-95) notable exceptions. Speakers such as Bill Lamb (1947-59), Lawrie Kelly (1976-88) and John Murray (1995-2003) were notorious for their partisanship.[9]

The nadir in electing a Speaker occurred in 1911, when the first Labor Government lost its majority in the Assembly. Acting Premier WA Holman persuaded a renegade Liberal MLA, Henry Willis, to nominate as Speaker so Labor could remain in office. The Opposition was outraged and commenced a filibuster to prevent Willis taking the chair. According to HV Evatt:

> Willis was duly nominated as Speaker by George Black and [Robert] Scobie, two Labor veterans. Then the Liberal barrage commenced. Under the Standing Orders, all that the Clerk was empowered to do was to point out the member who was next to speak. Unspeakably vile language was used by some Opposition members, and the Hansard staff was unable or unwilling to take down every insult. The attacks on Willis were continued without cessation throughout the night. Very few Labor members spoke. Leading Opposition members competed with one another in the violence of their epithets.[10]

There was, however, a weakness in the Opposition strategy in that they had neglected to nominate a candidate. Under the Standing Orders, if only one candidate was nominated, no vote was necessary and the nominee was called to the chair. To take advantage of this, a Labor MLA rose to speak but hesitated before commencing his address. According to Holman's account, every Labor Member used this crucial interruption to

> howl out the word "Willis" at the top of his voice, to the astonishment of the few members of the Opposition present ... Black and Scobie, faithful to their instructions, had each seized Willis by one arm, and were more than two-thirds of the way which separated his modest seat in the

[9] Clune and Griffith, *Decision and Deliberation*, pp. 558-559.

[10] H.V. Evatt, *Australian Labour Leader: The Story of WA Holman and the Labour Movement*. Sydney: Angus and Robertson, 1940, pp. 290-291.

> chamber from the Speaker's throne. For a moment a wild idea of resisting his occupancy of it by physical force was evidently contemplated by some members of the Opposition, but I had thoughtfully planted around the steps of the chair some members of our own party who by their physical dimensions and corporeal weight were qualified to discourage any effort of that kind ... In another moment Willis was in the chair.[11]

The Opposition never forgave Willis for taking the Speakership and his tenure of office (1911-13) was marked by constant disorder. He proved to be an unsuccessful, unpopular and unworthy presiding officer.[12] These disreputable events were in marked contrast to the more dignified and decorous proceedings in the Council.

THE ELECTION OF A SUCCESSOR TO PRESIDENT AJAKA

If the Presidency is vacant, the Council must elect a presiding officer before proceeding with any other business. In the absence of a President, the Clerk acts in the role and is in control of the house during the election. The procedure for election of a President is summarised in the *Annotated Standing Orders of the Legislative Council*:

> When two or more members are proposed as President under Standing Order 12, the election is determined by a ballot conducted under Standing Order 13. When a ballot is required, the bells are rung for five minutes and then the doors locked, as in a division. Ballot papers are distributed by the Clerks to all members in their places. Members must write on the ballot paper the name of the candidate for whom they wish to vote. The Clerk demonstrates to members in the chamber that the ballot boxes are empty, then locks the boxes before moving around the chamber allowing members in their places to deposit their ballot papers in the ballot boxes. When all members present have cast their vote, the Clerk asks the nominator of each candidate to act as a scrutineer during the counting of the votes. The ballot boxes are then opened in the chamber and the votes are counted by the Clerk witnessed by the scrutineers ... The candidate

[11] M. Hogan (ed.), *The First NSW Labor Government 1910-1916; Two Memoirs: William Holman and John Osborne*. Kensington: UNSW Press, 2005, pp. 48-50.

[12] Clune and Griffith, *Decision and Deliberation*, pp. 216-221.

> who has the greater number of votes is declared elected President, provided that the member also has a majority of the votes of the members present.[13]

The requirement that the successful candidate have a majority of votes cast was aimed at ensuring a presiding officer had widespread support in the house. It was to play a crucial part in the dramatic events surrounding the election of Ajaka's successor.

An early sign that machinations were under way came on 17 March when the Leader of the Opposition in the Council, Adam Searle, moved that a Sessional Order be adopted to amend the Standing Orders relating to the election of President. The effect was to remove the requirement that a candidate nominated for the position had to indicate that they consented. Traditionally, if a nominee did not acquiesce, their nomination lapsed. Under the Sessional Order, a Member elected without their consent would either have to take the chair or resign and precipitate a fresh election. In effect, the Sessional Order would provide cover for a Coalition defector to take the chair as a 'consensus' candidate who had not sought the office. The motion was successful with the support of all crossbenchers except Mark Latham and Rod Roberts from One Nation and Christian Democrat Fred Nile.[14]

When Ajaka announced his intention to resign, the early front-runner to succeed him was well-regarded Nationals Deputy President, Trevor Khan, who had support from the Opposition, crossbench and from some within the Coalition. However, Premier Gladys Berejiklian expressed a clear preference for Liberal Whip Natasha Maclaren-Jones.[15] This attempt to sideline Khan was a questionable strategy, as the Government lacked a majority in the Council. After the 2019 election, the Coalition had 17 MLCs and Labor 14. There were 11 crossbenchers: three Greens, two Shooters, Fishers and Farmers, two One Nation, two from the Animal Justice Party, Christian Democrat Fred Nile, and one Independent, former Green Justin Field. Post-election relations between the Government and crossbench had been strained.

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[13] S. Want, J. Moore and D. Blunt, *Annotated Standing Orders of the Legislative Council*. Leichhardt: Federation Press, 2018, pp. 38-39.

[14] *NSWPD*, 17 March 2021, pp. 5239-5248.

[15] Under a factional deal, Maclaren-Jones from the Liberal right faction (run by Police and Emergency Services Minister David Elliott) was the nominee for President, while Peter Poulos from the Premier's left faction replaced Ajaka, also from the left, as MLC. Poulos was elected to the Council on 6 May 2021.

The Sessional Order was a 'shot across the bows' to persuade the Government to nominate Khan. The implied threat was that the Opposition and the majority of the crossbench would support a disaffected Coalition MLC if the Government was not prepared to back off. Khan stated publicly that he would be supporting the Liberal nominee but the Opposition was said to have another Coalition MLC in mind.[16]

On 24 March, the Council met to elect a new President. The Government nominated Maclaren-Jones and the Opposition former Labor President Peter Primrose. After the votes were counted, the Clerk, David Blunt, announced the result: 'The Hon. Natasha Maclaren-Jones, 20 votes, the Hon. Peter Primrose, 14 votes, informal, eight votes. Honourable members, under Standing Order 13, in the absence of one of the two candidates receiving a majority of the votes of the members present, I am not in a position to declare either of the candidates elected'.[17] To try and resolve the deadlock, the Clerk held another ballot with the same result.

All of the crossbenchers except Latham, Roberts and Nile deliberately voted informal to prevent Maclaren-Jones being elected. Greens MLC Abigail Boyd later said that the rationale behind this strategy was that it would lead to 'a process where we could have some collaboration and discussion about who a consensus candidate would be. That is why we voted that way on the basis of the advice that was given to us, and that was a valid and democratic thing to do'.[18] There was an expectation that the Government would accept the political reality and put forward Khan as a compromise candidate.

The Clerk then left the chair 'until the ringing of a long bell' which, in effect, meant that the sitting was suspended. The Council was not scheduled to meet again until 4 May.[19] Although little noted publicly, it was a critical situation, as the Council could not function without a President and the NSW Parliament could not legislate without the upper house.

The Government sought legal advice from the Crown Solicitor, who advised that Maclaren-Jones had been legitimately elected. The reasoning was that, as the

[16] T. Rabe and A. Smith, 'Berejiklian's Pick for Coveted Position Dealt Significant Blow after Losing Vote'. *Sydney Morning Herald*, 17 March 2021.

[17] *NSWPD*, 24 March 2021(proof), p. 3).

[18] *NSWPD*, 24 March 2021(proof), p. 20).

[19] The following account is based on *NSWPD*, 24 March 2021. As procedurally the sitting of 4 May was considered a continuation of that of 24 March, it is contained in the *Hansard* for that date.

requirements that the successful candidate have a simple majority and an absolute majority of votes were in conflict, the former prevailed. The Clerk then sought advice from senior barrister Bret Walker SC, who regularly advises the Council. He also concluded that Maclaren-Jones had been legitimately elected. Walker argued, more subtly, that the eight informal votes did not constitute votes under the terms of the Standing Orders. Thus only 34 votes were cast, giving Maclaren-Jones a simple and an absolute majority.

When the Council resumed on 4 May, with the Clerk presiding, it became clear that the Government was determined to persist with Maclaren-Jones' candidacy. The Leader of the Government, Don Harwin took a point of order regarding the previous ballots. He argued that, on the basis of Walker's advice, the Clerk, contrary to his previous ruling, should declare Maclaren-Jones elected.

Opposition Leader Searle responded that neither the Clerk nor the house were compelled to take Walker's advice and could exercise independent discretion. He argued that there were a number of problems with Walker's opinion:

> The first difficulty is that this was an electoral contest between two candidates. Mr Walker's advice appears to be inconsistent with electoral law. In electoral law there are total votes, which are divided into formal and informal votes. In the recording of how many votes were cast at an election, informal votes, although not counted towards any candidate's tally, are nevertheless given their appropriate status as votes that were cast.[20]

According to the Opposition Leader, Walker's interpretation had the effect of disenfranchising eight Members of the house:

> It says they did not vote. I suggest that we ask those eight members, or all members, whether they think those eight members voted. That is a problem because in construing the meaning of the Standing Orders a view would not easily be reached that members opted out of the process of choosing a President of the chamber. If they were truly opting out of the process they would not have been in the room; they would not have bothered even to put in a blank ballot. What those members were doing

[20] *NSWPD*, 24 March 2021(proof), p. 6).

> was clearly expressing their dissatisfaction about the range of choices they had before them and they cast their ballot in a way to promote further discussion between members as to who would be an appropriate President of this chamber.[21]

Searle added that acceptance of Walker's advice would lead to

> … a result where a President is elected without a majority, despite the rules which clearly try to elect a President who truly has the confidence of an absolute majority of members of the chamber … Unlike the other place, this house requires a much-heightened level of trust between members, not just between the Government and the Opposition, but all members and the presiding officer. The presiding officer cannot rely on a majority of the Government to uphold those rulings, so any rulings made day to day must truly be accepted by all members, or at least an absolute majority, as being fair, reasonable and in accordance with the Standing Orders.

All of the crossbenchers except Latham, Roberts and Nile supported the Opposition. The Clerk suggested that, as there was no consensus in the house about the course that should be adopted, the way out of the impasse was a motion of dissent against his ruling on 24 March that Maclaren-Jones was not elected. The house then briefly adjourned.

When the Council resumed at 7.00pm, in a surprise move, Government Leader Harwin immediately rose in his place and declared that, as Maclaren-Jones had been properly elected according to Walker's advice, she should be conducted to the chair as was customary—two Liberal MLCs promptly did so. The Government argued that, as the Standing Orders did not specifically state that the Clerk should declare the winning candidate elected, it was open to any MLC to do so.[22]

The Government's gambit unleashed disorder and disruption unprecedented in the upper house. It was a reflection in a distant mirror of the 1911 election of Speaker Willis. The Opposition and Greens refused to accept the legitimacy of Maclaren-Jones

[21] *NSWPD*, 24 March 2021 (proof), p. 6.

[22] Standing Order 13(2) says: 'When two members have been proposed as President, ballot papers will be distributed by the Clerks to all members in their places. Members must write on the ballot paper the name of the candidate for whom they wish to vote, and deposit it in the ballot box provided by the Clerk. The candidate who has the greater number of votes is to be declared elected President, and will be conducted to the Chair'.

taking the chair and described it as ‘a coup’. She vainly struggled to assert her alleged authority in the face of constant taunts, interjections and expressions of defiance. Members unrestrainedly attacked each other across the chamber:

> Mr David Shoebridge: It is ridiculous.
>
> The Hon. NATASHA MACLAREN-JONES: Order! Order!
>
> Opposition Members and Crossbench Members: You have no authority! You have no authority! You have no authority! You have no authority! You have no authority!
>
> The Hon. NATASHA MACLAREN-JONES: Order! Order!
>
> Opposition Members and Crossbench Members: You have no authority! You have no authority! You are not the President! You have no authority!
>
> The Hon. NATASHA MACLAREN-JONES: Order! I call this house to order!
>
> The Hon. ADAM SEARLE: Mr Clerk, I seek the call.
>
> Opposition Members and Crossbench Members: You have no authority! You are not the President! You have no authority in this house! We do not recognise you as the chair!
>
> The Hon. NATASHA MACLAREN-JONES: Order! I call this house to order! I ask the Hon. Peter Primrose to resume his seat immediately.
>
> The Hon. Penny Sharpe: No! What are you going to do? You are not elected.
>
> The Hon. NATASHA MACLAREN-JONES: Order! I am trying to give the call to your leader. Take your seat!
>
> The Hon. Peter Primrose: You are not the President!
>
> The Hon. Mark Buttigieg: You cannot give the call; you are not the President.
>
> The Hon. Peter Primrose: You are not the President. You are bringing this house into disrepute.

> The Hon. NATASHA MACLAREN-JONES: Order! Order![23]

Opposition Leader Searle moved as a matter of privilege suddenly arising:

> (1) The taking of the chair by the Honourable Natasha Maclaren-Jones is disorderly, as she has not been declared elected as President as required under standing order 13(2);
>
> (2) This House does not have confidence in the Honourable Natasha Maclaren-Jones as President; and
>
> (3) The Honourable Natasha Maclaren-Jones be removed from the Chair.

Greens Leader David Shoebridge moved an amendment which Searle accepted: 'That the Clerk proceed to a fresh election and call for nominations'.[24]

Searle argued:

> No person can take the chair unless they have been declared elected by the Clerk. If the contention of the Government is that the Clerk should have declared someone elected, that is the motion that should be before this house—either a dissent in the chair's ruling or a positive motion that the Clerk declare her elected as, for example, set out in the advice of Bret Walker. But the Government has not chosen that course of action. Why? Because it knows that no matter how much it tries to dress it up, this house has not elected the Hon. Natasha Maclaren-Jones as President. She does not have the confidence of this house. The point is that no person can sit in that chair and uphold the best traditions of this house and maintain order unless they have the confidence of this house—the acceptance of the house that they are the rightfully and duly elected President of this chamber. What we have seen here is a stealing of the chair without being declared elected.[25]

Searle's motion, as amended by Shoebridge, was carried by 22 votes to 16. As before, the only crossbenchers supporting the Government were Latham, Roberts and Nile.

[23] *NSWPD*, 24 March 2021 (proof), p. 14.

[24] *NSWPD*, 24 March 2021 (proof), pp. 15-16.

[25] *NSWPD*, 24 March 2021 (proof), p. 15.

The Clerk then called for nominations for President. The Government proposed Maclaren-Jones. With Khan out of contention, the Opposition and the majority of crossbenchers countered with a strategy of electing a dissident Liberal, Matthew Mason-Cox, who nominated himself:

> I put my name forward tonight as a reflection of my view that in order to be in the position of President one needs the confidence of the house by way of a majority vote. As I listened to the debate tonight I was concerned that we would end up in this situation—with the shocking circumstances that occurred and a vote of no confidence in the chair. All that does is undermine this institution and it undermines all members. I hope that members can come together and understand that we are servants of this institution which, at the end of the day, is an incredibly important place for democracy in this State. It is the key plank of responsible government in this State. We are the servants of this institution and it is our duty to act in the interests of the people of NSW. From the start I have been in conflict in relation to this whole process. I state clearly that I am a most reluctant candidate for President. Many of those who came to see me would understand that that is not a position I coveted. I heard a range of conspiracy theories tonight but I will not dignify them by making any comment.[26]

There were no other nominations.

Mason-Cox had briefly been a Minister but was dropped in the reshuffle after the 2015 election. He became a forthright critic of the Government and used his vote to defeat his Party in crucial divisions.[27] Mason-Cox was prominent in the 2020 revolt against Berejiklian's decision to decriminalise abortion.[28]

[26] *NSWPD*, 24 March 2021 (proof), p. 31.

[27] See A. Smith and L. Visentin, 'Rogue Liberal MP Crosses the Floor, Forcing Release of Documents'. *Sydney Morning Herald*, 12 April 2018; A. Smith, 'Rogue NSW Liberal MP Punished for Crossing the Floor'. *Sydney Morning Herald*, 1 May 2018; *NSWPD*, 5 June 2018, pp. 34-35.

[28] A. Smith and L. Visentin, 'Premier Delays Abortion Bill'. *Sydney Morning Herald*, 3 September 2019; L. Visentin and T. Rabe, 'Bill Debate Drags on in Wake of Abandoned Spill Bid'. *Sydney Morning Herald*, 18 September 2019; A. Smith, 'Abortion Bill Passes Upper House after Marathon Debate'. *Sydney Morning Herald*, 25 September 2019.

Labor and the Greens supported Mason-Cox. Searle stated that he that believed Mason-Cox would uphold the Council's tradition of impartial and independent presiding officers. Greens MLC Abigail Boyd thanked Mason-Cox for nominating as a 'consensus' candidate:

> It is for this house to determine its own President on the basis of a majority vote and not for the government of the day to dictate its presidential choice and to try to force that decision upon the house. There were only a few consensus candidates that could have been put up at this time. If we were free from Government power-plays we would have been able to determine which of them had the most votes. We are incredibly grateful that one of those consensus candidates, the Hon. Matthew Mason-Cox, has agreed to nominate in these extraordinary circumstances. We have faith that he will uphold the powers of the house and he has our confidence.[29]

The Government and One Nation claimed that it was a Machiavellian plot to create a situation where Mason-Cox could justify defying his Party. One Nation Leader Mark Latham said:

> This has been an orchestrated exercise by the Hon. Adam Searle and Mr David Shoebridge trawling up and down the eleventh floor of this building to find the magic renegade Liberal or National Party member. Plan A was the Hon. Trevor Khan—*sans* hyphen—and that went out the window … It is supposed to be a spontaneous outbreak of consensus and harmony in the chamber that Matthew Mason-Cox has come forward as a saviour to restore harmony.[30]

Mason-Cox was elected with both a simple and an absolute majority, 23 votes to Maclaren-Jones' 18.[31] At 9pm, he was escorted to the chair by two Members from the Shooters, Fishers and Farmers Party.[32]

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[29] *NSWPD*, 24 March 2021 (proof), pp. 28-29.

[30] *NSWPD*, 24 March 2021 (proof), p. 29.

[31] Although the ballot was secret, it seems likely that Mason-Cox had 14 ALP votes, eight from the crossbench, plus his own. Maclaren-Jones presumably had 15 votes from the Coalition (Ajaka's replacement had not yet been elected), two from One Nation and one from Nile.

[32] Alexandra Smith, 'Shameful Saga over Empty Chair'. *Sydney Morning Herald*, 6 May 2021.

The *Sydney Morning Herald*'s Alexandra Smith commented:

> The Government wants a President who will be sympathetic to its position, while the Opposition and crossbenchers want the house of review to be chaired by someone who will show independence. They felt they had this with Ajaka. Labor and several of the crossbenchers, including the Greens, Animal Justice and Independent Justin Field, did not believe Maclaren-Jones would fit that bill and opposed her nomination … Some within the Government, including Berejiklian and Minister for Women Bronnie Taylor, immediately seized on Mason-Cox's election and labelled it an issue of gender, accusing Labor and the crossbenchers of choosing a Liberal man over a Liberal woman … Of course, Maclaren-Jones can still be promoted – to a different office. Berejiklian can install her into cabinet. If the Premier is serious about promoting women, she holds the power to do so within her own cabinet. She doesn't need to outsource the issue to a hostile chamber.[33]

The split amongst the right wing crossbenchers over the Presidency demonstrated that the crossbench does not always vote on predictable ideological lines: One Nation and Nile were at odds with the Shooters, Fishers and Farmers, who allied themselves with the Greens. The expectation of some observers after the 2019 election that the Government would usually have a majority with the votes of the five right crossbenchers has not been fulfilled. The political reality of minor party voting in the 57th Parliament is complex and uncertain.

CONCLUSION

The struggle for the succession after Ajaka's resignation showed that the politicisation of the election of a President has reached an extreme level. Neither the Government, Opposition nor crossbench can escape the blame for this unedifying public spectacle, which further damaged the standing of the NSW Parliament at a time when it is already at a low ebb after a series of scandals. The Government should have consulted, listened and proposed a candidate for presiding officer who was generally acceptable. By mid-March it was evident that the Opposition and crossbench were unwilling to

[33] Smith, 'Shameful Saga over Empty Chair'.

support the Liberal candidate, yet the Government not only persisted in nominating Maclaren-Jones and then attempted to install her as President by surprise against the wishes of the majority. The Opposition and Greens should have held aloof from Byzantine manoeuvring, which risked damaging the upper house in the long-term, to score a short-term victory over the Premier.

The crossbenches have had the balance of power in the Legislative Council since 1988. This has, on balance, been a positive development. The Council has developed an effective committee system, promotes accountability through orders for the Government to disclose state papers, and extensively debates and revises legislation. Governments have generally been able to work with the crossbench to implement their program.[34] Bipartisanship has been evident in improvements to the procedures of the house and in committee reports. The events of 4 May were in stark contrast to these positive trends. It is to be hoped that this does not set the direction for the future and, instead, a general awareness of the over-riding importance of the Council's role as an effective house of scrutiny and review will prevail.

[34] See D. Clune, *At Cross-purposes? Governments and the Crossbench in the NSW Legislative Council, 1988-2011*, Legislative Council of NSW, History Monograph No 4, 2019.

The Long, Long Road: Western Australian Electoral Reform*

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Abstract Electoral Acts are central to the manner in which elections are conducted, and determine whether the outcomes of these elections are free and fair. Australia has experienced a considerable degree of electoral reform in recent years; this article assesses how Western Australia's Electoral Act 1907 (WA) fares in key areas. The article considers four crucial areas in which WA lags behind best practice in Australia: malapportionment, ticket voting, political financing and postal voting. The article outlines where concerns lie in these areas, and what potential solutions are available to legislators.

1 The authors are members of the Electoral Policy Network of Western Australia and would like to thank fellow members, Dr Yvonne Haigh, Dr Lachlan Umbers and Dr Narelle Miragliotta for their support. The authors also wish to thank the reviewers for this article, whose feedback has been helpful and constructive.

INTRODUCTION

On 13 March 2021, Western Australians went to the polls to elect a new Parliament. While the Legislative Assembly result became the subject of much discussion on account of the extraordinarily one-sided result (with Labor winning 53 of the 59 seats, to the Liberal Party's two and the Nationals' four), two separate but equally extraordinary stories were playing out in the Legislative Council. First, the Daylight Saving Party candidate in the Mining and Pastoral Region, Wilson Tucker, won a seat in the Council with just 98 primary votes, in an election where 1,467,159 votes were cast for that House, and where unsuccessful upper house candidates in metropolitan Perth received as many as 27,077 votes.[2] The result was all the more remarkable given that the Mining and Pastoral Region has consistently voted against daylight saving at four referenda, the most recent being in 2009 when 65.89% of voters in that region rejected its adoption.[3] Second, the Labor Party won a record 22 seats in the 36 Member Legislative Council—its first ever majority, buttressed by its astonishing 60% primary vote. The election result shone a spotlight on problems in the *Electoral Act 1907* (WA) (the Electoral Act), especially in two key areas, malapportionment and group ticket voting, and the opportunity that now presents itself for reform.

This article reviews the Electoral Act and considers whether Western Australia (WA) is falling behind other Australian jurisdictions in key areas of electoral reform. In 2018, a parliamentary committee report on the 2017 WA election noted that:

> The outdated Electoral Act [in WA] … is a hodgepodge of contradictory provisions that often make no sense … our electoral process is becoming stuck in the past … legislative reform must be urgently undertaken and the Western Australian Electoral Commission appropriately resourced in the future.[4]

[2] This was the Greens candidate for North Metropolitan Region. Western Australian Electoral Commission 2021 State General Election: First Preference Analysis Reports. Perth: WAEC, 2021. Accessed at: https://www.elections.wa.gov.au/elections/state/sgelection#/sg2021/LCDetailResults

[3] Western Australian Electoral Commission. *2009 Western Australian Referendum on Daylight Saving*. Perth: WAEC, 2010.

[4] Community Development and Justice Standing Committee (CDJSC), *2017 WA State Election: Maintaining Confidence in Our Electoral Process.* Perth: Legislative Assembly, Parliament of Western Australia, 2018. Accessed at:

This comment is reflective of a broader pattern of WA elections falling behind national electoral best practice in crucial aspects. While a wholesale review of the Electoral Act would be ideal, this article will examine four specific areas of electoral practice which impact heavily on the integrity of WA's electoral system and which provide a basis for analysing whether WA's electoral system meets contemporary electoral standards. These four areas are:

1. Malapportionment, in both the Legislative Assembly and Legislative Council;
2. Ticket voting in the Legislative Council;
3. Regulation of political donations and campaign expenditure; and
4. Postal voting practices.[5]

MALAPPORTIONMENT

One critical component of any electoral law is the way electoral districts and regions are defined, as this in turn influences the number and indeed the nature of Members elected to each House. The current arrangements under WA's Electoral Act are characterised by significant malapportionment between districts in the Legislative Assembly and, especially, between regions in the Legislative Council.

Malapportionment—that is, systemic deviation in the number of electors between electoral districts—has a long history in Australia, as Jackman found in his survey of electoral bias from 1949 to 1993.[6] There has been significant research into malapportionment and its impact on the outcome of elections in recent decades.[7]

https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/20180201+-+RPT+-+Full+Report+-+FINALISED+-+Online+version.pdf

[5] There are a range of other issues which are potential areas for reform, such as truth in electoral campaigning, and the regulation and duration of early voting, but it was not possible to canvass all of these in this article. Our focus is on areas where WA is behind—and often well behind—best practice elsewhere in Australia.

[6] S. Jackman, 'Measuring Electoral Bias: Australia, 1949-93'. *British Journal of Political Science* 24(3) 1994, pp. 319-357.

[7] A. Siaroff, 'Spurious Majorities, Electoral Systems and Electoral System Change'. *Commonwealth & Comparative Politics* 41(2), 2003, pp. 143-160; N. Kelly, 'Research Note. Western Australian Electoral Reform: Labor Finally Succeeds'. *Australian Journal of Political Science* 41(3) 2006, pp. 419-426; A. Davies and M. Tonts, 'Changing Electoral Structures and Regional Representation in Western Australia: From Countrymindedness to One Vote One

Malapportionment undermines the notion of a legitimate government. Our Parliaments have the right to make decisions which bind us as a community because they purport to represent the collective decision of the public. This collective decision is seen as legitimate because all voters have the same right to elect the Members who sit in the Parliament that represents them. Without fair elections based on equal voting rights, the notion of legitimacy is compromised. Malapportionment raises the possibility of the 'spurious majority', where parliamentary majorities are formed despite a party (or coalition of parties) losing the popular vote to another party (or coalition). Spurious majorities occur more often where there are malapportioned electorates.

Advocates for malapportionment point out that equal representation for every voter in geographically large and sparsely-settled jurisdictions like WA means that rural communities would have a lesser voice in Parliament, and regional constituents would be unable to access local MPs effectively. They also argue that rural and regional voters are among the most economically and social disadvantaged people in the community.[8] Yet there are many other marginalised or disadvantaged groups within a community who can also claim to lack a political voice, lack access to MPs, or have an insufficient say in decision-making. Improved telecommunications and provision of greater financial resources to MPs representing large electorates can help compensate for difficulties in providing electors with representation and access functions, without the need for malapportioned electorates. Over time, the equal representation argument has increasingly prevailed in Australia.

Malapportionment in WA's Legislative Assembly

After more than a century of debate and struggle, historic electoral reform legislation in 2005 achieved 'one vote one value' across almost all lower house electorates in WA.[9] Section 16 of the Electoral Act divides the state into 59 single member electorates (or

Value'. *Space and Polity* 11(3) 2007, pp. 209-225; G. Orr and R. Levy, 'Electoral Malapportionment: Partisanship, Rhetoric and Reform in the Shadow of the Agrarian Strongman'. *Griffith Law Review* 18(3) 2009, pp. 638-665; N. Kelly, *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management*. Canberra: ANU Press, 2012.

[8] M. Davies, 'Country Voters Need a Strong Political Voice'. The West Australian, 28 March 2019. Accessed at: https://www.miadavies.com.au/country-voters-need-a-strong-political-voice/

[9] Kelly, 'Research Note'.

districts), with most required to be within 10 percent of the Average District Enrolment (ADE), which at the time of the 2021 State Election was 29,097 (the total number of electors divided by the number of districts). However, special provision was made for districts of 100,000 square kilometres or more, via what is termed the Large District Allowance (LDA). The bigger the size of the electorate, the larger the LDA. In effect, this has meant that four electorates in the far-flung Mining and Pastoral Region contain far fewer voters than other electorates. Two electorates in the Agricultural Region receive similar treatment. WA followed Queensland in adopting this LDA model, providing a partial concession to rural and regional interests while at the same time providing the major parties (Labor, Liberal and National) with reasonable prospects of winning at least some of these less populated seats.

Tables 1 and 2 show the largest and smallest electorates by enrolled voters, as of 11 February 2021 (the final roll used for the WA election on 13 March 2021). All of the six districts with the largest number of voters (Table 1) are in the Perth metropolitan region.

Table 1. Largest WA Electoral Districts by enrolled voters (February 2021)

District	Enrolled voters	Variation from ADE
Butler	32,712	12.4%
Baldivis	32,554	11.9%
West Swan	32,246	10.8%
Armadale	32,207	10.7%
Jandakot	32,119	10.4%
Perth	32,100	10.3%

Source: Western Australian Electoral Commission, District Enrolment Statistics. Perth: WAEC, 11 February 2021. Retrieved from: https://www.elections.wa.gov.au/enrol/enrolment-statistics/state-enrolment-reports.

By contrast, certain regional areas, especially in the Mining and Pastoral region, have experienced little to no population growth, resulting in their number of enrolled voters remaining low. Seven regional districts are more than 10 percent below the ADE (see Table 2). At the extreme, electors in the least populous electorate (North West Central) have almost three times the voting weight of those in the most populous electorate (Butler).

Table 2. Smallest WA Electoral Districts by enrolled voters (February 2021)

District	Enrolled voters	Variation from ADE
North West Central	10,993	-62.2%
Kimberley	15,734	-45.9%
Kalgoorlie	19,651	-32.5%
Pilbara	23,272	-20.0%
Roe	24,711	-15.1%
Central Wheatbelt	25,884	-11.0%
Moore	26,014	-10.6%

Source: See Table 1.

Despite these issues, there have been no attempts since 2005 to change the provision of the LDA in the Legislative Assembly. This may be because this chamber has always embodied single member representation on a regional basis, and because the Labor, Liberal and National parties have all won LDA seats at various times.

Malapportionment in WA's Legislative Council

Despite the shift toward electoral equality in the Legislative Assembly in 2005, the situation in the Legislative Council did not improve—in fact, it went backwards.[10] The system created in 1987 of having six regions (three in the metropolitan area and three in the regions), each electing multiple Members via proportional representation, was preserved, but the malapportionment (with rural regions having more representatives per voter than metropolitan regions) was not only retained but intensified. The 1987 changes saw the metropolitan area have three regions, one with seven Members and two with five each. The country area had a similar split.[11] As a consequence, the quota

[10] Kelly, 'Research Note'.

[11] In WA, the 1987 reforms established that the whole Council is elected every four years, unlike the situation in the Senate and some other state upper houses, where Members have staggered terms and only half the house is normally up for election at any one time.

of votes required to win a seat was either 12.5 percent (seven-Member regions) or 16.7 percent (five-Member regions). In 2005, the number of Legislative Council Members (MLCs) was increased from 34 to 36, again with equal Members in the metropolitan and country areas, but now with each of the six regions having six MLCs. This means the quota for gaining a seat is now 14.3 percent in each region, thus in theory making it easier for minor parties to win a seat in four of the six regions (but slightly more difficult in two regions). This may have been a factor behind the Greens' insistence on this model in the negotiations leading up to the 2005 changes, although in fact they have not been more successful in securing MLCs in subsequent elections.[12]

More importantly for our purposes here, the 2005 changes meant that malapportionment has increased overall, as the regional population has continued to move into the metropolitan area while its share of MLCs has remained the same. As a result, rural and regional voters—and the parties representing them—continued to have more political influence in the WA upper house than their population would warrant, due to deliberate malapportionment.[13] The WA Legislative Council has by far the most extreme malapportionment of any state or territory house in Australia.

Section 16 of the Electoral Act divides the state into the six electoral regions electing six Members each. As noted above, the Act stipulates that there will be three metropolitan regions (North, South and East), and three non-metropolitan: Mining and Pastoral; Agricultural; and South West. The boundary between the metropolitan and non-metropolitan regions is fixed in legislation. Moreover, the Electoral Act specifies that the number of electors in the three metropolitan regions should be roughly equal, but there is no such stipulation for the non-metropolitan regions.

Hence there are two levels of inequality built-in to the legislation. The first is between the metropolitan and non-metropolitan regions, with the average number of electors in the former being around three times those in the latter (see Table 3). The second is between the three non-metropolitan regions, with the South West Region being increasingly disadvantaged compared to Agricultural and, in particular, Mining and Pastoral. Furthermore, there is no in-built mechanism in the legislation to prevent the

[12] The history behind the 2005 changes has been told deftly by both Kelly and Phillips. See Kelly, 'Research Note'; H.C.J. Phillips, *Electoral Law in the State of Western Australia: An Overview.* Perth: Western Australian Electoral Commission, 2012.

[13] Davies and Tonts, 'Changing Electoral Structures'.

situation deteriorating further, as population continues to shift towards the South West and metropolitan regions.

Table 3. Weighting between enrolled voters within Regions in the Legislative Council of WA

Election	Metropolitan (average)	Non-Metropolitan	South West	Agricultural	Mining and Pastoral
1989	1.00	2.8	2.74	2.5	3.27
1993	1.00	2.78	2.59	2.58	3.38
1996	1.00	2.82	2.52	2.71	3.56
2001	1.00	2.85	2.4	2.85	3.87
2005	1.00	2.86	2.36	2.89	4.02
2008	1.00	2.92	1.85	3.91	4.35
2013	1.00	2.97	1.84	3.88	4.76
2017	1.00	3.01	1.76	3.88	5.82
2019 (November Distribution)	1.00	3.06	1.76	4.04	6.04
2021 (State Election)	1.00	3.13	1.78	4.19	6.22

Source: See Table 1.

Note: Legislative change after the 2005 election increased the Legislative Council from 34 to 36 Members, and changed the number of MLCs per region.

Table 3 demonstrates the substantial discrepancy between the metropolitan and non-metropolitan regions in the Legislative Council over repeated electoral cycles. The 'one vote one value' reforms relating to the Legislative Assembly passed by the Gallop Government in 2005, which relied on support from the WA Greens, did not resolve malapportionment in the Legislative Council; instead, while the discrepancy between the metropolitan regions and South West has slightly decreased, their difference with Mining and Pastoral and Agricultural regions has increased. There is now more than six times the number of voters per MLC in the Perth Metropolitan Region as a whole, compared to the Mining and Pastoral Region. Table 3 shows this is getting worse with each electoral cycle.

Table 4. Number of enrolled voters per Legislative Council Region (State Election 2021)

Region	Enrolment	Percentage of total enrolled voters	No. of MLCs	Percentage of total MLCs
South Metropolitan	449,182	26.2%	6	16.7%
East Metropolitan	423,759	24.7%	6	16.7%
North Metropolitan	427,779	24.9%	6	16.7%
South West	242,983	14.2%	6	16.7%
Agricultural	103,378	6.0%	6	16.7%
Mining and Pastoral	69,651	4.1%	6	16.7%
Total	1,716,732	100%	36	100.0%

Source: See Table 1.

Table 4 lists the number of electors and Members in each Legislative Council region. It shows that metropolitan electors represent around three-quarters of all enrolled electors (75.8 percent to be precise) but choose only half the MLCs. Just one-tenth (10.1%) of enrolled electors—namely those from the Mining and Pastoral, and Agricultural, Regions—choose one-third of MLCs. In fact, the imbalance is actually worse than the enrolment figures suggest, as the voter turnout in the Mining and Pastoral Region is traditionally much lower than in the other regions. At the 2017 election, only 73.78 percent of enrolled electors in that Region actually voted, well

below the state average of 87 percent. By 2021 turnout had dropped to 72 percent.[14] Hence the malapportionment in favour of Mining and Pastoral electors compared to the rest of the state is even greater when actual turnout is considered.

WA is now wildly out of kilter with the upper houses in other Australian states and territories, all of whom have removed malapportionment in their electoral systems. Only the Australian Senate retains a comparable level of malapportionment, as all 'original' states elect 12 Senators regardless of their population. However, this was a situation imposed by the states as a pre-condition of federation set by the six self-governing colonies. Changing it requires a constitutional referendum and is highly unlikely to be contemplated, let alone approved. It therefore has a different rationale to the situation in WA, where the Legislative Council regions have no administrative basis.

Reforming malapportionment in WA faces its own set of legislative and constitutional difficulties. A clause in the Electoral Act (s 16M) stipulates that absolute majorities of Members (requiring a majority of those eligible to vote) in each house of Parliament are required to repeal or alter crucial clauses relating to electoral districts and regions. In particular, an absolute majority is required to change the number of regions, while an absolute majority and a referendum of WA electors is required to reduce the total number of MLCs.[15]

Alternative models of representation

One means of establishing more equal enrolment in the Legislative Assembly of WA would be to abolish the Large District Allowance (LDA). The clause establishing the LDA is one of the few that is specifically exempted from the requirement for an absolute majority of Members. Abolishing the LDA would ensure that the number of voters in each electorate would need to be within 10% of the Average District Enrolment (ADE). In real terms, this would mean the abolition of at least one of the electorates in the

[14] Western Australian Electoral Commission 'Mining and Pastoral Region Profile'. Accessed at: https://www.elections.wa.gov.au/elections/state/sgelection#/sg2021/region/5/results

[15] Such a change may activate s 73(2)(d) in the *Constitution Act 1889* (WA) and require any amending Bill to comply with the absolute majority and referendum requirements in ss 73(2)(f) and (g) of the *Constitution Act 1889* (WA). These procedures would likely be rendered binding by s 6 of the *Australia Acts 1986* (Cth & UK) when the amending Bill would seemingly relate to the 'constitution' of the WA Parliament.

Mining and Pastoral Region and adding substantial numbers of voters to the others. It may also result in the abolition of further electorates within the Agricultural Region in future. However, there are practical implications for local representation in the abolition of the LDA, given that the electorates in question are already very large. As noted above, there has been no appetite from either side of politics to amend the LDA since its inception in 2008.

A much more pressing reform issue is the situation in the Legislative Council. There are a number of potential models, which would ensure more complete voting equality across the State. These include:

1. One State-wide electorate, consisting of 36 Members;
2. Three Regions in the Perth Metropolitan Area consisting of 9 Members each and three Non-Metropolitan Regions consisting of 3 Members each;
3. Five Regions in the Perth Metropolitan Area consisting of 5 Members each, one Region in the South West consisting of 5 Members, and 3 Members each in the Agricultural Region and Mining and Pastoral Region;
4. Three Regions in the Perth Metropolitan Area consisting of 9 Members each and one Non-Metropolitan Region consisting of 9 Members.

Option 1 would be similar to the situation in NSW and SA, although in those states voters only elect half the MLCs at each election (thereby giving each MLC an 8-year term), whereas in WA all MLCs face election every four years. Options 2, 3 and 4 would be variations on the current system but with regional malapportionment removed as much as possible, and would be similar to the system prevailing in Victoria (which has eight regions each returning five MLCs).

TICKET VOTING AND PREFERENCE HARVESTING

Another issue in which WA electoral procedures have fallen behind other states and federal practice concerns the ongoing use of 'ticket voting' at Legislative Council elections, and the requirement that voters either use this option (by voting 'above the line' for a party) or indicate a full ranking of every candidate standing, with no exceptions (i.e., a 'below the line' vote), to produce a valid vote. This provision effectively pushes voters towards the ticket vote option, which the vast majority (over 97 percent in 2021) avail themselves of rather than numbering a full slate of preferences. While convenient, the use of ticket voting undermines voters' ability to control the distribution of their preferences, forcing voters to accept their chosen party's full preference ordering. The lack of any 'savings provisions' in the Electoral Act

also means that a single error by an elector in numbering 'below the line' leads to the vote being declared informal, further discouraging electors from preferencing candidates of their choice.

Ticket voting was a response to the interaction of compulsory preferential voting with increasingly high levels of candidature. It was first introduced at the federal level for Senate elections in 1984 to make the act of voting simpler, but also to allow political parties more control over the flow of preferences. It effectively makes Australia's single transferable vote electoral systems (used for the federal Senate and most state upper houses) resemble the party list forms of proportional representation ('PR') found in Europe. It has largely succeeded in making voting easier, with the previously high rates of informal voting for Senate elections falling as the onerous task of numbering every candidate was replaced with a single party vote. But ticket voting also had other unintended consequences, which have been addressed at the federal level and by some other states but not yet by WA.

WA adopted ticket voting when PR came to the Legislative Council in 1987. Under ticket voting, parties and aligned candidates may lodge prior to the election a preference schedule or 'group voting ticket', which sets out how their preferences are allocated when they receive an 'above-the-line' vote (in contrast to an elector ranking every candidate standing if they vote 'below-the-line'). In WA, this constitutes a written statement of preferences lodged with the Western Australian Electoral Commission ('WAEC') by a political party contesting a Council election. The statement indicates how preferences will be distributed during the count if a party, group or candidate is eliminated, or if they have a surplus to transfer. This effectively moves decisions on preference allocation from voters to party secretariats.

Ticket voting has, over time, created some unexpected pathologies in Australian elections. In particular, it has provided multiple opportunities for parties to 'game' the system through the direction of preferences. One way in which such gaming can occur is via a form of preference-swapping between 'micro' parties (parties with a minimal public profile that receive negligible vote shares, rendering them irrelevant in most circumstances). At the 2013 Senate election, some of these micro-parties were able to win seats by making promiscuous preference-trading deals with others and reaping the (essentially random) rewards that accrued to whichever was able to assemble the necessary quota for victory. Such 'preference whispering' saw several micro-party

candidates elected and holding crucial balance-of-power positions in the Senate, with one gaining a seat on just 0.23% of the primary vote.[16]

In 2014 the federal Joint Standing Committee on Electoral Matters conducted an inquiry into the ticket voting system, finding that:

> The 'gaming' and systematic harvesting of preferences involving complex deals that are not readily communicated to, or easily understood by the electorate has led to a situation where preference deals are as valuable as primary votes.[17]

In response, in 2016 the system was changed to allow voters in Senate elections an optional preferential vote 'above the line' between parties, or the alternative of needing to number at least 12 preferences below the line to enact a valid vote. These reforms have been widely seen as successful, making voting more consequential, and largely eliminating the proliferation of micro-parties. In WA, however, a single ticket vote above the line or a full ranking of all candidates below it remain the only ways to enact a valid vote for the Legislative Council. This means that nearly all WA voters rely on parties to allocate their preferences, rather than doing it themselves.

The continuation of this model in WA has amplified the possibility that preference deals will be gamed and result in micro-parties not just winning representation with negligible public support, but potentially holding the balance of power. It is only thanks to good fortune that there were no glaring examples of this at the 2017 State Election, when several micro-parties such as Flux the System, Fluoride Free WA and the Daylight Savings Party all engaged in apparent preference harvesting. Examination of 2017 electoral returns for the Legislative Council show the influence of ticket voting and preference deals on several outcomes. For instance, the Liberal Democrats won a South Metropolitan seat on less than four percent of the primary vote (in a situation where the quota for election is 14.3 percent) by receiving preference transfers from all

[16] I. McAllister and T. Makkai, 'Electoral Systems in Context: Australia', in Erik S. Herron, Robert J. Pekkanen and Matthew S. Shugart (eds)*, The Oxford Handbook of Electoral Systems*. Oxford: Oxford University Press, 2018.

[17] Joint Standing Committee on Electoral Matters Interim report on the inquiry into the conduct of the 2013 Federal Election Senate voting practices. Canberra: Commonwealth Parliament, 2014. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report

of the parties mentioned above, along with others such as One Nation and the Australian Christians.

At the March 2021 State Election, Labor's historically high vote at the expense of all other parties reduced the representation of minor and micro parties in the Council. Still, group ticket preferences saw two Legalise Cannabis WA candidates elected, one in South West and one in East Metropolitan, despite receiving just 1.98 percent of the overall state-wide vote. By contrast, the Greens received 6.38% of the state-wide vote and had just one candidate elected. As discussed above, the most extraordinary result was the election of Wilson Tucker from the Daylight Saving Party. His party polled just 0.24 percent of the primary vote across the state, and an even smaller share (0.20 percent) in the Mining and Pastoral Region, where Mr Tucker was elected.

It is important to emphasise that this is not an argument against minor parties gaining election. Proportional representation in WA, as in other jurisdictions, has been successful in giving minor parties who attract real support but are unlikely to gain a lower house seat a viable route to representation. In the eight elections held since the WA system of multi-Member regions was adopted in 1989, this has allowed 37 independents and non-major party representatives (i.e., excluding Labor, Liberal and National Party MLCs) to gain election in the Legislative Council, breaking the almost exclusive monopoly held by the three oldest parties in the chamber. The WA Greens, for instance, which elected their first Member to the Council in 1993, managed to elect between two and five Members of the Council at every election until 2017.[18] There is a difference between minor party representatives, who often command significant but dispersed voter support, and micro-parties with no real support base.

Action needs to be taken to put preferences back into the hands of voters, so that they can more easily choose where their vote ends up. An obvious route is to follow the Senate and states such as New South Wales and South Australia and allow voters to indicate their preferences between parties 'above the line', on an optional basis. This would make voting more consequential by eliciting more information about voters' true preferences between parties, and undercut any preference harvesting strategies such as those adopted by micro-parties at the 2017 State Election. However, a 2019

[18] N. Miragliotta, S. Murray and J. Harbord, 'Western Australia', in Peter J. Chen, Nicholas Barry, John R. Butcher, David Clune, Ian Cook, Adele Garnier, Yvonne Haigh, Sara C. Motta and Marija Taflaga (eds), *Australian Politics and Policy*. Sydney: Sydney University Press, 2019.

Private Members Bill to do exactly this, introduced by the Greens, failed to progress in the Legislative Council, leading to the 2021 result outlined above.[19] The need for reform along the same lines as the Senate, New South Wales and South Australia is now clear.

POLITICAL FINANCING

Transparency and timeliness are crucial to the success of any political financing regime. While political parties, candidates and 'third party' campaigners (e.g. companies, industry associations, trade unions, etc.) all require funds to communicate their electoral messages, voters need to be able to make informed decisions at the ballot box, including those in relation to how the political communications they receive have been funded.

WA electoral funding laws have long fallen short of best practice. In June 2020, in line with the governing Labor Party's election platform, the Electoral Amendment Bill 2020 (WA) ('Bill') was introduced into the WA Legislative Assembly. The Bill introduced a range of reforms including to disclosure thresholds, foreign donations, contemporaneity of disclosure and fundraising caps. While some of these measures received a lukewarm reception by the WA Standing Committee on Legislation, the Bill signalled a recognition of the need for political financing reform in WA. Unfortunately, the Bill was introduced to the Parliament relatively late in the Government's term, in a period when Covid-19 related matters were taking precedence, and lapsed when Parliament was prorogued for the 2021 election, without being fully debated. Nevertheless, the matters raised in the Bill are worthy of discussion, as they are likely to be raised again in the next term of government. During the 2021 election campaign, WA Premier Mark McGowan promised to introduce new legislation to provide greater transparency around political donations.[20]

[19] Electoral Amendment (Ticket Voting and Associated Reforms) Bill 2019.

[20] P. Taylor, 'Mark McGowan Wants Transparency in Donations from Developers'. The Australian, 25 February 2021, Accessed at: https://www.theaustralian.com.au/nation/politics/mark-mcgowan-wants-transparency-in-donations-from-developers/news-story/c2055f69f5e7c83d7ca62cf1e338a064

Disclosure thresholds

Currently WA only requires donations exceeding $2500 to be disclosed (Electoral Act, s 175; *Electoral (Political Finance) Regulations 1996* (WA) r 3).[21] The Bill would have reduced this amount to $1000, which would bring WA in line with most other states and territories.[22] However, the Standing Committee on Legislation put a number of questions to the Minister for Electoral Affairs in relation to this threshold, including whether it should be increased to align with 'the tax deductible threshold for political donations'.[23]

There are a range of other weaknesses with the WA disclosure regime as it currently stands. First, a party registered at state and federal level, can meet their state disclosure requirements by satisfying the federal disclosure levels.[24] As the 'disclosure threshold' under the *Commonwealth Electoral Act 1918* (Cth) sits at $14,300 (ss 287, 321A),[25] the state limits can be readily bypassed. Second, the anti-avoidance provision (s 175N(4)), which aggregates two or more gifts by the same individual, does not apply if a gift is below one-third of the disclosure amount. As the Standing Committee on Legislation highlighted, '[a] series of donations under $833 by the same person' can, through this legislative gap, be made anonymously. Third, the donation regime relies on accurate party disclosure and compliance without reporting by donors or adequate mechanisms for enforcement or regulator monitoring.[26]

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[21] Government Gazette No. 93 of 2017, 12 May 2017.

[22] Western Australian Standing Committee on Legislation, Report 47- Electoral Amendment Bill 2020. Accessed at: https://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/2FF98027EF21DCFC4825861E0014334E/$file/ls.eab.201112.rpf.047.xx.pdf; Chivers, C., Wood, D. and Griffiths, K., (2018). Time for the Federal Government to Catch up on Political Donations Reform. Grattan Institute, 14 August, Accessed at: https://grattan.edu.au/news/time-for-the-federal-government-to-catch-up-on-political-donations-reform/

23 Western Australian Standing Committee on Legislation, Report 47, p. 19.

24 Electoral Act, s 175N(5); Community Development and Justice Standing Committee, 2017 WA State Election; Hamish Hastie, 'Who's Paying for Our Politics? Your Complete Guide to WA's Political Donations'. WA Today, 12 February 2020. Accessed at: https://www.watoday.com.au/politics/western-australia/who-s-paying-for-our-politics-your-complete-guide-to-wa-s-political-donations-20200211-p53zv0.html

25 Australian Electoral Commission, Disclosure Threshold. Accessed at https://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm

26 WA Standing Committee on Legislation, Report 47, [2.17]-[2.18]))

Foreign donations

On the back of Committee recommendations from a Senate Select Committee Report, the Commonwealth Parliament legislated, pursuant to the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth), to ban foreign political donations because of their potential for foreign influence on public policy decision-making.[27] Other jurisdictions such as NSW, Victoria and Queensland employ similar measures. While the WA Bill sought to curtail such donations, the WA Standing Committee on Legislation identified that it may not go far enough, since the Bill's definition of 'foreign donor' is narrower than that used federally or in NSW. It would not, for instance, rule out donations from a foreign individual with residency rights in Australia or who owned an Australian business. Given that WA is the state most economically exposed to the influence of the mining industry and Chinese business investment—both major sources of political donations in Australia—this creates another weak point in the Electoral Act's disclosure regime.

Timing of disclosure

WA's current disclosure regime lacks contemporaneity, potentially undermining the object of disclosure. For instance, a donation made in the first half of one year (e.g., January-June 2020) does not become public until 2021. If it is made in the second half of a year (e.g., July-December 2020) it does not become public until 2022, because the reporting cycle is annual and based on the financial year.

The proposed Bill represented an improvement in disclosure standards by introducing more frequent quarterly reporting. In the current Act, separate rules are in place for election returns, requiring candidates and parties to report donations within 15 weeks after election day. The Bill shortened this to 12 weeks. However, in terms of transparency around election time, this is still inadequate. The public would lack

[27] Select Committee into the Political Influence of Donations, Political Influence of Donations. Canberra: Commonwealth Parliament, 2018. Accessed at:

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024147/toc_pdf/PoliticalInfluenceofDonations.pdf;fileType=application%2Fpdf; Joint Standing Committee on Electoral Matters (JSCEM) (2017). Second interim report on the inquiry into the conduct of the 2016 Federal Election: Foreign Donations. Canberra: Commonwealth Parliament, 2017. Accessed at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Report_1

complete information about political donations at the time of their casting a vote. Likewise, there is still no 'real time' disclosure for donations received outside the election period, although this is less significant given that voters are not at that time preparing to pass judgement on parties or candidates. Best practice disclosure would be for all donations to be disclosed within a matter of days after the donation has been accepted, especially during the election period.

The WA Standing Committee on Legislation recommended that 'an online "real-time reporting system"', such as that employed in Queensland, be considered by the WA Minister for Electoral Affairs.[28] However, a majority of the Committee opposed the shift towards quarterly over annual reporting because of the administrative load it would introduce, recommending the deletion of this amending clause. This administrative load could be easily managed though, were WA to increase public funding of political parties beyond its current levels, which are the lowest in the country for those jurisdictions that are bicameral.[29]

Capping electoral expenditure

Expenditure caps are vital to ensure 'that those with the deepest pockets should not be able to spend their way to influence an election'.[30] The Bill proposed to establish expenditure caps for candidates, political parties and third party organisations, while not putting a ceiling on party donations per se. There are strong reasons why this is a necessary reform. A fair electoral process should have a relatively even 'playing field' in that a number of different electoral competitors should be able to access and influence public opinion. Furthermore, wealth should not be an obstacle to pursuing election to Parliament, which may be the case if different candidates or parties are effectively unable to compete due to the unlimited resources of one entity. Excessive expenditure by a single entity has the potential to 'drown out' alternative voices.

For these reasons a number of Australian jurisdictions have imposed expenditure caps, including NSW, South Australia and Queensland. The High Court in *Union New South*

[28] WA Standing Committee on Legislation, Report 47, [4.79]).

[29] As of December 2020, WA funds its political parties at $1.96699 per vote, for those which meet the four percent threshold within an electorate. This is much lower than other states and territories, or the Commonwealth. The next lowest figure is the Commonwealth, which funds parties at $2.73 per vote.

[30] Stephen Dawson MLC, Western Australia, Parliamentary Debates. Legislative Council, 13 August 2020, p. 4945.

Wales (No 1) v State of New South Wales (2013) and *Unions NSW v State of New South Wales (No 2)* (2019) found that capping campaign expenditure is a legitimate practice; however, the extent of any caps must be justified and not impair competition, given they limit freedom of political communication. It is perhaps this finding that has led to rather generous provisions in the WA Bill for spending by political parties, candidates and third party organisations. For instance, the Bill's proposed expenditure limits per seat exceed those in NSW, South Australia and Queensland and are CPI indexed.[31] While it may be argued that distances in WA require higher political campaigning costs, it is unlikely to justify, for example, the $2 million cap for third parties, which is double that which applies in a jurisdiction such as Queensland. While the Government asserted that 'the electoral system in Western Australia is unique so it was not possible to ensure consistency with other jurisdictions in Australia',[32] even an elevated figure of $1.5 million would accommodate campaigning costs for third parties, while providing for a more level playing field. Relevantly, a majority of the Standing Committee on Legislation disavowed the expenditure cap limits set out in the Bill as 'unsafe' when the 'case for the establishment of expenditure caps had not been made'.[33] This left open the unacceptable possibility that the existing situation of no spending limits at all would be retained.

POSTAL VOTING

A fourth aspect of WA's electoral arrangements in need of reform concerns postal voting. As Kelly notes, there are instances when the major political parties have ignored best electoral practice and acted in their own interests; the administration of postal voting application (PVA) forms provides such an example.[34] Under the current legislation, candidates and political parties can and do send PVAs to many thousands of voters. Those who respond usually send their applications to the candidate or party concerned, who are required to forward them on to the WAEC. This practice occurs in some other Australian jurisdictions, although the practice has been reformed in Victoria and South Australia. It is not established practice in comparable international

[31] WA Standing Committee on Legislation, Report 47.

[32] WA Standing Committee on Legislation, Report 47, Appendix 1.

[33] WA Standing Committee on Legislation, Report 47, p.56.

[34] Kelly, *Directions in Australian Electoral Reform.*

electoral processes; in no other instances have political parties been so directly involved in the promotion and administration of postal voting. Wall *et al*'s research on electoral management design highlights a number of key criteria for independent electoral administration, which include maintaining electoral management processes that are free from interference by executive government, and ensuring that the electoral management body takes full responsibility for the implementation of all election processes.[35] The sending and receipt of PVAs falls short of such standards.

The WAEC has itself expressed its concern at the involvement of political parties in the postal voting process, as has the Australian Electoral Commission at numerous Commonwealth inquiries.[36] These concerns have both administrative and integrity aspects. The two-step delivery process involved in an elector using a reply-paid envelope to a political party or candidate, who is then obliged to forward it to the Commission, generates the potential for delay in forwarding the ballot material to the elector by the WAEC. Parties may wait before sending postal vote applications in bulk to the WAEC, which can exacerbate the situation.[37] It is possible for electors to miss out on voting if their ballots are not received by a certain date—for example, if they are preparing to travel interstate or overseas.

The potential for inadvertent or deliberate mistakes increases with 'double handling' of postal vote applications. Indeed, one of the biggest sources of complaint to the WAEC comes from voters who had applied for postal votes but had not received them, sometimes several weeks later. Searches on the Commission's voter databases then fail to find evidence that the application has been lodged.[38]

While there is no evidence that political parties deliberately withhold postal vote applications, there is clearly *potential* for this to occur. Even such potential interference in the voting process should not be acceptable. As Wall *et al* note, the

[35] Wall, A., Ellis A., Ayoub A., Dundas C., Rukambe J. and Staino S. (2006). *Electoral Management Design: The International IDEA Handbook.* Stockholm: International IDEA.

[36] Western Australian Electoral Commission, State General Election: Election Report, Perth: WAEC, 2017.

[37] Community Development and Justice Standing Committee, *2017 WA State Election: Maintaining confidence in* our electoral process – Government Response. Perth: Legislative Assembly, Parliament of Western Australia, Perth, 2018. Accessed at:

https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/government+response.PDF

[38] Community Development and Justice Standing Committee, *2017 WA State Election.*

perception of political interference in itself is enough to undermine the legitimacy of election results.[39] There is also a transparency issue. The Commission has noted that it 'continues to be concerned about the level of confusion when electors receive unsolicited postal vote application forms through the mail. It may not be clear that an accompanying reply-paid envelope is in fact addressed to a political party rather than the Commission'.[40]

There should be no place for candidates or political parties organising applications for any particular vote type; this should be left to the WAEC, as the independent statutory body. Unfortunately, this activity is likely to increase with the shift towards convenience voting, in addition to lingering concerns about in-person voting due to Covid-19. Indeed, at the 2021 WA election, 755,075 electors (55 percent of the electorate) voted early, including 169,301 who returned postal vote ballots (15 percent of the electorate) (WAEC 2021c, authors' calculations).[41]

South Australia and Victoria have legislated in recent years to address this issue, at least to some extent. Both these states allow application forms to be distributed by parties to electors so long as they specifically state that the forms must be returned directly to the electoral commission. Political parties are notified of any returned applications. There is also a stipulation that there cannot be any political party material included in the material distributed to the elector. These reforms should be considered as a minimum reform in any review of the WA Electoral Act. While some areas of electoral reform require complex or contentious solutions, in this case the solution to concerns around the integrity of the postal voting process is simple: the Electoral Commission should be the only entity which handles PVAs, and voters should return these directly to the Commission.

There has been no movement in the WA Parliament towards reform of postal voting in recent years, despite a Legislative Assembly committee in 2017 recommending an urgent review of the Electoral Act and that particular consideration be given to 'the ability of political parties to distribute postal vote applications'.[42]

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[39] Wall *et al*., *Electoral Management Design*.

[40] Western Australian Electoral Commission, State General Election: Election Report, p.19.

[41] Western Australian Electoral Commission, Return of Writ, Perth: WAEC 2021. Accessed at: https://www.elections.wa.gov.au/about-us/media/whats-new/1934

[42] Community Development and Justice Standing Committee, *2017 WA State Election*, p. xii.

CONCLUSION

Implementing electoral reforms is never easy; however, WA's laggard electoral status makes it a priority. Malapportionment continues to get worse with each election, with outcomes in the Legislative Council in particular being unrepresentative of the collective views of the WA public. Ticket voting in the Legislative Council needs urgent reform to ensure that voters can easily select their own preferences. While there were promising moves towards the reform of political finance in 2020, these eventually came to naught. In any case, much more is required in this area to ensure transparency and integrity around campaigning and decision-making in government. The postal voting mechanisms, while much criticised, remain unchanged and give the opportunity for political interference in the accessing of voting forms. The advent of Covid-19 has made reform in this area more pressing.

Earlier in this article we quoted from the bipartisan report of a parliamentary committee on the 2017 election highlighting the need for wholesale revision of the Electoral Act. The WA Government's formal response to the Committee concluded with these words: 'The Government is committed to reviewing the Electoral Act, and is keen to have it completed as soon as possible'.[43] No such review has taken place, although legislation to reform political finance provisions was eventually introduced (see above). Given the myriad deficiencies of WA's electoral system outlined here, such a review of the Electoral Act, followed by legislative action to reform its manifest deficiencies, is a matter of urgency. In particular, the Legislative Council issues of malapportionment and group ticket voting stand out, given the results of the 2021 election. Whatever the precise route chosen, the general direction and destination required are clear, commencing with the four areas of reform highlighted in this article.

[43] Community Development and Justice Standing Committee, *2017 WA State Election*, p.3.

Disrupting Consensus in Parliamentary Committees? Minority Reports and a Taxonomy for Classifying Them*

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* Double-blind reviewed article.

Abstract Westminster parliamentary committees have traditionally valued consensus. When a minority report is tabled, this is a form of dissent that disrupts such consensus. This article examines the role of minority reports generated by joint investigatory committees of the Parliament of Victoria over three parliamentary terms to gain an understanding of the objectives that minority reports perform. These objectives can be better understood using an original taxonomy that classifies minority reports as having four distinct objectives. The taxonomy may be applied in other comparable jurisdictions, and this article will demonstrate the way classification facilitates appropriate responses to the various kinds of minority reports.

INTRODUCTION

The growth of parliamentary committees has been recognised as 'arguably the most important institutional development in modern Westminster-style parliaments'.[1] Their influence and reach has been underpinned by their reputation, which is due in part to their ability to undertake 'detailed investigations of matters and [to] encourage debate about public policy'.[2] In recent years, the role of parliamentary committees has

[1] John Halligan and Richard Reid, 'Conflict and Consensus in Committees of the Australian Parliament'. *Parliamentary Affairs* 69(2) 2016, pp. 230-248, p. 230.

[2] Halligan and Reid, 'Conflict and Consensus', p. 230.

been a focus for researchers in common law jurisdictions, including the United Kingdom and Australia, with this research centred on their role and performance in national Parliaments.[3] There has been no similar research into the role of conflict and dissent in Victorian parliamentary committees.[4] This article seeks to address this gap by examining joint investigatory committees (JICs) from the Australian state of Victoria, and drawing lessons from the experience in Victoria that may be applied in comparable jurisdictions.[5] JICs have been selected because they form part of what Moulds terms a 'sophisticated system of committees', rather than operating on an 'ad hoc basis'.[6]

The first part of this article provides an overview of the notion that consensus is central to the operation of parliamentary committees. It then provides some background to the operation of JICs and the way that dissent is possible within this committee system, with the primary mechanism of dissent being minority reports. The authors' contention is that dissent is an important element for the operation of parliamentary

[3] Philip Norton, 'Departmental Select Committees: The Reform of the Century?'. *Parliamentary Affairs* 72(4) 2019, pp. 727-741; Halligan and Reid, 'Conflict and Consensus', p. 230; Laura Grenfell and Sarah Moulds, 'The Role of Committees in Rights Protection in Federal and State Parliaments in Australia'. *University of New South Wales Law Journal* 41(1) 2018, pp. 40-79; Laura Grenfell, 'Parliament's Reputation as the 'Pre-Eminent' Institution for Defending Rights: Do Parliamentary Committees Always Enhance this Reputation?'. *Australasian Parliamentary Review* 31(2) 2016, pp. 34-45; Hannah White, *Select Committees under Scrutiny: The Impact of Parliamentary Committee Inquiries on Government*. London: Institute for Government, 2015. Accessed at: https://www.instituteforgovernment.org.uk/sites/default/files/publications/Under%20scrutiny%20final.pdf; Paul Yowell, Hayley Hooper and Murray Hunt, *Parliaments and Human Rights: Redressing the Democratic Deficit*. London: Bloomsbury Publishing, 2015, p. 141; Ian Marsh and Darren Halpin, 'Parliamentary Committees and Inquiries', in Brian Head and Kate Crowley (eds.), *Policy Analysis in Australia*. Bristol, The Policy Press, 2015, pp. 137-150; David Monk, 'A Framework for Evaluating the Performance of Committees in Westminster Parliaments'. *The Journal of Legal Studies* 16(1) 2010, pp. 1-13; Sarah Moulds, *Committees of Influence. Parliamentary Rights Scrutiny and Counter-Terrorism Lawmaking in Australia*. Cham: Springer, 2020.

[4] For a discussion of the role of cohesion in committees in Sweden, Iceland and Scotland, see David Arter, 'Committee Cohesion and the 'Corporate Dimension' of Parliamentary Committees: A Comparative Analysis'. *The Journal of Legislative Studies* 9(4) 2003, pp. 73-87.

[5] Our research has excluded two JICs that focus on regular oversight, scrutiny and review. These are the Public Accounts and Estimates and Scrutiny of Acts and Regulations (SARC) JICs. For a detailed discussion of the impact of the SARC, see Sharon Mo 'Parliamentary Deliberation in the Operation of the Victorian Human Rights Charter', in Julie Debeljak and Laura Grenfell (eds.), *Law Making and Human Rights: Executive and Parliamentary Scrutiny Across Australian Jurisdictions*. Sydney: Lawbook Co., 2020.

[6] Sarah Moulds 'Scrutinising COVID-19 Laws: An Early Glimpse into the Scrutiny Work of Federal Parliamentary Committees'. *Alternative Law Journal* 45(3) 2020, pp. 180-187, p182. Moulds refers to the role of scrutiny committees in protecting rights.

committees and, by extension, of parliamentary democracy. How important or useful this is depends on the nature and volume of the dissent.

The second part of the article analyses minority reports by JICs in Victoria over three parliamentary terms (2006 – 2018) to develop a way of categorising them. Four categories are identified, each with distinct objectives: (1) contributing to policy debate, (2) overt political objectives, (3) claims of committee malpractice, and (4) drawing attention to issues of evidence in the committee report. Examples of each category are provided.

The article concludes with a discussion of the value of categorising minority reports in this way, arguing that it enables different responses to the different types of reports. This provides a basis for understanding the important role that dissent can play in the operation of parliamentary committees when the dissent is properly understood.

THE CONSENSUS NORM AND DISSENT BY MEMBERS OF JOINT INVESTIGATORY COMMITTEES

Parliamentary committees are recognised as 'important deliberative spaces where policy problems are identified and framed' and in 'mediating policy knowledge'.[7] This characterisation of committees fits within a broader description of them as 'a smaller group from the parent assembly undertaking much of the creative, cooperative work of legislature'.[8] Committees can be seen as representing a 'well-functioning deliberative system, [with] ideas and arguments flow[ing] from various public spaces to inform the more formal (decision-making) spaces', foremost the executive branch.[9] Members of Parliament in many systems spend a significant proportion of their time conducting committee business.[10] In their capacity as a sub-set of the Parliament, committees have the capacity to undertake deeper and more expansive investigations

[7] Caroline M. Hendriks and Adrian Kay, 'From 'Opening Up' to Democratic Renewal: Deepening Public Engagement in Legislative Committees'. *Government* and *Opposition* 54(1) 2019, pp. 28-29.

[8] Hendricks and Kay, 'From 'Opening Up' to Democratic Renewal', p. 28; Dominique Della-Pozza, 'Promoting Deliberative Debate? The Submissions and Oral Evidence Provided to the Australian Parliamentary Committees in the Creation of Counter-Terrorism Laws'. *Australasian Parliamentary Review* 23(1) 2008, pp. 39-61.

[9] Dryzek, as cited in Hendricks and Kay, 'From 'Opening Up' to Democratic Renewal', p. 28.

[10] Marsh and Halpin, 'Parliamentary Committees and Inquiries', p. 137.

into issues, legislation and policy challenges than the Parliament as a whole. As a consequence, both due to their nature and operating environment, they are 'theoretically likely to display stronger deliberative virtues, such as listening and reflection, then larger open plenary sessions'.[11] The extent to which parliamentarians are likely to reflect such 'deliberative virtues' in a committee setting depends on jurisdictional political culture. It also depends on whether committee work is undertaken in public or in private (private settings are more conducive to deliberation), and the nature of what is being investigated (more politically sensitive matters are less likely to lead to deliberation).[12] If such deliberation by parliamentary committees is accepted to be positive and integral to the smoother functioning of committee inquiry work and outcomes, it is also a pre-requisite to consensus building in committees.

In practice, a trend towards consensus has been a key characteristic of parliamentary committees. This is reflected in the proportion of unanimous committee reports. There are several possible reasons for this. The first is that the inquiry process itself (evidence gathering, investigating, deliberating, and recommending) likely offers space and opportunity to negotiate and form consensus. This process, described as being a 'positive-sum outcome'[13] occurs because committees work closely and for long periods of time, with Members learning and deliberating as they go, fostering a collegial culture conducive to consensus. The second is that unanimous reports from parliamentary committees are viewed by committee members as carrying more weight,[14] in part because recommendations are seen to be more likely to be implemented by government if there is an absence of dissent. Even where recommendations are not immediately implemented, unanimity and bipartisanship are seen to result in inquiry work that will be impactful in the longer term. Lastly, the work of committees may be seen as an opportunity for deep engagement with an inquiry topic which may reduce

[11] Joseph M. Bessette *et al*., as cited in Hendricks and Kay, 'From 'Opening Up' to Democratic Renewal: Deepening Public Engagement in Legislative Committees', p. 28.

[12] André Bächtiger *et al.*, as cited in Hendricks and Kay, 'From 'Opening Up' to Democratic Renewal: Deepening Public Engagement in Legislative Committees', pp. 28-29.

[13] Giovanni Sartori, as cited in Halligan and Reid, 'Conflict and Consensus', p. 232.

[14] Giovanni Sartori, as cited in Halligan and Reid, 'Conflict and Consensus', p. 229; John Halligan, Robin Miller and John Power, *Parliament in the* Twenty-*first Century: Institutional Reform and Emerging Roles*. Carlton: Melbourne University Press, 2007, p. 229.

the overriding focus on overt political matters and ideological disagreement that are a feature of party politics in a Westminster Parliament.

Victorian joint investigatory committees

The tendency towards consensus is empirically borne out in JICs in Victoria. JICs are established at the commencement of each four-year term of Parliament. They generally have a total of seven Members, who are drawn from both the Victorian Legislative Assembly and the Legislative Council and are comprised of members of various political parties. The *Parliamentary Committees Act 2003* (Vic) (the Act) and parliamentary Standing Orders set out the subject area responsibility of each committee, its procedures and powers.[15]

Generally, JICs have shown a clear preference for bi-partisan and multi-partisan consensus in undertaking their inquiries and in developing and adopting findings and recommendations. Indeed, committee consensus is the most likely outcome for a JIC in Victoria. That conclusion is based on an analysis of the period between 2006 and 2018, which covers three parliamentary terms (the 56th Parliament [2006-2010], the 57th Parliament [2010-2014] and the 58th Parliament [2014-2018]). Two different political parties were in government during this time (Labor from 2006 to 2010 and 2014 to 2018, and the Coalition from 2010 to 2014). As set out in Table 1, unanimous reports were the norm despite:

- membership turnover on committees
- changes to the composition and number of committees
- changes to the areas of committee operation
- changes of government and Premiers, and
- the nature and scope of inquiries, including inquiries which may have been suited to other forms of investigation, such as Royal Commissions[16].

[15] See, e.g., Victorian Legislative Assembly, Standing Orders (Committees), January 2020, [221]. Accessed at: www.parliament.vic.gov.au/assembly/standing-aamps-sessional-ordersrules/standing-orders/2-legislative-assembly/articles/766-chapter-24-committees#so221.

[16] Such as Family and Community Development Committee, Betrayal of Trust. Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations. Parliament of Victoria. Tabled 13 November 2013.

Table 1. Victorian Joint Committee Inquiry reports 2006-2018

Parliament	Number of reports tabled	Total minority reports	Minority reports as a percentage
2006-10	48	12	25%
2010-14	35	7	20%
2014-18	31	5	16%

The trend apparent in Table 1 is relatively consistent, revealing a reduction in minority reports in the 2006-2018 period. Other noteworthy findings were that minority reports were almost always tabled by non-government (Opposition) committee members. Law reform, electoral matters and environment related committees were most likely to include minority reports. Twenty of the 24 minority reports included as an author either the chair[17] or deputy chair of the committee.[18] Most minority reports were supported by three or more committee members.

Mechanisms of dissent in joint investigatory committees

Dissent in committees when it occurs, arises in two ways: in votes arising during committee deliberation and adoption of the final reports (which are recorded as divisions) and/or in minority reports appended to the final reports. The latter are the focus of this article, but a brief overview of deliberations is also provided.

First it is important to outline the reasons that dissent occurs. The membership of committees, derived from the Act (amended at the beginning of each new Parliament), carries with it a risk that the party in power will have a majority of Members in committee. This occurs when the party that has won government has the numbers to set the committee membership. This power is used to ensure that government backbench Members can exercise control over the approach to an inquiry, the drafting

[17] In the period 2006-2018 there was a single instance of a minority report written by a Chair.

[18] Law Reform, Road and Community Safety, Inquiry into Lowering the Probationary Driving Age in Victoria to Seventeen. Melbourne, Victoria, Parliament of Victoria, 2017. Accessed at: www.parliament.vic.gov.au/431-lrrcsc/inquiry-into-lowering-the-probationary-driving-age-in-victoria-to-seventeen.

and adoption of the report and the making of findings or recommendations. Ordinarily, the power is used to appoint the chair of the committee, an important role given the report is initially drafted in the chair's capacity before being adopted by the rest of the membership.[19] Thus, the power to appoint the membership of a JIC can lead to political advantage—the likelihood of being able to control an inquiry's outcomes. This power to appoint operates alongside the otherwise independent, bipartisan approach that committees usually take, reflecting the fact that they are not an extension of the executive but a subcommittee of the Parliament as a whole, tasked with reporting back to it their findings and recommendations. In short, government majority control of a JIC can result in majority control of each committee and its operations. Therefore, there are at least theoretical risks involved in having government backbenchers form the majority on a JIC. This is particularly so given that decisions of a committee regarding the formal drafting and adoption of reports (including recommendations and findings) involve votes and divisions, in the same way as in both houses of Parliament.

This state of affairs effectively creates an incentive to dissent against the primary report if non-government Members feel aggrieved. Dissent seems most likely to occur in circumstances where the majority view aligns with the interests or the broad policy/operational approach of the government or its bureaucracy. The submission of a minority report can be seen as a check on the power of the executive.

Dissent expressed during committee deliberations

During the normal practice of the adoption of the report (formal and last approval of the committee draft), where there is a lack of unanimous support, a committee can divide and vote on the report's recommendations. Theoretically, members can also divide and vote on paragraphs and entire chapters. Formal adoption involves adopting each and every component part of the report, including tables, contents pages, chapters, findings, recommendations etc.). The exception to adoption is the chair's foreword which is not subject to vote—it is the exclusive prerogative of the chair. In addition to the draft report, division and votes can also be taken on any new proposals, alternative recommendations or findings or changes to existing findings and

[19] Victorian Legislative Assembly, Standing *Orders (Committees)*.

recommendations. These are usually circulated by sponsoring member of a committee in advance, are tabled and then voted on by attending members.

Alternative recommendations and findings can conflict with those already contained in the draft report and if defeated in the adoption meeting, can form the basis for a minority report. The proposals, together with votes and divisions taken on them, are published in the proceedings section located at the end of an inquiry's report.

The proceedings section provides access to otherwise unknown information that helps contextualise the matters that a committee discussed and debated, given that it ultimately divided and voted on these. Thus, divisions and votes provide an insight into the matters debated by a committee and provide a way to understand the differences between members and political parties on findings and recommendations. In most cases prior to the present parliamentary term, the divisions and votes during deliberation and adoption favoured the committee majority.

Dissent expressed via minority reports

Given the effect on JIC investigations and inquiries of a majority of government members exercising control over a committee, the Act explicitly provides a power to dissent using a minority report. At the conclusion of the deliberation and adoption phase, a member, or group of members may write and have published an additional report.[20] This power is found in section 34(2) of the Act.[21]

Minority reports must address the terms of reference. Theoretically, they could be drafted as an alternative report in whole. However, they are usually structured as a response that debates or criticises the findings and recommendations of the adopted report, and sets out alternative findings and recommendations. In addition, they can include views from public hearing participants or submissions which are seen to have not been appropriately referenced in the main report. They can also address or raise

[20] Minority reports are written outside of normal operations and are unsupported administratively, in terms of research or management, by the JIC or its secretariat. Instead, this work is undertaken solely by the members of the Committee who initiate the minority report.

[21] The exact wording of the subsection is as follows: 'A Joint Investigatory Committee must include with a report made by it to the Parliament any minority report on behalf of a member of the Committee if so requested by the member'.

failures by the committee to give appropriate weighting to a view expressed by stakeholders, or can question the very basis for the inquiry in the first place.

The key reason that minority reports are written is to criticise the report adopted by the majority. In that respect, they provide a conduit for dissent where members of a committee are unable to alter the report's findings or recommendations due to insufficient numbers, even with the use of the division and vote process described earlier. Minority reports therefore act as an institutional check, and a democratic pressure release valve allowing alternative ideas and judgments to be published on an inquiry topic, at the same time as the majority adopted report is being published. In that way, the minority report is supportive of the broader democratic principles in the Parliament, pluralising the voices and views that a report represents.

Response to minority reports

The question of whether the Government is required to respond to a minority report is less clear than would be desirable. Section 36 of the Act requires that the Government respond within six months from the tabling of a JIC report to any recommendation made for government action. Specifically, subsection 36(1) states:

> If a Joint Investigatory Committee's report to the Parliament recommends that the Government take a particular action with respect to a matter, within 6 months of the report being laid before both Houses of the Parliament or being received by the clerks of both Houses of the Parliament, the appropriate responsible Minister must provide the Parliament with a response to the Committee's recommendations.

The section does not differentiate between a majority or a minority report. However, given the construction of the section, and the reference to a minority report as something included with a JIC's report (per section 34(2)), the section does not appear to place a requirement on government to respond to recommendations made in a minority report. Our analysis of government responses to JIC reports failed to locate a single response to a matter raised in a minority report.

While governments are required to respond only to the adopted report, the minority report is not without influence and is capable of generating reactions from government, the media and the public. A minority report may mitigate the power of a committee majority, which could otherwise lead to action being taken on the findings and recommendations of the report to an extent not justified by the evidence presented to the inquiry. Without a minority report, it would be difficult to capture

alternative views and ideas, thus reducing the role and power of minority parties represented on a JIC.

CATEGORISING MINORITY REPORTS

As was noted earlier, there has been extremely limited research of any kind on Victorian JICs[22] and almost none on minority reports by either JICs or other types of committees. Indeed, one could view the current situation in Victoria as un-researched. As a result of the limited focus on inquiry reports, minority reports are currently viewed as a homogenous group. In analysing the minority reports made in JIC reports over the period between 2006 and 2018, it is clear that a better way to assess and understand them is to attempt to classify them. This is because dissenting views represented by minority reports vary in focus: each has different drivers, imperatives and objectives. That in turn is reflected in the structure, reasoning, issues, style, and language used in minority reports.

A taxonomy is a way of coming to grips with this complexity. Defined by Simpson, a taxonomy is 'the theoretical study of classification, including its bases, principles, procedures and rules'.[23] Taxonomies provide a scheme of classification with a consistent set of characteristics or attributes which are used for identification purposes.[24] Once classified, it becomes a more manageable task to identify trends in the type of dissent embodied in minority reports, the extent of friction within JICs, and the nature of this friction. Given the operation of the consensus norm and the idea that reports are seen to have more impact if they have unanimous support,[25] there is

[22] One example of a detailed analysis of the operation of a JIC can be found in Nathaniel Reader, 'Assessing the Policy Impact of Australia's Parliamentary Electoral Matters Committees: A Case Study of the Victorian Electoral Matters Committee and the Introduction of Direct Electoral Enrolment'. *Parliamentary Affairs* 68(3) 2015, pp. 494-513.

[23] Kenneth Bailey, *Typologies and Taxonomies: An Introduction to Classification Techniques*. Thousand Oaks: SAGE, 1994, p. 5.

[24] The process of classification is 'defined as the ordering of entities into groups or classes on the basis of their similarity': Bailey 'Typologies *and Taxonomies',* p. 2.

[25] Halligan and Reid, 'Conflict and Consensus'; Joint Select Committee Working Arrangements of the Parliament, Report No 14: Dissenting Statements, Hobart, Tasmania, Parliament of Tasmania, 2005. Accessed at: www.parliament.tas.gov.au/ctee/Joint/REPORTS/Report%20No%2014%20Dissenting%20Statements.pdf; George

value in considering in some detail the reasons why such consensus is not always achieved.

A Taxonomy for minority reports

For the period from 2006 to 2018, 24 minority reports were analysed by the authors to identify common attributes or characteristics that allow such classification. Elements of structure, patterns of reasoning, use of evidence, typical language, and the focus of each report were considered. These elements combine to represent a coherent, multi-dimensional taxonomy.

At the top level, we consider that these reports fall into one of four categories. These are:

1. **Policy focused** The minority report focuses largely on the broader policy issue that the committee was established to address, offering a different interpretation to the final report.
2. **Political** The minority report takes issue with one or more of the party-political positions that divide the Parliament.
3. **Malpractice/malfeasance** The minority report alleges that some malpractice or malfeasance (administrative or otherwise) has occurred and is not adequately addressed in the final report.
4. **Evidential** The minority report draws attention to evidence ignored, inadequately addressed or otherwise given insufficient attention in the final report.

These categories are subject to further division into four subcategories. Each category of report may be further analysed through attention to its:

1. **Objective or Purpose** Clarity, objectivity, disingenuousness.
2. **Structure** Stand-alone, commentary, questioning.
3. **Language** Formal, rhetorical, inflammatory.
4. **Handling of evidence** Detailed, well martialled, partial, biased.

Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights'. *Monash University Law Review* 41(2) 2015, p. 479.

These subcategories are in some respects matters of style but are important in judging the minority report's likely impact. Table 2 sets out these categories and subcategories in a manner that demonstrates their relationships. The cells in the table contain text that identifies the predominant characteristics of each category of report in each subcategory.

In some cases, the category into which a minority report falls will be easily definable – that is, it will fit clearly or easily within one or other category. In other cases, this will not be clear. In this situation, a predominant purpose will need to be identified: that is, an attempt will need to be made to determine what characteristics from the four categories and sub-categories predominate. This is a question of assessing the report's characteristics on the basis of volume (accounting for which characteristics are most represented).

Table 2. Taxonomy for Classifying Minority Reports

		Category	
		Policy Focused	***Political***
Sub-category	***Objective or Purpose***	Debates policy issues/design, makes recommendations that have a policy/ legislative focus.	Critiques and/or questions the government's position on policy issues, reflects a party-political/campaigning interest, seeks to re-prosecute issues between political parties outside the inquiry.
	Structure	Formal, largely follows the same approach as the main report, with findings, recommendations, use of Hansard quotes, footnote references etc.	Informal, tends to contain unsupported statements
	Language	Technical/ technocratic, complimentary, dispassionate, analytical.	Political language, antagonistic, sloganeering, active, critical.
	Handling of evidence	Focus on policy documents, academic research, Hansard quotes and expert testimony.	Little to no reliance on evidence, or highly selective use of evidence.

Taxonomy for Classifying Minority Reports (continued)

		Category	
		Malpractice/Malfeasance	***Evidential***
Sub-category	***Objective or Purpose***	Seeks to raise malpractice in the terms of: (a) reference/inquiry (e.g., whether the inquiry was necessary/waste of committee resources); (b) the way the inquiry was managed (witness selection, public hearings schedules, disproportionate focus on types of witnesses (e.g., government entities appear more often than other interested parties); (c) in the performance or appearance, or failure to appear/perform/respond appropriately by government entities/individuals. In some cases, the focus will be on malfeasance by the committee; e.g., failure to follow committee procedures rules.	Seeks to raise evidence that either was not considered (ignored), incorrectly considered, or misrepresented by the committee in the main report. It may also seek to add evidence or views that were not included. These may already exist in public submissions, testimony gathered during public hearings, or be new material never considered by the Committee.
	Structure	Can be both formal/informal, raises allegations, will raise matters which cannot be independently verified, even in the extracts section of the main report.	Formal and informal, may use Hansard quotes, can be in the writing style of the main report, may use references.
	Language	Active, critical, accusatory, conspiratorial, prosecutorial.	Active and passive, complimentary, accusatory, victim based, conspiratorial.
	Handling of evidence	Largely unverifiable, based on author's views/experiences, will not be easily provable.	Hansard testimony, submissions, personal testimony to authors of the minority report.

Some cautions

There is always a subjective element to any social science taxonomy. Indeed, it has been noted that 'a classification is no better than the dimensions or variables on which it is based'.[26] In the case of minority reports, the authors recognise that there are subjective elements at play. These include that assessing the characteristics involves subjective analysis; that the characteristics may not be consistently applied, which may impact empirical assessment; and the role of political objectives is likely at play in all four categories. Additionally, there is also the possibility of there being other unrecognised categories. Indeed, in a small number of instances, the mixture between

[26] Bailey, 'Typologies and Taxonomies', p. 2.

different categories is such that a minority report could be considered a hybrid of two different categories.[27]

Nevertheless, we consider that this taxonomy is a useful tool for understanding minority reports and that it has strong heuristic value. As with other social science taxonomies, its strength lies in providing a descriptive tool that allows for 'side-by-side' comparisons, 'reducing complexity or achieving parsimony', 'identifying similarities and differences'.[28] It can be versatile, in that it may be used to understand minority reports in other jurisdictions. The minority report taxonomy is the first to be created for classifying minority reports, and should provide a basis for understanding their role, dimensions and contribution in public policy debates and parliamentary practice and outcomes.

THE TAXONOMY IN ACTION

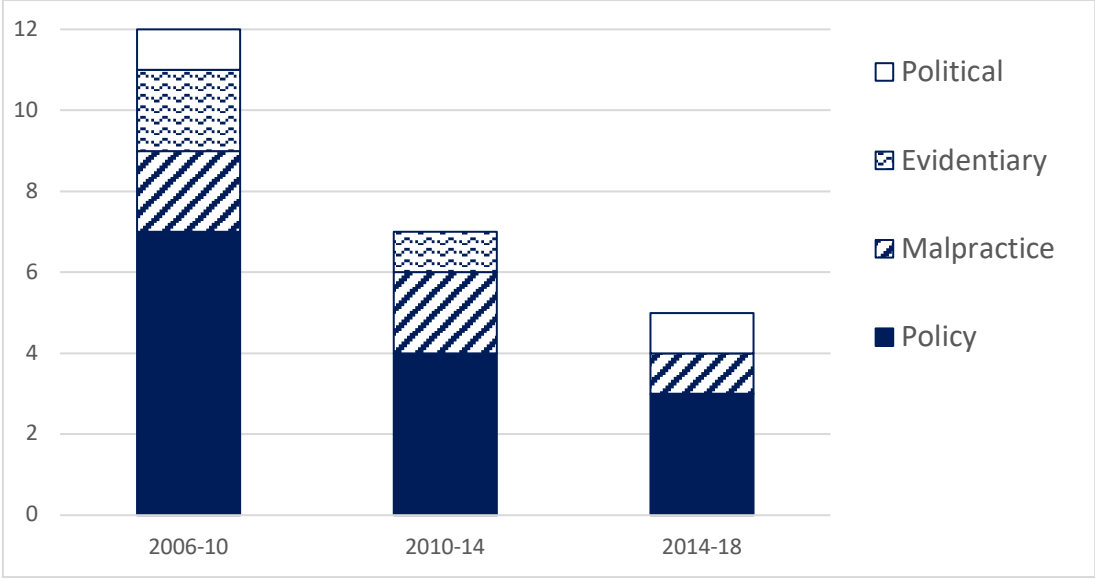
Figure 1 provides an overview of the trends in the types of minority reports made by JIC in the period 2006-2018. Appendix A provides a timeline of which committees resulted in minority reports of each category.

Across the three parliamentary terms, most minority reports were policy focused. Further, in each parliamentary term, the policy focused category consistently comprised between 58% and 63% of the overall number of minority reports. The data demonstrate that very few politically aimed minority reports were made - none in the 2010-14 period.

[27] One example is the Road Safety Committee's report on Pedestrian Safety in Carparks that has been categorised as a malpractice/malfeasance minority report because the main argument in the minority report is that it was a waste of Committee time and resources to conduct this inquiry when, in their view, there were more important road safety considerations in Victoria. This minority report also contains elements of a political report because it critiques the Government for instigating this inquiry at the particular time. Road Safety Committee, Inquiry into Pedestrian Safety in Car Parks. Melbourne, Victoria, Parliament of Victoria, 2010, p. 126. Accessed at: www.parliament.vic.gov.au/58-rsc/pedestrian-safety-in-car-parks. A second example is the Environment and Natural Resources Committee inquiry into the approvals process for renewable energy projects in Victoria. This minority report has been classified as predominantly a policy focused report, but it also contains elements of a political report because it is critical of a governing party that is specifically named. Environment and Natural Resources Committee, Inquiry into the Approvals Process for Renewable Energy Projects in Victoria. Melbourne, Victoria, Parliament of Victoria, 2010, p. 287. Accessed at: www.parliament.vic.gov.au/enrc/inquiries/article/870.

[28] Bailey 'Typologies and Taxonomies', pp. 10-11.

Figure 1. Victorian Joint Investigatory Committee Minority Reports by taxonomic type 2006-18



The best way to gain an insight into the characteristics of minority reports falling into each of the four categories is to consider an example from each category. Each case study covers the characteristics outlined in the taxonomy above.

Policy focused category

The policy focused category of minority reports hones in on the policy issue covered by the terms of reference of the inquiry, seeking to make different recommendations to those contained in the main report (either related to those contained in the main report, or additional). The minority report on the Law Reform Committee's (LRC) *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009) has been categorised as a policy focused report using the taxonomy,[29] and is a good illustration

[29] Law Reform Committee, Inquiry into Alternative Dispute Resolution and Restorative Justice: Minority Report. Melbourne: Parliament of Victoria, 2009.

of this category of minority report.[30] The minority report highlights three recommendations made by the majority in the main report (recommendation numbers 69, 70 and 71) and outlines the reasons why the minority do not support these recommendations.[31] These recommendations concern pilot programs so the focus of the report is on policy matters.

The report is structured formally, containing headings. There are headings for each of the recommendations that the minority disagree with under which they discuss their views. The minority report contains quotes from experts, such as the Chief Commissioner of Police and contains four footnote references.[32] The expert testimony (Hansard transcripts of oral testimony) and written submissions form the bulk of the evidentiary basis for the report.

The language used is rational and dispassionate (e.g., 'it is premature to reach that conclusion on the basis of the evidence available to date'), complimentary (e.g., 'some of these approaches may have potential for greater use than at present', and 'the minority members of the Committee wish the Broadmeadows pilot program well') and analytical (e.g., 'the Committee is not in fact forming a clear conclusion of its own at all, but rather it is leaving the outcome to a future assessment by others').[33]

Political category

Minority reports in the 'political' category seek to further a political agenda that may be unrelated, or only tangentially related, to the terms of reference of the inquiry. The minority report of the Electoral Matters Committee (ELC) *Inquiry into the provisions of the Electoral Act 2002 (Vic) relating to misleading or deceptive political advertising* (2010) has been categorised as a political report using the taxonomy.[34] The report's

[30] This minority report was authored by three members of the Committee: Robert Clark MLA, Jan Kronberg MLC and Edward O'Donohue MLC. Note that the minority report page numbering begins from 1 after page 422 of the LRC report and the numbering does not continue from the main report.

[31] Law Reform Committee, Inquiry into Alternative Dispute Resolution and Restorative Justice: Minority Report, pp. 3-5 (hereafter ADR MR).

[32] *ADR MR*, p. 4.

[33] *ADR MR*, pp. 2, 4, and 6.

[34] Electoral Matters Committee, Inquiry into the provisions of the Electoral Act 2002 (Vic) relating to misleading or deceptive political advertising: Minority Report, Melbourne, Victoria, Parliament of Victoria, 2010 (hereafter EMC

objective is to criticise the position taken by the Victorian state Government (at the time led by the ALP) during the inquiry, particularly the evidence given to the Committee by the ALP's state secretary. It is a short report (less than 1.5 pages) and most of it consists of un-contextualised quotes from submissions and transcripts of public hearings.

The language of the report is antagonistic and without support for the claims (e.g. 'we regard the view of Stephen Newnham as being unacceptable'[35]) and critical ('the position adopted by the ALP could be categorised as at best tending to confuse, and at worst, in the words of a campaign worker for Les Tentyman "a debasement of the political system"'[36]). Further, there is evidence quoted, but it is not well connected to the claims of the authors of the report. The overall position of the authors remains unsubstantiated.

Malpractice/malfeasance category

Malpractice or malfeasance minority reports deal with failures of committee processes or performance and/or actions that frustrate the work or investigations of the committee and are often focused on government entities. The minority report on the LRC's *Inquiry into arrangements for security and security information gathering for state government construction projects* (2010) (LRC 2010)[37] raises concerns about malpractice/malfeasance and has been placed into this category using the taxonomy. The report raised four major concerns:

(1) that the inquiry was 'shut down'

(2) that there was a report completed by the Commissioner for Law Enforcement and Data Security that was not made available to the Committee by the Government

MR). The minority report was authored by three members of the Committee: Philip Davis, Michael O'Brien and Murray Thompson. The page numbering continues from the main report.

[35] *EMC MR*, p. 170.

[36] *EMC MR*, p. 171.

[37] Law Reform Committee, Inquiry into arrangements for security information and security information gathering for state government construction projects: Minority Report, Melbourne, Victoria, Parliament of Victoria, 2010 (hereafter LRC MR). This minority report was authored by three members of the Committee: Robert Clark MLA, Jan Kronberg MLC and Heidi Victoria MP. Note that the minority report page numbering begins from 1 after page 4 of the LRC report and the numbering does not continue from the main report.

(3) that the majority of the Committee did not hold any public hearings, and

(4) that the majority of the Committee did not make any submissions to the inquiry public.[38]

The structure of the report is formal. It contains headings and has a logical flow. The language used is critical and prosecutorial (e.g. 'the majority not only refused' and 'is insulting to those persons who put time and effort into preparing submissions'), conspiratorial (e.g. 'there are strong grounds to conclude that the government has sought to conceal and prevent public scrutiny' and '[t]erminating MOUs and avoiding future MOUs will be of little benefit if it results in Victoria Police conversely feeling unable to pass on vital information') and accusatorial - the word 'gag' is used throughout the report in relation to how the minority feel they are being treated by the majority of the Committee e.g. '[t]he majority's gag on us means we are prohibited' and 'the consequent gagging of the minority members of the Committee is unprecedented'.[39] There is limited evidentiary material relied upon, including references to a report by the Commissioner for Law Enforcement and Data Security.[40] However, most of the minority report is based on the opinions of its authors.

Evidential category

Evidential minority reports are focused on dealing with material which has, according to their authors, been excluded, misconstrued, misinterpreted or ignored. A good illustration of a report falling into the evidential category under the taxonomy is the minority report of the Education and Training Committee's (ETC) *Inquiry into the Approaches to Homework in Victorian Schools* (2014).[41] It is a short report (two pages) that focuses on the perceived lack of attention given by the main report to evidence relating to one particular matter: 'the removal of certain forms of financial assistance

[38] *EMC MR*, p. 1.

[39] *EMC MR*, p. 1, 2, 5, 6 and 7.

[40] See e.g., *EMC MR*, p. 4

[41] Education and Training Committee, Inquiry into the Approaches to Homework in Victorian Schools: Minority Report, Melbourne, Victoria, Parliament of Victoria, 2014 (hereafter ETC MR). Accessed at: https://www.parliament.vic.gov.au/images/stories/committees/etc/Homework_Inquiry/Homework_Inquiry_final_report.pdf. This minority report was authored by two members of the Committee: Colin Brooks MP and Nazih Elasmar MLC. The page numbering continues from the main report.

from disadvantaged families'.[42] The report seeks to 'supplement the majority report rather than to replace it or to provide an alternative point of view'[43] and goes on to make an additional recommendation calling for an assessment of the impact of removing particular payments to low-income families.[44]

The report is informal and does not provide any quotes from Hansard. It refers to evidence from 'a student who gave evidence to the committee',[45] without quoting what that student said in their submission or oral testimony. It instead refers to the particular concerns of the report's authors explicitly.

The language used in the report is accusatorial and conspiratorial. For example, it refers to a particular bonus being 'abolished by the Napthine Government in 2013' and refers to 'the Federal Government's *compounding* decision to cease' another bonus payment (emphasis added) and adds that 'the Government has removed the very financial assistance that is designed to help them do this'.[46] I t also refers to the 'very real risk of increasing student exclusion and disengagement' as a result of these reforms,[47] without providing any evidence about how or why that might occur—in particular, without reference to evidence provided to the Committee during the inquiry.

DISCUSSION AND CONCLUSION

Minority reports are an important and enduring characteristic of JICs. They play an important role that can be summarised as exercising a normative influence, generating reaction from government or from civil society, providing a canary or sentinel function, dealing with risks arising from the over-representation of a political party on committees or abuses of process, and providing a means of capturing a plurality of different or underrepresented views. In Victoria, minority reports in the period 2006-2018 saw a consistent reduction in number over time occurring at the same time as a

[42] *ETC* MR, p. 106.

[43] *ETC MR*, p. 106.

[44] *ETC MR*, p. 107.

[45] *ETC MR*, p. 106.

[46] *ETC MR*, p. 107.

[47] *ETC MR*, p. 107.

reduction in the number of committees and inquiries undertaken. Taxonomically, the policy focused minority report predominated with few political minority reports across the 2006-2018 period, a time period during which evidential minority reports have also declined to zero. Importantly, minority reports when made are almost always focused on 'real' or 'valid' motivations: policy debate, evidence, and abuse of process or power. Interestingly, and unexpectedly, our analysis shows that they are rarely used as an alternative forum to attack political opponents.

The categorisation of minority reports using the taxonomy demonstrates that minority reports serve different functions and reveals that dissent within parliamentary committees is nuanced. Therefore the treatment of the different reports needs to be correspondingly nuanced. However, current accepted practice is not to respond to minority reports when responding to main reports by Committees. The detailed analysis of minority reports undertaken in this article, combined with the classification of minority reports into different categories, reveals that closer attention to minority reports could be considered in certain instances. It also reveals that minority reports could contribute to policy development on the one hand, and have implications for future inquiries, on the other. The question of how that might occur is a question for future research.

Of the four categories of minority reports identified using the taxonomy, the authors consider that only the political category of reports do not contain content that is pertinent to the subject-matter of the inquiry. Future research could focus on whether action is required in response to the other three categories, albeit with some differences in approach. In relation to minority reports that contribute to policy debate, which often contain recommendations, future research should consider whether these could be responded to when the legislatively-mandated response to the main report is provided. These reports contain rational analysis that can inform policy development—particularly when considered alongside the main report. Similarly, future research could be undertaken for minority reports that draw attention to issues of evidence in the main report. These reports contain concerns that could have an impact on how the content and recommendations of the main report are responded to.

Finally, reports that contain claims of committee malpractice could be directly referred to an appropriate committee of the Parliament, depending on their nature. This should

likely be the Procedures/Standing orders Committee[48] or in some circumstances, the Privileges Committee of either the Victorian lower and upper house.[49] These committees should undertake reviews of minority reports raising malpractice/malfeasance claims, and determine what action needs to be taken, or what reforms should be introduced.

The taxonomic classification of minority reports provides a clear path towards a differential response to the categories of minority report. It provides researchers and those involved within the Victorian parliamentary system with a way of understanding and categorising minority reports. Excluding political category reports, researchers should explore whether further attention should be paid to the other three types (policy focused, malpractice/malfeasance and evidential).

The categorisation of minority reports also demonstrates that consensus-driven committees may mask problems with committee processes (concerning malfeasance/malpractice and evidence) that could lead to missed opportunities for refinement of the policy proposals put forward in the main report. This is not to suggest that widespread dissent is desirable. In any case, the empirical data suggests that this is unlikely. The Victorian data suggests that JICs have generally experienced consistent reduction in the number of minority reports, representing a decrease in committee dissent: minority reports are written by multiple committee members, are heavily skewed towards policy debate and evidentiary matters, and are rarely focused on political point scoring.

However, if the trend was to change—particularly if there was an increase in malpractice/malfeasance or political reports—then that kind of dissent may be a harbinger of an ill-functioning committee system and in turn may reflect broader issues within Parliament and the democratic system and culture. That broad point is likely to be the case in most Westminster Parliaments, given that consensus is considered integral to the functioning of these committee systems. This is a situation that can be more easily identified by having a taxonomy to classify the various types of minority

[48] This Committee is established 'to consider any matter regarding the practices and procedures of the House': Committees, 'Procedure'. *Parliament of Victoria*, n.d. Accessed at: www.parliament.vic.gov.au/procedure-committee.

[49] Committees, Legislative Council Committees, 'Privileges'. *Parliament of Victoria*, 13 July 2018. Accessed at: www.parliament.vic.gov.au/lc-privileges; Committees, Legislative Assembly Committees, 'Privileges'. *Parliament of Victoria*, n.d. Accessed at: https://www.parliament.vic.gov.au/la-privileges.

reports. That is, the taxonomy could be used to measure the operational health and outcomes of the committee system.

If the current trend in JICs continues, minority reports will not unduly disrupt the consensus norm. Indeed, if the trend between 2006-2018 continues, minority reports may become rare examples of parliamentary dissent. The reasons for this decline are unclear. They may relate to political drivers, approaches to dissent within parliamentary committees, the purported usefulness of minority reports and their impact on policy debates, or lack thereof. These factors are worthy of future analysis and research. Minority reports represent an important institutional pressure release valve, can act as measure of performance and democratic outcomes of Parliament and, when properly classified, could be appropriately responded to.

Appendix A: Reports by Joint Committees (organised chronologically) 2008 to 2017 with minority report classification using the taxonomy

Tabling date	Committee	Inquiry	Classification of minority report
May 2009[50]	Law Reform Committee (57th Parliament)	*Inquiry into Alternative Dispute Resolution and Restorative Justice*	Policy focused
June 2009	Environment and Natural Resources	*Inquiry into Melbourne's Future Water Supply*	Two minority reports; both policy focused
November 2009	Outer Suburban/Interface Services and Development	*Inquiry into the Impact of the State Government's Decision to Change the Urban Growth Boundary*	Policy focused
November 2009	Rural and Regional	*Inquiry into Regional Centres of the Future*	Evidential
November 2009	Law Reform Committee (57th Parliament)	*Review of The Members of Parliament (Register of Interests) Act 1978*[51]	Evidential
December 2009	Family and Community Development	*Inquiry into Supported Accommodation in Victoria for Victorians with a*	Policy focused

[50] The minority report is dated 27 April 2009. The majority report was tabled in May 2009.

[51] The minority report is dated 4 October 2010. The majority report was tabled in December 2009.

		Disability and/or Mental Illness	
February 2010	Environment and Natural Resources	*Inquiry into the Approvals Process for Renewable Energy Projects in Victoria*	Policy focused
February 2010	Electoral Matters Committee	*Inquiry into the provisions of the Electoral Act 2002 (Vic) relating to misleading or deceptive political advertising*	
May 2010	Road Safety Committee	*Inquiry into Pedestrian Safety in Car Parks*	Malpractice/. Malfeasance
October 2010	Rural and Regional	*Inquiry into the Extent and Nature of Disadvantage and Inequity in Rural and Regional Victoria*	Policy focused
October 2010	Law Reform Committee (57th Parliament)	*Inquiry into arrangements for security and security information gathering for state government construction projects*	Policy focused

12 December 2012[52]	Outer Suburban/Interface Services and Development	*Inquiry into Liveability Options in Outer Suburban Melbourne*	Malpractice/ Malfeasance
March 2013	Law Reform Committee (57th Parliament)	*Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*	Policy focused
June 2013	Outer Suburban/Interface Services and Development	*Inquiry on Growing the Suburbs: Infrastructure and Business Development in Outer Suburban Melbourne*	Malpractice/ Malfeasance
March 2014	Electoral Matters Committee	*Inquiry into the future of Victoria's electoral administration*	Two minority reports; both policy focused
August 2014	Education and training	*Inquiry into the approaches to homework in Victorian schools*	Evidential
September 2014	Law Reform, Drugs and Crime Prevention	*Inquiry into the Supply and use of Methamphetamines, Particularly Ice, in Victoria*	Policy focused
May 2016	Electoral Matters Committee	*Inquiry into the conduct of the 2014*	Policy focused

[52] The minority report is dated 6 December 2012. The majority report was tabled 12 December 2012.

		Victorian state election	
May 2016	Environment, Natural Resources and Regional Development	*Inquiry into the CFA Training College at Fiskville*	Political
June 2016	Economic, Education, Jobs and Skills	*Inquiry into portability of long service leave entitlements*	Malpractice/ Malfeasance
March 2017	Law Reform, Road and Community Safety	*Inquiry into lowering the probationary driving age in Victoria to seventeen*	Policy focused
March 2018	Law Reform, Road and Community Safety	*Inquiry into Drug Law Reform*	Policy focused

Conduits Between Parliament and People: Does Referring Petitions to Committees Improve Citizen Participation?*

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*Double-blind reviewed article

Abstract Petitions and committees are considered two of the key conduits between the community and the Parliament. However, the question still remains; does referring petitions to committees improve citizen participation in Parliament? This article examines trends in participation through petitions presented to the Legislative Assembly for the Australian Capital Territory between 2008 and 2018. Following this analysis, the article explores the definitions of improved citizen participation, as well as citizen expectations. These definitions are key in determining whether the Assembly's adoption of Standing Order 99A, which refers petitions with 500 or more signatories to a standing committee for consideration, actually improves citizen participation, as well as meeting citizen expectations. This article concludes that Standing Order 99A, as it stands, does not improve citizen participation but that it has the potential to if additional processes are adopted.

INTRODUCTION

Over the past decade there has been an increase in academic and practitioner interest in the parliamentary petition process. A number of Parliaments have recently reviewed their petition process in an attempt to ensure their processes are reflective of the community's needs. This article extends this interest beyond simply determining whether a committee process improve the general level of citizen participation. Through the use of Arnstein's Ladder of Citizen Participation, this article defines improved participation and examines whether specific committee related approaches have an impact on citizen participation and expectations in the petition process.

To explore this his possibility, the article analyses data on petitions presented to the Legislative Assembly for the Australian Capital Territory (Assembly) to assess whether petitions improve citizen participation in the Assembly. Petitions have been reviewed for a period of 10 years, from the last year of the 6th Assembly in 2008 to the last sitting day of the 9th Assembly in 2018. During this period, excluding 2008, ACT Labor formed government with a Parliamentary Agreement between ACT Labor and ACT Greens. This article compiles the following data for petitions presented to the Assembly between 2008 and 2018:

- The number of petitions tabled;
- The number of e-petitions tabled;
- The number of petitions referred to a standing committee;
- The number of signatories to petitions tabled;
- The subject matter of petitions;
- The parties sponsoring petitions; and
- Statements made by Members on presentation of petitions.

In November 2015, the Assembly adopted Standing Order 99A, which required that petitions with more than 500 signatures be referred to a standing committee for consideration. This article explores the impact the adoption of Standing Order 99A has had on increasing citizen participation, as well as meeting citizen expectations.

Before analysing the role and effect of committees in the petition process, improved citizen participation and participant expectations must first be defined. This article sets out to define citizen participation and expectations, while examining whether the referral of petitions to a standing committee improves citizen participation in Parliament.

The analysis demonstrates that referring petitions to committees can improve citizen participation in Parliament. Additionally, this process has the potential to ensure what the citizens expect to achieve through the petition process is met. This analysis further demonstrates that, to achieve improved participation and meet citizen expectations, the role the committee takes in the petition referral process is essential.

THE REVIVAL OF ACADEMIC INTEREST IN PETITIONS

Over the past decade, a growing number of academic articles have explored how petitioning has been used as a method to connect the people with the Parliament, to inform the Parliament and to put community concerns on the parliamentary agenda. Many of these academic articles have considered specific practices adopted through the petition process as tools for increasing citizen participation in Parliament. With specific reference to the consideration of petitions by committees, scholars generally acknowledge that the utilisation of a committee, in any format, contributes to improved citizenry participation.

In 2012, Hough analysed the growing trend of parliamentary reviews of petition processes. In his analysis, Hough hypothesised that '[I]in order to be considered truly effective, a legislative petitions system must enable citizens to contribute to parliamentary debate and, ultimately, influence policy development.'[1] This outcome is best promoted through the inclusion of a dedicated petitions committee, as it provides structure and focus to the petition system. Such focus and structure create a tangible link between Parliament and the public, while facilitating policy development and scrutiny.[2]

In 2018, Burton reviewed petition processes adopted by the Legislative Council and Legislative Assembly of Western Australia, covering a period beginning November 2008 and ending November 2016. Burton found that '[t]he unique function of the Legislative Council Committee tasked with inquiring into petitions demonstrates that petitions can provide a mechanism for achieving community objectives through committee inquiry'.[3] Burton also noted that although governments may not acknowledge the correlation between committee inquiries and changes to their policies, it can be argued that petition related committee inquires can prompt indirect and direct action by governments.[4]

[1] Richard Hough, 'Do Legislative Petitions Systems Enhance the Relationship between Parliament and Citizen? *The Journal of Legislative Studies*, 2012, p. 483.

[2] Hough, 'Do Legislative Petitions Systems Enhance the Relationship between Parliament and Citizen?, pp. 479-495.

[3] Rebecca Burton, 'The People's Parliament: Have Petitions Had Their Day' *Australasian Parliamentary Review,* 33(1) 2018, p. 63

[4] Burton, 'The People's Parliament', pp. 41-71.

Beyond the adoption of a committee process, the literature has also evaluated the e-petition system as a method used in Parliaments to improve citizen participation through the petitions process. Reynolds and Williams observed the increased citizenry support in parliamentary petitions as a result of the introduction of an e-petition process, with particular reference to the United Kingdom and Queensland. Reynolds and Williams note that since the adoption of the e-petition system in the Queensland Parliament, there has been an increase in the number of petitions lodged, as well as an increase in the number of petition signatures. To this extent, Reynolds and Williams consider the number of petitions lodged and signatures attached, after the introduction of an e-petition system, as a tool to evaluate the success of e-petitions in improving citizen participation.[5] In contrast, Pearce (as cited in Hough) highlighted that while the introduction of an e-petition system in both houses of the Tasmanian Parliament received considerably positive feedback, both houses had received an insignificant number of e-petitions.[6]

In addition to the role of Parliament through engagement and scrutiny, scholars have also examined the effectiveness of an obligatory government response to petitions. Scholars appear divided on which role, that of the Parliament or that of the Government, appears to be the most effective method employed to improve citizen participation through the petition process. With specific reference to the House the Representatives, Griffith notes that ministerial responses manage public expectations. Specifically, Griffith maintains that while it would be rare for a Minister to directly acknowledge the issues raised in the petition through direct action, the Government response provides a mechanism for accountability in which the Minister stipulates the Government's reasoning behind their position on the matter.[7] Sampford observes that the majority of scholarly opinion appears to agree that a formal requirement for a ministerial response improves citizen participation through the petition process. This is mainly due to the responses being used as a direct dialogue between the Government and citizens, as well as a mechanism for accountability.[8]

[5] Daniel Reynolds and George Williams, 'Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition'. *Australasian Parliamentary Review* 31(1) 2016, pp. 60-80.

[6] Hough, 'Do Legislative Petitions Systems Enhance the Relationship between Parliament and Citizen?', p. 486.

[7] G. Griffith, 'Public Petitions: A Case Study of New South Wales'. *The Parliamentarian,* 2, 2011, pp. 144-151.

[8] Karen Sampford, 'A Petition Committee for Queensland—An Idea whose Time has Come?' *Australian Parliamentary Review* 25(2) 2010, p. 100.

The academic articles explored above note the significant role petitions play in providing a link between the people and the Parliament. While these articles acknowledge the role of committees in the petition process, which has been explored by other academics, this article goes beyond simply determining whether a committee process would improve citizen participation. In particular, through the use of Arnstein's Ladder of Citizen Participation, this article defines improved participation and examines how specific committee related approaches would impact citizen participation and expectations in the petition process.

PETITIONS IN THE ACT ASSEMBLY

Under subsection 24(3) of the *Australian Capital Territory (Self-Government) Act 1988*:

> Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as 'the powers for the time being of the House of Representatives and its members and committees'.[9]

The Assembly Standing Orders 83-100 relate specifically to petitions. These Standing Orders consider the form and content of the petition, lodgement of petitions, consideration of petitions, as well as the adoption of e-petitioning. On 1 January 2019, the Assembly implemented revised Standing Orders. Six of the 24 petition related Standing Orders were updated, following the revision of the 280 Standing Orders on 29 November 2018.

The majority of the amendments were typographical or made to better reflect the modernisation of petitions through the e-petition process. However, Standing Order 98 was expanded to include Standing Order 98A, which provides for time restrictions for the debate on petitions after they are presented in the Assembly. Standing Order 99A also saw an amendment that allows paper petitions and e-petitions of a similar topic to be considered together and referred to a standing committee if they have more than 500 signatures combined.[10]

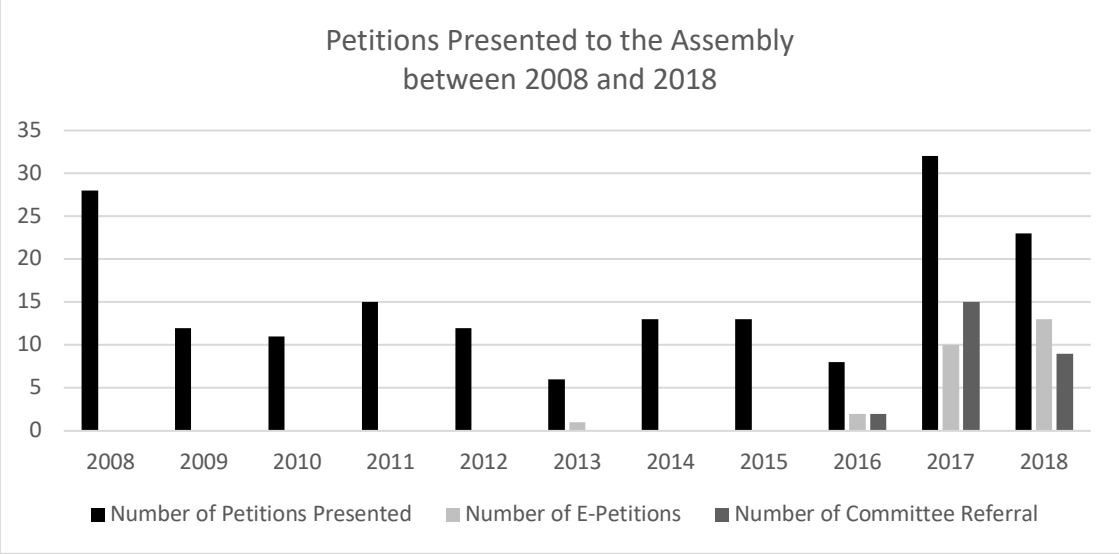
[9] Commonwealth, *Australian Capital Territory (Self-Government) Act 1988,* Subsection 24(3).

[10] The current Assembly Standing Orders can be found at: https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders/standing_orders.

Number of Petitions

The number of petitions presented to the Assembly has varied between 2008 and 2018, ranging from six in 2013 to 32 in 2017, with the average number being 13. Figure 1 provides a breakdown of the number of petitions tabled in the Assembly over the period, the number of petitions that were received as e-petitions, as well as the number of petitions that were referred to a standing committee.

Figure 1. Number of Petitions Presented to the Assembly between 2008 and 2018[11]



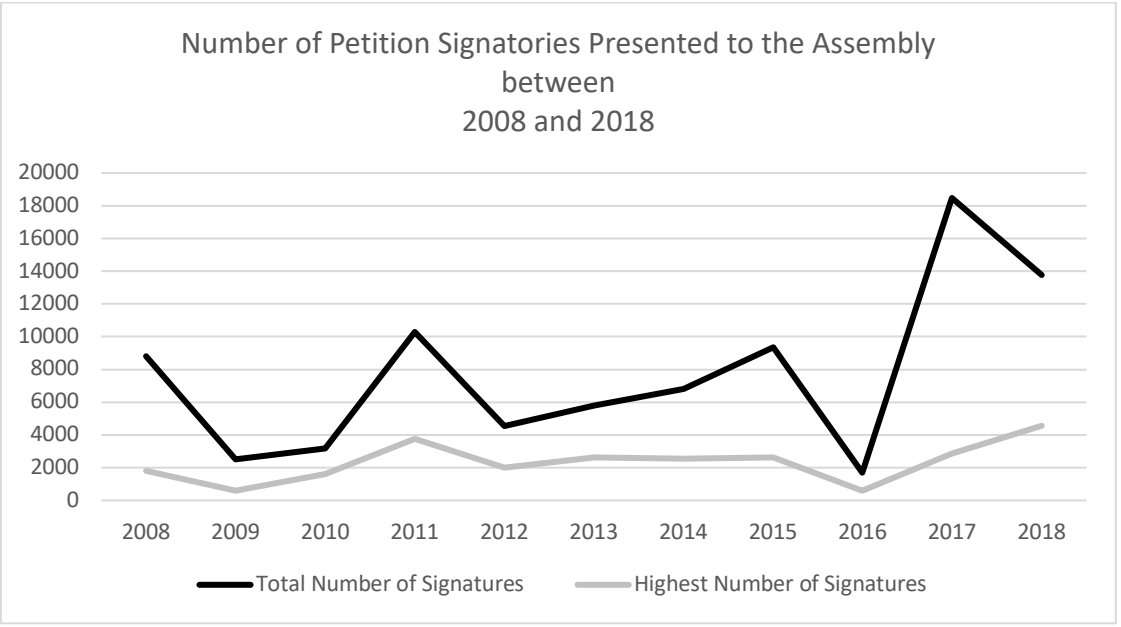
Number of Signatories to Petitions

There were approximately 85,000 signatories to petitions tabled in the Assembly between 2008 and 2018. During this time, the population of the ACT increased from 345,600 in 2008 to 406,692 in 2018. The largest single petition lodged between 2008 and 2018 was tabled in the Assembly on 20 March 2018. The Assembly Minutes of

[11] Data from 2008 illustrates that 28 petitions were presented to the Assembly. However, upon further analysis, 2008 had a significantly higher number of petitions of the same topic presented multiple times (repeat petitions) in comparison to subsequent years. If repeat petitions are excluded from the data, 2008 only saw 14 petitions presented to the Assembly, which is more reflective of data for the subsequent years. It appears that the practice of repeat petitions did not continue during the 7th, 8th and 9th Assemblies.

Proceedings noted the terms of the petition called for the Assembly to reinstate the light rail stop planned for the Canberra suburb of Mitchell.[12] The petition contained 4,560 signatures.[13] Figure 2 provides the number of signatories to petitions tabled in the Assembly during the period and the petition with the highest signatories for each year.

Figure 2. Number of Signatories to Petitions Presented to the Assembly between 2008 and 2018



Subject Matter of Petitions

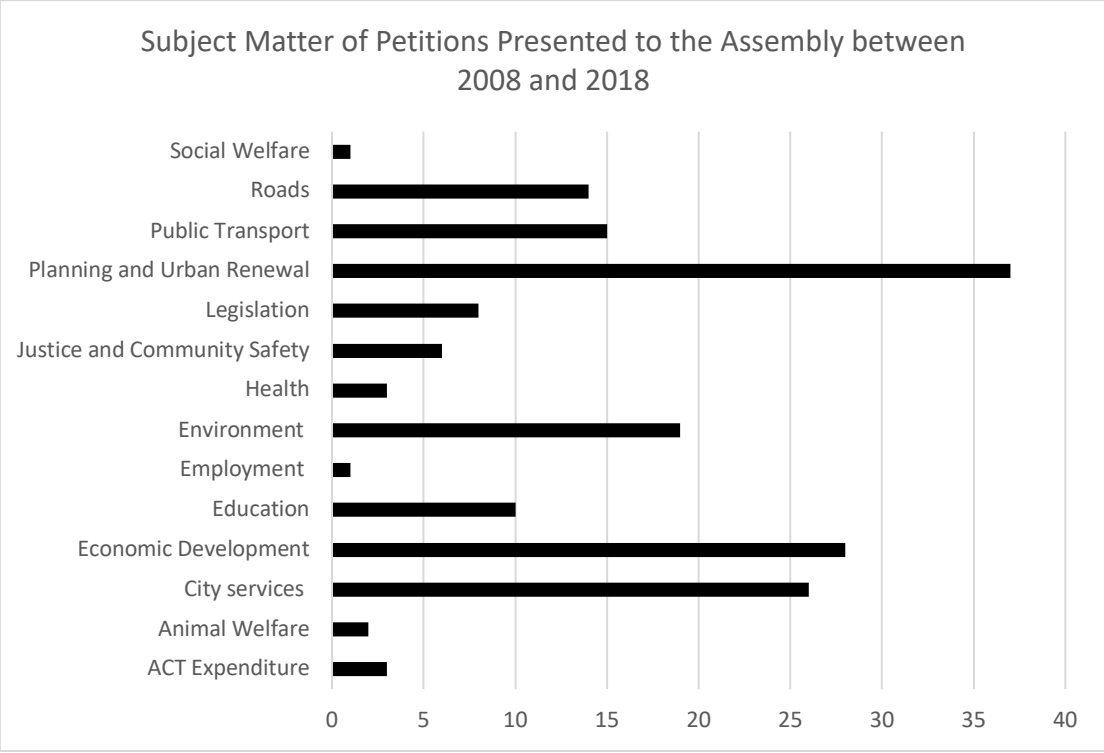
As shown in Figure 3, planning and urban renewal matters accounted 25.6 per cent of petitions presented to the Assembly from 2008 to 2018. Other subject matters that

[12] Legislative Assembly, *Minutes of Proceedings*, 20 March 2018, pp. 718-719.

[13] The largest single petition ever received by the Assembly, was lodged on 27 June 1996. The Assembly Minutes of Proceedings (1996) noted the terms of the petition called for the Assembly to vote against the Government's proposed restricted shopping hour's legislation. The petition contained 39,874 signatories.

accounted for more than 10 per cent of petitions included city services (14.2 per cent), economic development (15.3 per cent) and environment (10.3 per cent).

Figure 3. Subject Matter of Petitions Presented to the Assembly between 2008 and 2018



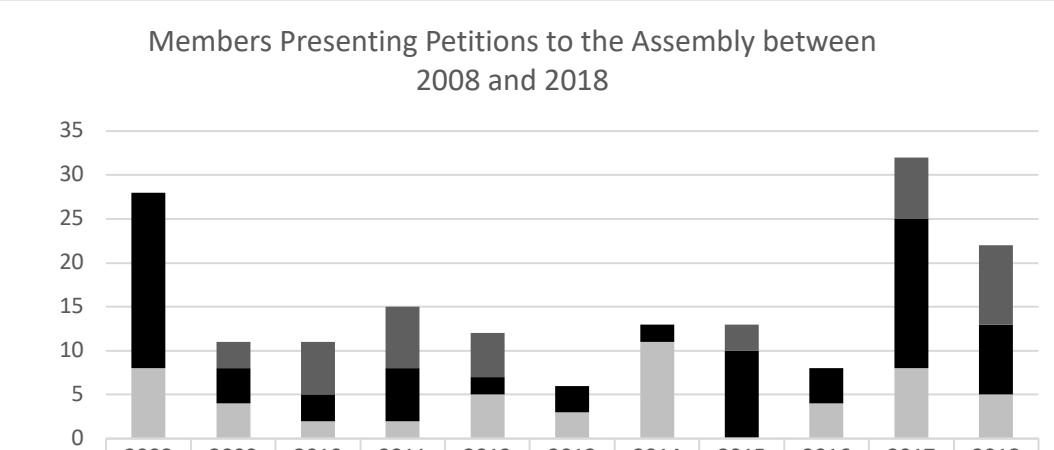
Members Presenting Petitions

Under Standing Order 95, petitions presented to the Assembly can only be lodged by a Member. Due to this requirement, it could be argued that the number of petitions sponsored by a particular party may be reflective of which party is in power and which party is in Opposition. From the period 2008 to 2018, ACT Labor formed the Government and the Canberra Liberals formed the Opposition. For the majority of the

10 years, the ACT Greens had a signed Parliamentary Agreement with ACT Labor, in order for ACT Labor to form Government.[14]

As shown in Figure 4, Members of the Canberra Liberals sponsored the most petitions presented to the Assembly over the period, with 46 percent. ACT Labor Members sponsored 30 per cent of petitions presented to the Assembly while the ACT Greens Members sponsored 23 percent of petitions. However, as ACT Labor and ACT Greens were part of a Parliamentary Agreement for majority of this period, combined both parties sponsored 53 percent of petitions presented to the Assembly.

Figure 4. Party of Members Presenting Petitions to the Assembly between 2008 and 2018



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Greens	0	3	6	7	5	0	0	3	0	7	9
Liberal	20	4	3	6	2	3	2	10	4	17	8
Labor	8	4	2	2	5	3	11	0	4	8	5

Statements by Members on Presentation of Petitions

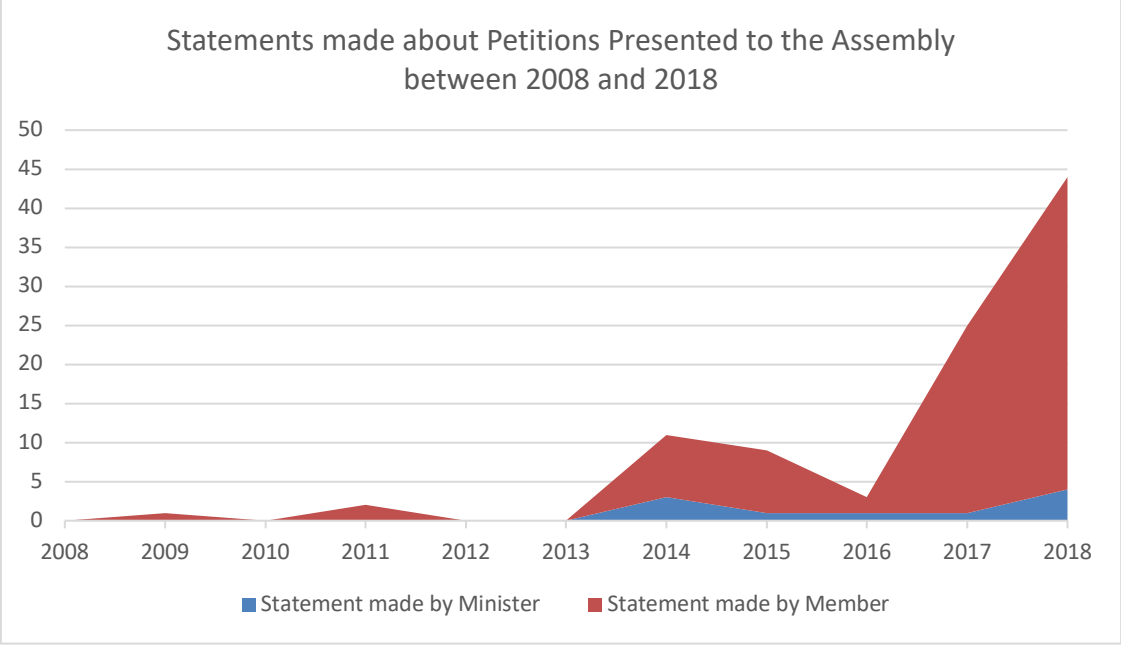
As shown in Figure 5, there has been a significant increase in the number of Members of the Assembly who have made a statement immediately after a petition has been

[14] In 2008, which was the last year of the 6th Assembly, the ACT Greens were not in a Parliamentary Agreement with ACT Labor. However, following the election in late 2008 and the formation of the 7th Assembly, the ACT Greens signed a Parliamentary Agreement with ACT Labor.

presented to the Assembly. Prior to the 9th Assembly, an average of 2.3 Members made statements in regards to a petition. However, in 2017 (the first year of the 9th Assembly), 24 Members and one Minister made statements in relation to a petition. In 2018, the number of Members who made a statement in relation to a petition almost doubled from 2017, with 40 Members and four Ministers making a statement.

The introduction of Standing Order 98A on 1 January 2019, which includes a 30 minute time restriction for the debate on petitions after they are presented to the Assembly, clearly highlights the increase of Members speaking to petitions, as well as the increase in time spent on petitions.

Figure 5. Statements made by Members and Ministers about Petitions Presented to the Assembly Between 2008 and 2018



Discussion of these Trends

Although there were peaks and troughs with the number of petitions presented to the Assembly and their corresponding signatories, the first two years of the 9th Assembly (2017 and 2018) saw an increase in the number of petition related matters. Such petition related matters included an increase in the number of petitions presented, the number of e-petitions lodged, the number of Members making a statement on a petition and the number of petitions referred to a standing committee.

On average, prior to the 9th Assembly, 13 petitions were presented to the Assembly each year. However, within the 9th Assembly, the number of petitions presented increased, with 32 petitions presented in 2017 and 23 petitions presented in 2018. On average, prior to the 9th Assembly, only three petitions each year were referred to a standing committee for consideration. However, after the adoption Standing Order 99A, the data illustrate an increase of petitions being referred to a standing committee, with 15 petitions being referred in 2017 and eight being referred in 2018. On average, prior to the 9th Assembly, the collective number of signatures received each year was 5,881. However, within the 9th Assembly, the number of signatures received each year through petitions increased, with 18,471 signatures received in 2017 and 13,781 signatures collected in 2018.

There are a number of key arguments to take into account when considering the increase of petitions presented to the Assembly and the increase in the number of signatures on petitions, as well as the increase in petitions referred to Standing Committees during the 9th Assembly. However, the argument that will be further explored in this article, is that the introduction of Standing Order 99A, referring petitions that receive more than 500 signatories to a standing committee, has contributed to the increase of petitions presented to the Assembly.

On average, 29.5 percent of petitions would have been referred to a standing committee had Standing Order 99A been in place for the 10 year period. Following the adoption of Standing Order 99A, an average of 42.3 percent of petitions has been referred to a standing committee. The number of petitions receiving more than 500 signatures has increased 12.8 percent since the adoption of Standing Order 99A in November 2015. Noting the increase in the number of petitions presented to the Assembly, as well as the number of petitions with more than 500 signatures, one could argue that the potential for a petition to be referred to a standing committee has contributed to the increased participation in the petition process during the 9th Assembly and subsequently the Assembly itself.

Effectiveness of Petitions

The Companion to the Assembly's Standing Orders notes that the two resolutions adopted in the 17th century, which established the right of the petitioner and the power of the House of Commons to deal with petitions, significantly contributed to the progressive style of petitions that is currently reflected in the 21st century. As petitions have been entrenched in the Westminster system for five centuries, the Companion argues that petitions are an important element within the parliamentary system that provides a direct line of communication between the public and the Parliament. As the

centuries have passed so has the role and expectation of the petition. Originally, petitions were used to air grievances and to seek redress. With the introduction of the Ombudsman, various administrative law tribunals and media, citizens often now choose to use those avenues to air their grievances or seek redress. The Companion goes on to suggest that although petitions still remain an important avenue in bringing the views of the community to the Assembly, this shift has contributed to a decline in the emphasis given to them.[15]

Despite this suggestion, the data presented above indicates that there is an argument for the petition referral process to committees being a process utilised as a conduit between the community and the Parliament and, as such, one that improves the engagement and participation of the community in the parliamentary process. Before calculating the effectiveness of committees considering petitions, improvement must be defined, as well as the participants' expectations.

DEFINING IMPROVEMENT

Beyond standard dictionary definitions of improvement, there are a number of academic articles available that examine levels of participation within the social construct. In particular, Sherry R. Arnstein's 1969 article, 'A Ladder of Citizen Participation', specifically examines public participation in the decision making process, which could be applied to the examination of the effectiveness of petitions in improving citizen participation in Parliament. Arnstein's article defines improved citizen participation in the following way:

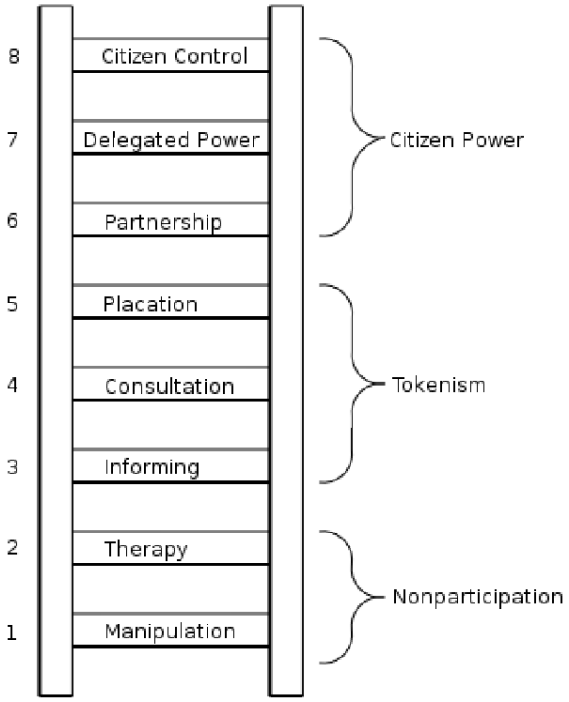
> Citizen participation is a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic process, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources are allocated, programs are operated, and benefits like contracts and patronage are parcelled out. In short, it is the means by which they

[15] Mark McRae (ed.), *Companion to the Standing Orders of the Legislative Assembly for the ACT*. Canberra: Legislative Assembly for the ACT, 2009, pp. 267-274.

can induce significant social reform which enable them to share the benefits of the affluent society.[16]

Through her analysis of public participation, Arnstein identified eight types of participation, which are grouped under three broad categories. Figure 6 identifies the eight types of participation and the three broad categories each type falls within.

Figure 6. Ladder of Citizen Participation[17]



Arnstein goes on to define what form of participation each rung of the ladder takes. The bottom two rungs of the ladder, manipulation and therapy, describe levels of non-participation. The objective of these two rungs is not to enable people to participate, but enable the powerholders to educate and cure the participant. Rungs

[16] Sherry. R. Arnstein, 'A Ladder of Citizen Participation' *Journal of the American Planning Association,* 35(4) 1969, p. 216.

[17] Arnstein, 'A Ladder of Citizen Participation'.

three, four and five—informing, consultation and placation—describe levels of tokenism. These rungs allow people to hear and be heard. However, these three rungs still place the power to consider and the right to decide with the powerholders. The top three rungs—partnership, delegated power and citizen control—describe levels of citizen power and provide the citizens with the full managerial power.[18]

To apply Arnstein's Ladder of Citizen Participation to the petition process, the 'powerholders' would be identified as the government of the day, while the 'have-nots' would be identified as petitioners and signatories. The program in which the level of participation is evaluated is the petition process. Finally, the committee referral process is considered as a mechanism to increase the power of the have-nots.

To determine whether referring petitions to committees improves citizen participation, the first step will be to identify which level on Arnstein's Ladder of Citizen Participation was being achieved prior to the introduction of Standing Order 99A. The next step will be to identify whether the introduction of Standing Order 99A increased the level of participation. The final step will be to identify if the adoption of Standing Order 99A is the best method for increasing the level of citizen participation in the Assembly. Improved participation can be defined as whether or not the level of the citizens' participation has climbed on the Ladder of Citizen Participation.

PARTICIPANT EXPECTATIONS

When evaluating public participation, two clear expectations are identified: the individual who expects to hear and be heard, and the individual who expects their role to contribute to an effective policy that reflects the needs of the wider community. Both forms of participation have been acknowledged, within the political process, as essential for the functioning of a government that is representative of its constituents. As such, a number of processes have been adopted within Parliament to ensure public participation is acknowledged and applied in the decision making process. Such processes adopted by the Assembly include direct access to Members, question time, the adjournment debate, the committee process and the petition process. However,

[18] Arnstein, 'A Ladder of Citizen Participation', p. 217.

the question is not whether there is access to citizen participation in the Parliament, but what level of participation citizens wish to engage in.

Recent evidence from the United Kingdom is instructive on this question. The Hansard Society facilitates an annual audit of political engagement, which provides an annual benchmark to measure political engagement in the UK, gauging public opinion about politics and the political system and more broadly the general health of UK democracy. In the *Audit of Political Engagement 15: The 2018 Report,* a number of questions were asked that highlighted the level of public engagement through participatory mechanisms adopted by the Government and the Parliament, as well as the public's perception of their engagement. With regards to participatory mechanisms utilised by the public, the Audit highlighted that creating or signing an e-petition, as well as donating money or paying a membership fee to a charity or campaign, have remained the most frequently undertaken public participation activities.[19]

In the Audit, 38 percent of respondents said that they would create or sign an e-petition, with only 24 percent actually having signed an e-petition. Additionally, 37 percent of those audited said that they would create or sign a paper petition, with only 10 percent actually having signed a paper petition.[20] With regards to the public's perception of political engagement, the Audit highlighted that, when asked how good or bad the system of governing Britain is at allowing ordinary people to get involved in politics, only 21 percent responded positively.[21] Additionally, the public's sense of the efficacy of their involvement remains consistently low. The Audit indicated that only 34 percent of people believe that they can affect political change.[22]

If these statistics were indicative of a cross section of citizens of the ACT, the increased number of signatories to petitions presented to the Assembly in 2017 and 2018 are indicative of the desire by citizens to be heard but not involved in the decision making process. Additionally, the increase in petition related debate in the Chamber would be reflective of a satisfactory level of participation. However, a second group is also identified in these statistics, the British population which feel that they are unable to get involved with politics or find that they cannot affect political change. If these

[19] Hansard Society, *Audit of Political Engagement 15: The 2018 Report,* 2018, p. 39.

[20] Hansard Society, *Audit*, p. 40.

[21] Hansard Society, *Audit*, p. 61.

[22] Hansard Society, *Audit*, p. 42.

statistics were to be applied to the ACT, this particular cross section of citizens feel that having their voices heard is not enough and want to participate in the process of changing public policy. Consequently, the adoption of referring petitions to Standing Committees could go some way to improving citizen perceptions of the efficacy of their involvement in parliament.

PETITIONS AND COMMITTEES

Parliaments that have adopted the Westminster system have implemented a number of petition related processes that aim to increase the consideration and accountability of issues brought to the Parliament through petitions. A number of parliaments have adopted petition specific committees that can consider, inquire into and even report on petitions that have been referred to them, a process that can be seen in the Scottish Parliament. Alternatively, other parliaments utilise existing general purpose committees when referring petitions, an example of which can be seen in the New Zealand Parliament. These two options are explored in more detail below.

Scottish Parliament—Public Petitions Committee

Under rule 6.10 of the Scottish Parliament's Standing Orders, the remit and responsibility of the Public Petitions Committee is to consider public petitions addressed to the Parliament and, in particular, to—

a) Decide in case of dispute whether a petition is admissible;

b) Decide what action should be taken upon an admissible public petition; and

c) Keep under review the operation of the petition system.[23]

In the 2017-18 financial year, the Public Petitions Committee considered 86 petitions with a total of 26,508 signatures, took written evidence from 676 people and organisations, heard evidence from 77 people, and tabled three reports on petition related matters.[24]

[23] The Scottish Parliament, *Standing Orders,* 9 May 2018, Rule 6.10.

[24] The Scottish Parliament, Public Petitions Committee, *Annual Report 2017-18,* 13 June 2018, p. 4.

A review of the Public Petitions Committee in 2015 found that a key expectation of petitioners was that the Public Petitions Committee would consider the contents carefully, receive evidence and take a considered view about the issues involved. However, a survey of the extent to which petitioners agreed that their petition was given due consideration by the Public Petitions Committee found a mean satisfaction score of +0.24, on a scale from -1.0 (strongly disagree) to +1.0 (strongly agree). When respondents were asked the extent to which they agreed that they were given a chance to present additional evidence to the Public Petitions Committee, a mean satisfaction score of +0.22 was achieved.[25]

Although fairly neutral results were provided by respondents in regards to the extent in which petitions were considered and inquired into, petitioners expressed the view that they did feel more engaged in politics as a result of the petition process. The Review of the Public Petitions Committee concluded that if the point of the petitions process is to encourage more participatory democracy, then the positive attitude expressed by respondents provided some assurance that the system was working well.[26]

The inclusion of a petition specific committee, for the consideration and report on petitions presented in Parliament, contributes to the increase in citizen participation on Arnstein's Ladder of Citizen Participation. The Scottish Parliament Public Petitions Committee appears to sit on the placation rung of the ladder. This level of participation allows the petitioner to advise the Committee of their concerns, which in turn the Committee can make recommendation to the Scottish Government. However, the right to decide how to proceed with these recommendations is still retained by the government of the day.

New Zealand Parliament – General Purpose Committees

An alternate method for utilising committees in the petition process is adopted by the New Zealand Parliament. This approach results in all petitions being referred to the relevant general purpose committee (a select committee) of the New Zealand Parliament. Standing Order 370 of the New Zealand Parliament states that:

[25] Gareth D. James, SPICe Briefing, *A Review of the Public Petitions Process, 2009-2015,* October 2015, pp. 44-53.

[26] \ James, SPICe Briefing, pp. 44-53.

> When a petition that conforms with the Standing Orders is presented, it stands referred to a select committee. The petition is allocated by the Clerk to the most appropriate select committee for consideration and report.[27]

Following the referral of a petition to a select committee, the extent of the consideration given is entirely up to the committee. However, there appear to be a number of well-established steps committees follow when considering a petition. First, all Government departments that are considered to have some official interest in the subject matter of the petition are sent a request and asked to make a submission to the committee. Second, the principal petitioner will be asked if they wish to tender any written evidence in support of the petition. Third, committees, may hold a public hearing where the principal petitioner, the Member who presented the petition and the government departments are asked to appear and give evidence. Finally, a report is presented in similar form to that of other select committee reports. The clerk of the committee advises the principal petitioner of the nature of the committee's report. When a select committee presents a report on a petition that includes recommendations addressed to the government, a response is required by the appropriate Minister who will communicate directly with the petitioner and present the response in the House.[28]

In 2018, 89 petitions were referred to select committees for consideration and report, and 25 of the 89 petitions were reported on. The inclusion of the referral of all petitions to a select committee for consideration and report contributes to the increase in citizen participation in Arnstein's Ladder of Citizen Participation. The New Zealand Parliament's referral of petitions to a select committee appears to fall on the placation rung of the ladder. Similarly to the Scottish Parliament's Public Petitions Committee, the utilisation of a committee allows the petitioner to voice their concerns and make recommendations. However, the right to decide how to proceed with these recommendations is still retained by the government of the day.

Although both the Scottish and the New Zealand model appear to be on the placation rung of the ladder, it is important to recognise two distinct aspects of the petition process that citizens' value. The first valued aspect is that the petition process is an avenue where concerns are raised and heard by the Parliament. The second valued

[27] New Zealand Parliament, *Standing Orders of the House of Representatives,* 23 August 2017, SO 370.

[28] New Zealand Parliament, *Parliamentary Practice in New Zealand,* 17 August 2017, pp. 600-613.

aspect is the process itself. As Carman notes, 'process evaluation far exceeds outcome evaluation in influencing petitioner trust in political institutions'.[29] These two distinct aspects of the petition process highlight a clear expectation that petitioners' voices are heard and that their concerns are validated.

ACT LEGISLATIVE ASSEMBLY—PAST, PRESENT AND FUTURE

Prior to the adoption of Standing Order 99A, petitions were presented to the Assembly. Under Standing Order 98 (2016) the Clerk would:

1. Announce the petitions lodged for presentation to the Assembly;
2. Indicate the Member who lodged the petition; and
3. Identify the number of eligible petitioners and the subject matter of the petition.[30]

Standing Order 98 (2016) also stipulated that no discussion upon the subject matter of a petition should be allowed at the time of presentation.[31] However, as noted earlier in this article, statements were made by both Members and Ministers. Members were able to do this by seeking leave to make a statement, which appeared to always be granted. Standing Order 100 (2016) stipulated that once the petition was presented in the Assembly, a copy of the petition was referred to the Minister responsible for the administration of the matter which was the subject of the petition. The Minister had then to respond to the petition within three months of the tabling of the petition and lodge the response with the Clerk for presentation in the Assembly.[32]

Prior to the adoption of Standing Order 99A, the level of citizen participation experienced through the petition process fell on the informing rung of Arnstein's Ladder of Citizen Participation. This rung emphasises a one-way flow of information

[29] Christopher Carman, 'The Process is the Reality: Perceptions of Procedural Fairness and Participatory Democracy'. *Political Studies* 58, 2012, pp. 731-751.

[30] Legislative Assembly for the ACT, *Standing Orders and Continuing Resolutions of the Assembly,* December 2016, SO 98.

[31] Legislative Assembly for the ACT, *Standing Orders and Continuing Resolutions of the Assembly,* December 2016, SO 98.

[32] Legislative Assembly for the ACT, *Standing Orders and Continuing Resolutions of the Assembly,* December 2016, SO 100.

from the government to the petitioner. The form of one-way information was expressed through the obligatory government response, as well as Standing Order 100, which did not allow for debate of a petition at the time of presentation (although this appears to be circumvented). There was no clear avenue for feedback to the petitioner and no form of negotiation with them.

After the adoption of Standing Order 99A, petitions with at least 500 signatories are referred to the relevant standing committee for consideration. In the period from 2105 to 2018 after the adoption of Standing Order 99A, 26 petitions were referred to a committee but none were inquired into. Under Standing Order 99A, the level of citizen participation experienced through the petition process could be considered the consultation rung. This rung emphasises providing an avenue for citizens to voice their concerns and ideas. However, it provides no assurance that government will take these concerns and ideas into account. Not one petition was inquired into. Up to 18 statements were made to the Assembly, by chairs of the standing committees to which the petition was referred. These statements advised the Assembly that the Committee had considered the petition but resolved not to take any further action. It appears that the adoption of Standing Order 99A could have increased the participation level from informing to consultation, but due to the lack of committee involvement in the petition referral process, it is more likely that the adoption of Standing Order 99A has not improved citizen participation in parliament.

If the Assembly were to re-evaluate their approach to referring petitions to committees, the level of participation and the effectiveness of the process could improve. As the Assembly is a small, unicameral parliament, it is difficult to argue for a petitions specific committee. However, the adoption of a similar model to that utilised by the New Zealand Parliament could result in an increase in citizen participation from informing or consultation to placation. Additionally, the adoption of the New Zealand Parliament model could also result in an increase in citizens feeling that they have been acknowledged and considered through the petition process, which in turn, could instil greater trust in the Assembly and the decisions it makes.

As the Assembly and subsequently the Office of the Assembly is small, it is important to ensure that both committee members and the committee secretariat do not feel impeded by the pressure of petition related inquiries. Ellingford argues that:

> If committees are impeded in their investigatory work due to large petitions workload, members may become frustrated or dissatisfied with the committee process. This would result in petitions being treated as an unwelcome hindrance to their regular work and thus not taken seriously,

> thereby removing the benefits of referring petitions to committees for consideration.[33]

The continued application of Standing Order 99A would alleviate the pressure of inquiring into all petitions, as well as reducing the risk of Members treating petitions as an unwelcome hindrance, which would remove the benefits of this process. However, the inclusion of a requirement to inquire and report on petitions referred to committees would ensure that committees carefully consider those petitions referred. The inquiry process would include the committee seeking a submission from the government and the principal petitioner, having the option to hold a public hearing with the responsible Minister and the principal petitioner, and tabling a report with recommendations. This provides a process in which the citizen can recognise efforts taken by the Assembly to acknowledge and consider their thoughts and concerns.

Conclusion

A review of petitions in the ACT between 2008 and 2018 demonstrates that petitions have shown inconsistency in numbers over during this period but an increase in the last two years of the period. The number of petitions presented, the number of signatories to petitions, and the number of Members making statements on petitions have all increased significantly.

Due to the increase in the popularity of petitions in the 9th Assembly, it is apparent many residents of the ACT want to participate in the parliamentary process and they want their concerns and voices heard. This re-energized passion for Parliament must be harnessed by the Assembly and it appears that the adoption of Standing Order 99A could nurture this re-energised passion. However, the continued lack of consideration of petitions by committees is not nurturing in any way and could negatively impact the public's perception that their opinions are valued. Conscious of the negative impact of inundating committees with petition related inquiries can have, it is recommend that Standing Order 99A be amended by the Assembly to stipulate that:

> A petition and/or e-petition with at least 500 signatories in total from residents/citizens of the ACT presented to the Legislative Assembly on the

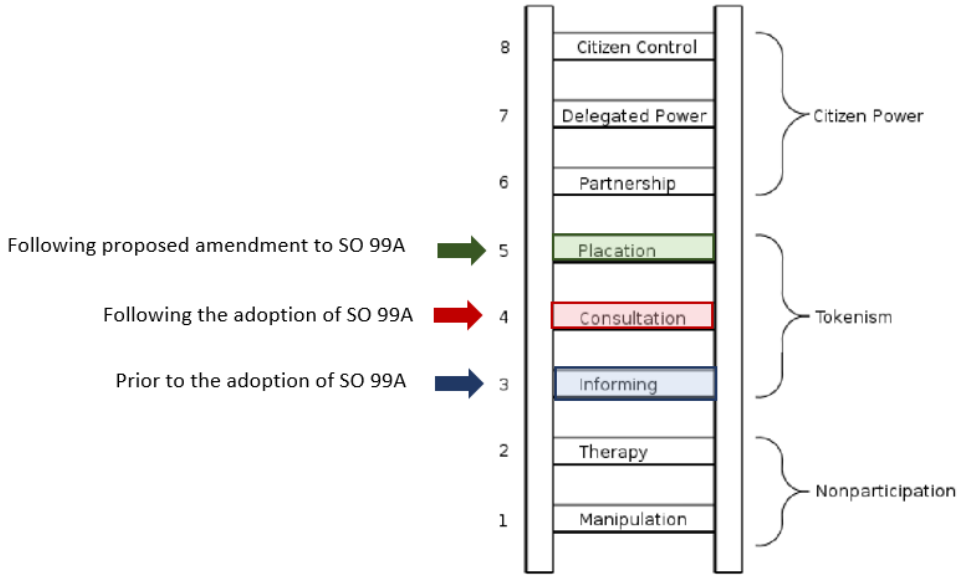
[33] Karen Ellingford, *The Purpose, Practice and Effects of Petitioning the Victorian Parliament,* Australasian Parliamentary Review, Spring 2008, Vol. 23(2), p. 106.

same day shall be referred to the relevant standing committee for **inquiry and report.**

The inclusion of 'inquiry and report' to Standing Order 99A would increase the level of participation from informing or consultation to placation, which is an improvement in citizen participation in Parliament. The inclusion of 'inquiry and report' to Standing Order 99A would also address the two levels of citizen expectations; that being the citizen who expects to hear and be heard and the citizen who expects their role to contribute to an effective policy that reflects the needs of the wider community. Although, the citizen still would not have the power to directly change policy, through the inquiry process, the citizen could use the committee as a conduit for the recommended changes in policy.

Although the level of participation would increase if committees were to inquire into petitions referred to them, it must be noted that the process prior to the adoption of Standing Order 99A, the adoption of Standing Order 99A and the recommended amendment to Standing Order 99A still place the level of participation within tokenism, as seen in Figure 7.

Figure 7. Impact of Standing Order 99A to the Ladder of Citizen Participation



Connected Parliaments: An International Conversation on Public Engagement and Its Impact on Parliaments

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Abstract Parliamentary democracies face a daunting mix of challenges, including citizen distrust, disruption to traditional political and party processes and increasingly complex policy questions. In response, Parliaments have begun to experiment with new forms of community engagement. This paper presents some of the ideas for deeper public engagement discusses at the Australian and European hubs of an international conference on *Public Engagement and its Impact on Parliaments* led by the International Parliamentary Engagement Network and held on 26 March 2021.

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. As Flew argues, the rise of populism around the world points to 'more general crisis of trust in social institutions and in the project of globalisation that has prevailed in Western liberal democracies'.[34] Despite great advances in communication technologies, the distance between elected representatives and the electorate seems

[34] Terry Flew, 'Digital Communication, the Crisis of Trust, and the Post-Global'. *Communication Research and Practice* 5(1) 2019, pp. 4-22, DOI: 10.1080/22041451.2019.1561394. See also M. Goede, 'The Future of Democracy: The End of Democracy as We Know It'. *Kybernetes* 48(10) 2019, pp. 2237-2265.

to be greater than ever before.[35] Party politics, as traditionally understood, also appears to be fragmenting as electorates across the world increasingly look to 'outsiders' or Independents as alternatives to organised political parties when casting their vote.[36]

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 techniques such as citizens juries, 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.[37] Each of these techniques gives rise to new opportunities, but also raises new questions. For example, what tools should the Parliament use to engage with the public? How should we identify the groups or 'publics' that need to be considered when developing new laws or scrutinising government action? 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 sharing experiences and insights from parliamentarians, parliamentary staff, researchers and community leaders who are actively involved in engagement activities, and by identifying indicators of best practice when it comes to facilitating positive relationships between Parliaments and the publics they represent. Understanding what is meant by 'public

[35] See, e.g., Luca Verzichelli 'Back to a Responsible Responsiveness? The Crisis and Challenges Facing European Political Elites: The 2017 Peter Mair Lecture'. Irish Political Studies 35(1) 2020, pp. 1-17, DOI: 10.1080/07907184.2019.1677393

36See e.g L Bardi, S Bartolini,and A Trechsel, 'Responsive and responsible? The role of parties in twenty-first century politics', (2014) 37(2) West European Politics, 235 at 244.

37 See, e.g., Chris Reidy and Jenny Kent, Systemic Impacts of Mini-publics, Report prepared for the NewDemocracy Foundation. Sydney: University of Technology, 2019. Accessed at: <docs_researchpapers_2017_nDF_RP_20170613_SystemicImpactsOfMiniPublics.pdf>; D. Stockemer and B. Kchouk, 'Inclusive Parliaments: A Trigger for Higher Electoral Integrity?'. The Journal of Legislative Studies 23(3) 2017, pp. 419–438; Torsten Geelan, Hernado González and Peter Walsh, From Financial Crisis to Social Change Towards Alternative Horizons. Cham: Springer International, 2018; Helen Marshall, Joanne Collins, Rebecca Tooher, Maree O'Keefe, Teresa Burgess, Rachel Skinner, Maureen Watson, Heather Ashmeade and Annette Braunack-Mayer 'Eliciting Youth and Adult Recommendations through Citizens' Juries to Improve School Based Adolescent Immunisation Programs'. Vaccine 32(21) 2014, pp 2434-2440; Nicole Moretto, Elizabeth Kendall, Jennifer Whitty,, Joshua Byrnes, Andrew P. Hills, Louisa Gordon, Erika Turkstra Paul Scuffham and Tracy Comans 'Yes, The Government Should Tax Soft Drinks: Findings from a Citizens' Jury in Australia'. International Journal of Environmental Research and Public Health 11 2014, pp. 2456-2471; doi:10.3390/ijerph110302456.

engagement' is the first step to facilitating these national and international conversations.

WHAT IS PARLIAMENTARY PUBLIC ENGAGEMENT?

Leston-Bandeira has described the broad idea of public engagement as being about 'empowering people in relation to their surroundings'.[38] This idea has origins in a range of disciplines.[39] When applied to public institutions such as Parliament, it takes on a particular complexion, encompassing activities whereby the public has a say on a law or a policy, or may even be co-producers of law with parliamentary representatives.[40] This suggests a strong relationship between parliamentary public engagement and the concept of 'deliberative law-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.[41] 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 to engage in an active search for a common ground between different values or interests.[42] This in turn sees decision-makers engaging in reflection and sometimes, changing their minds.[43] This concept of deliberation is evident in Leston-Bandeira's description of the five elements of public

[38] Cristina Leston-Bandeira, 'The Public Engagement Journey' Blogpost, Centre for Democratic Engagement, University of Leeds, 25 May 2021. Accessed at: https://cde.leeds.ac.uk/2021/03/24/the-public-engagement-journey/. (accessed 22 April 2021).

39 See, e.g., Ian Devonshire and Gareth Hathway, 'Overcoming the Barriers to Greater Public Engagement', PLOS Biology, 12(1) 2014, p. 1; Angharad Saunders and Kate Moles, 'The Spatial Practice of Public Engagement: "Doing" Geography in the South Wales Valleys', Social and Cultural Geography 14(1) 2013, pp. 23-40. DOI: 10.1080/14649365.2012.733407

40 Cristina Leston-Bandeira, 'The Public Engagement Journey'.

41 James Fishkin, When the People Speak: Deliberative Democracy and Public Consultation. Oxford: Oxford University Press, 2009, p. 39.

42 Ron Levy and Grahame Orr, The Law of Deliberative Democracy. London: Routledge, 2016, pp. 76-80.

43 Levy and Orr, The Law of Deliberative Democracy, pp. 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 pp. 197-200).

engagement with Parliament that she contends co-exist in a circular, interconnected relationship (see Figure 1).

Figure 1. The Public Engagement Journey[44]

These five elements of the 'engagement journey' are useful to keep in mind when considering the many different practical forms parliamentary public engagement can take, including within Australian Parliaments.[45] For example, when thinking about public engagement with parliamentary *law-making* in Australian Parliaments, it can be focused on the more one-way information sharing elements (see Figure 2), or on the more inter-connected understanding and participation elements (see Figure 3).

Figures 2 and 3 provide examples of different forms of public engagement, each with their own specific impacts on the law-making process and each demanding different tools or techniques. Some of the impacts (for example, changing the content of the

[44] Cristina Leston-Bandeira, 'The Public Engagement Journey'

[45] Organisation for Economic Co-operation and Development (OECD), *OECD Studies on Public Engagement*. Accessed at: <https://www-oecd-ilibrary-org.access.library.unisa.edu.au/governance/focus-on-citizens_9789264048874-en

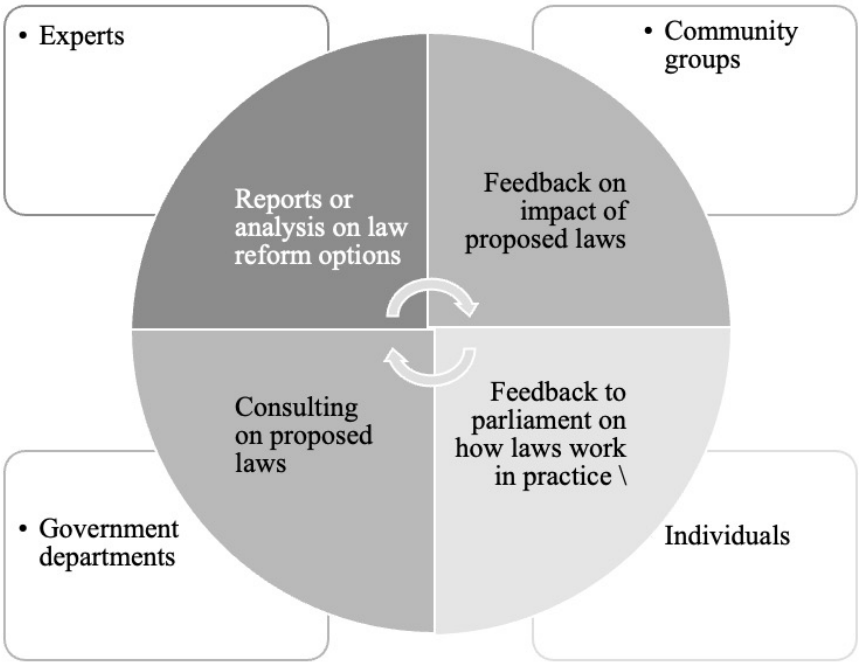
law or increasing the diversity of participation in a public forum) may be easier to quantify than others (such as changing the culture within a government department). Some forms of public engagement (such as tracking the passage of a proposed law) may be easier to 'digitalise' than others (such as consulting on a complex policy).[46] These are some of the practical challenges associated with develop effective strategies or 'toolkits' for effective public engagement that have been explored recently in national and international discussions on the topic, including those led by the International Parliamentary Engagement Network (IPEN).

Figure 2. Public Engagement as One -Way Information Sharing[47]

[46] Hyeon Su Seo and Tapio Raunio, 'Reaching Out to the People? Assessing the Relationship between Parliament and Citizens in Finland'. *Journal of Legislative Studies* 23(4) 2017, pp. 614–634.

[47] OECD, *OECD Studies on Public Engagement*.

Figure 3. Public Engagement as a Deliberative Process[48]



INTERNATIONAL PARLIAMENTARY ENGAGEMENT NETWORK

IPEN (International Parliament Engagement Network) was created in 2020 and designed to bring together academics, parliamentary officials and third sector representatives from all over the world, who work on public engagement and Parliament.[49] IPEN aims to share international best practice when it comes to Parliamentary public engagement and to facilitate an exchange of information between practitioners and academics to support the development of evidence-based enhancement of existing practices. On 26 March 2021, IPEN held an international

[48] Levy and Orr, *The Law of Deliberative Democracy*.

[49] For further details see < https://cde.leeds.ac.uk/other-activity/international-parliament-engagement-network/> (accessed 21 April 2021. To become a member of IPEN, please contact ParliamentEngagementNetwork@leeds.ac.uk.

conferenced entitled *Public Engagement and its Impact on Parliaments.*[50] The Conference commenced with an 'Australian hub' which included input from experts around the region.

The Australian hub aimed to connect those working to improve the way Parliaments engage with the communities they represent and serve by providing:

- a forum to explore some of the 'big picture' questions and assumptions relating to parliamentary public engagement, including why engagement is important, who should be doing the engagement work, and who is the public or publics in Australia that should be engaged;
- an opportunity for practitioners, officials and parliamentary staff to share their experiences of parliamentary public engagement in Australia and to reflect on their experiences and areas in need of further improvement or exploration;
- an opportunity for students, researchers and academics to share current and emerging areas of research and to collaborate with practitioners, officials and parliamentary staff to identify future areas of research, evaluation and analysis; and
- a forum for Australian academics, practitioners, officials and parliamentary staff to interact directly with IPEN to share key lessons from the Australian experience and to benefit from the experiences and developments occurring in other jurisdictions.

In order to advance these objectives, the Australian hub program developed by two focus groups involving parliamentary staff and academics researching in this area and was designed to be dynamic and interactive, with opportunities for all participants to share their experiences and expertise.

[50] For further details see <http://parliament-engagement.com/>

OUTCOMES FROM THE AUSTRALIA-BASED CONVERSATION ON PARLIAMENTARY PUBLIC ENGAGEMENT

The hub began with an exploration of the 'big picture' topics, including the question of why public engagement is important to modern parliamentary democracies,[51] who should be responsible for doing the engagement work,[52] and how the needs of different 'publics' might be met.[53] The hub also explored the different commitments and responsibilities of parliamentary staff when it comes to engaging with the public, and the challenges and barriers they face when seeking to innovate in this area.[54] The Australian hub ended with discussions about 'outside the box thinking'[55] to help engage those 'publics' previously underrepresented or ignored in public engagement strategies, such as young people[56] and First Nations people[57] in Australia. The common themes emerging from the Australian discussion can be summarised as follows:

1. Improving parliamentary public engagement is not an option but a necessity for modern democracies like Australia. Australian parliamentarians should make this a key priority, particularly when it comes to our young people, our First Nations people and other vulnerable groups.
2. Deliberative theories and ideas should not be misunderstood as 'asking everyone all the time' but rather ensuring *quality* encounters, *time* for meaningful dialogues and exchanges and *openness to changing positions*. This is a challenge for some highly politicised environments like Parliaments, but there are reasons for hope (eg

[51] Discussion led by Professor Mark Evans, Democracy 2025 Project, with input from Professor John Dryek, Australian Research Council Laureate Fellow and Centenary Professor in the Centre for Deliberative Democracy and Global Governance, Institute for Governance and Policy Analysis, University of Canberra.

[52] Discussion led by Joanne Fleer, Parliamentary Officer, House of Assembly, Parliament of South Australia, Dr Emma Banyer, Principal Research Officer, Australian Senate, and Andres Lomp, Community Engagement Manager, Parliament of Victoria.

[53] Discussion led by Joanne Professors Gabrielle Appleby and Megan Davis, UNSW and Professor Carolyn Hendriks, Crawford School of Public Policy, ANU.

[54] Contributions from Laura Sweeney, Assistant Director, Research, Australian Senate, Lauren Monaghan, Senior Council Officer, Digital Engagement, Parliament of New South Wales, Professor Chris Reidy, University of Technology Sydney ,and Andres Lomp, Community Engagement Manager, Parliament of Victoria.

[55] Discussion led by Carolyn Hendriks, Crawford School of Public Policy, ANU.

[56] Discussion led by Renee Gould, Principal Research Officer, Parliament of Western Australia and Millennium Kids (Western Australia).

[57] Discussion led by Dr Dani Larkin, UNSW.

citizens assemblies, mini-publics, First Nations Voice to Parliament, the work of Millennium kids).[58]

3. There is not one 'public' but many 'publics' and each public demands careful consideration when considering engagement strategies and methods. For example, First Nations peoples must have the opportunity not just to 'be heard' in *response* to parliamentary activity but to have an *active voice* in the way the Australian Parliament works, how it engages with First Nations peoples, and how it exercises legal and political sovereignty over First Nations peoples.[59]
4. Evaluating engagement strategies and looking for impact beyond the immediate 'success' or 'failure' of a particular technique or inquiry is critical to ensuring we accurately capture the resources required to do things better in the future, and to make the case for more investment in the right engagement activities.[60]
5. Within parliamentary committees there is often a sense of rigid constraints on processes and procedure (conventional ways to do things). Stepping outside these constraints can attract criticisms and concerns for parliamentary staff about impartiality and independence. However, there is a pressing need to move beyond conventional modes of engagement to reach the publics that have been ignored or excluded from these processes.[61] Developing separate teams of experts and clear strategies and toolkits can support parliamentary staff to develop appropriate strategies in these areas.
6. 'Thinking outside the box' is part of the solution: Parliament should go *out to the people* instead of the people having to come into Parliament.[62] Empowering different publics to initiate their own forms of engagement—to set the agenda,

[58] For example, the Australian hub included a presentation from Dr Nick Vlahos, University of Canberra on 'Deliberative democracy and citizen-led decision making in action: Andrew Leigh example'. See also Nick Vlahos 'Prioritizing Opportunities to Enhance Civic Engagement'. Medium, 2019.

59 See further G. Appleby and E. Synot, 'A First Nations Voice: Institutionalising Political Listening'. Federal Law Review 48 2020, pp. 529-542, http://dx.doi.org/10.1177/0067205X20955068

60 See further Sarah Moulds, 'From Disruption to Deliberation: Improving the Quality and Impact of Community Engagement with Parliamentary Law-making'. Public Law Review 31 2020, pp. 264-280.

61 See further Emma Banyer, 'The Franking Credits Controversy: House of Representatives Committees, Public Engagement and the Role of the Parliamentary Service'. Australasian Parliamentary Review 35(1) 2020 pp. 77-110.

62 See further Carolyn Hendriks, Ercan & Boswell (eds.), Democratic Mending: Democratic Repair in Disconnected Times. Oxford: Oxford University Press, 2020.

define the terms of reference, identify the key players—may also help to overcome existing barriers to effective and diverse public engagement.

OUTCOMES FROM THE INTERNATIONAL CONVERSATION ON PARLIAMENTARY PUBLIC ENGAGEMENT

The Australian 'hub' of the Workshop was followed by a Europe hub, introduced by Cristina Leston-Bandeira and Elise Uberoi (UK House of Commons), co-founders of IPEN. The European hub included sessions were designed to showcase different public engagement practices around the world,[63] and to share the key findings of a forthcoming Inter-Parliamentary Union (IPU) report on public engagement. The European hub also facilitated an interactive session to enable participants to contribute directly to the development of a practical 'toolkit' on parliamentary public engagement with a focus on identifying a shared understanding of what public engagement entails, what good public engagement looks like, and how it should be evaluated. The European hub was supported by live scribing from Laura Evans of Nifty Fox Creative, who produced visual summaries of each of the three sessions in the hub, culminating in a graphic international 'Toolkit' for Parliamentary Public Engagement, reproduced in Figure 4.

The final session of the Europe hub was a roundtable discussion about how Parliaments have been using mini-publics and deliberative decision-making, including the advantages and disadvantages of different models of using mini-publics.[64]

The last stage of the IPEN's *Public Engagement and its Impact on Parliaments* was hosted by practitioners and academics in Brazil, including Cristiane Brum Bernardes from the Brazilian Chamber of Deputies who chaired a session on the use of social media by parliamentarians to connect with their citizens. Subsequent sessions included a specific focus on particular social media tools including WhatsApp and how this has

[63] Discussion led by Aileen Walker, Global Partners and Governance, Conor Reale and Derek Dignam, Parliament of Ireland, and Kate Addo, Parliament of Ghana.

[64] Discussion led by Dr Stephen Elstub , University of Newcastle, Min Reauchamps, Catholic University of Louvaia, Zohreh Khoban, Uppsala University) and Claudia Chwalisz, Organisation for Economic Co-operation and Development.

been used by campaign groups to influence institutional digital platforms of engagement[65]

It is hoped that this international conversation on the value, role and methods of parliamentary public engagement will continue to inform and inspire practitioners within Australia and support research collaborations across jurisdictions to improve the relationship between Parliaments and the publics they represent.

Figure 4. 'Toolkit' for Parliamentary Public Engagement

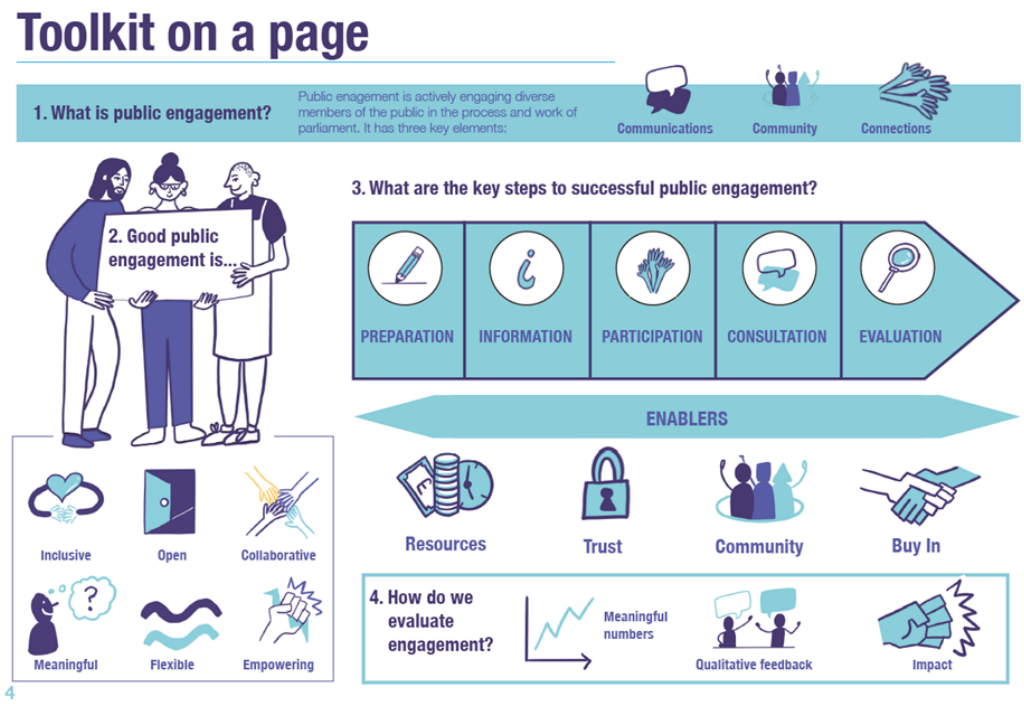


Image: Laura Evans, Nifty Fox Creative, April 2021

[65] Discussion led by Dr Isabele Mitozo, Federal University of Maranhão, and Viktor Chagas, Federal Fluminense University.

Book Review

Novel Politics: Studies in Australian Political Fiction, by John Uhr and Shaun Crowe. Carlton: Melbourne University Press, 2020. pp. xiv + 170, Paperback RRP $34.99 ISBN: 9780522876420

Rodney Smith

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Australian political scientists have paid scant attention to literary fiction to inform their understanding of the nation's politics. In this book, which is based on an 'Ideas in Australian Politics' subject that they run at the Australian National University, John Uhr and Shaun Crowe present this blinkeredness as a missed opportunity. They challenge the traditional view that Australian fiction has had 'little time for politics' (p. 6) and argue instead that Australian novels often 'deal with politics as broadly understood' (p. viii). In the book's concluding chapter, they draw together four strong political themes in the novels that they survey: the natural environment; the 'peopling' of Australia; progressive social thinking; and nationalism and internationalism.

Uhr and Crowe do not attempt an overview of all the major Australian novelists or novels that might be considered 'political'. Instead, they focus on six writers drawn from two widely separated time periods—the second half of the nineteenth century and the early twenty-first century. Uhr contributes chapters on Catherine Spence's *Clara Martin* (1854), Rosa Praed's *Policy and Passion* (1881) and Catherine Martin's *An Australian Girl* (1890), while Shaun Crowe discusses Tim Winton's *Dirt Music* (2001), Christos Tsiolkas's *The Slap* (2008) and Kim Scott's *That Deadman Dance* (2010) and *Taboo* (2017). These specific choices of novel seem *ad hoc* and are not really explained in the Preface or Introduction to the book. Nonetheless, there is a lot to be learned here about the politics of the particular novelists and novels under consideration. Each chapter provides information about the life and political concerns of the featured novelist, sets the primary novel in the context of the novelist's other works, summarises the novel's plot and provides commentary on its specific social, political and philosophical themes.

At several points, the authors stress that the focus of these novels is not on institutional politics—for example, 'the theatre of parliament'—but on 'politics in its deeper social

and human context' (p. x). Interestingly, the nineteenth century novelists presented in *Novel Politics* seem to make much stronger connections between these two facets of politics than their twenty-first century counterparts. In Spence's *Clara Martin*, characters participate in political debates over electoral and party competition and over public policy. Stella, the central character in *An Australian Girl*, engages in ongoing philosophical reflection and debate over Kant, Cardinal Newman and the potential of German socialism. She spends time in Germany, meeting socialist activists and attending a secret meeting featuring radical parliamentarians. Praed's *Policy and Passion* features the machinations of a Premier, rival Ministers and the Opposition in the colonial Queensland Parliament. (Uhr understandably discusses more detailed plot developments but I'll refrain from giving away spoilers here in case *APR* readers want to read the novels themselves.)

Nothing in the novels by Winton, Tsiolkas and Scott seems to approach this level of engagement with colonial/state or national institutional politics. They do not attempt to connect institutional politics with the social and cultural dimensions of politics in similar ways to Spence, Praed and Martin. The closest that the recent novels appear to come to these connections is passing references to protest and voting. This is not a criticism of the contemporary novels, which address critical political issues such as race, environment, violence, gender and sexuality in imaginative ways, but it does suggest some intriguing questions that are not addressed in *Novel Politics*. When and why did political novels in Australia apparently shift from serious concern with the institutional politics of Parliaments, executives, elections and parties to focus predominantly on broader social and cultural politics? Alternatively, is there an ongoing vein of Australian fiction that has continued to concern itself with political institutions and is still waiting for proper recognition and analysis? The ways in which Uhr and Crowe have shed new light on the contributions to political thought of largely forgotten nineteenth century Australian women novelists and their better known recent male counterparts suggests the value of future research into such questions.