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

John Aliferis and Anita Mackay

Independent researcher.

Senior Lecturer, La Trobe Law School, La Trobe University.

* 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 Hendriks 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 Hendriks 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 Commissions¹⁶.

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 chair¹⁷ 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 JICs²² 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.

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

| Sub-category | Category | | |
|--------------|-----------------------------|---|---|
| | <i>Policy Focused</i> | <i>Political</i> | |
| | <i>Objective or Purpose</i> | 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. |
| | <i>Structure</i> | 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 |
| | <i>Language</i> | Technical/ technocratic, complimentary, dispassionate, analytical. | Political language, antagonistic, sloganeering, active, critical. |
| | <i>Handling of evidence</i> | 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)

| Sub-category | Category | | |
|--------------|-----------------------------|--|--|
| | Malpractice/Malfeasance | Evidential | |
| | 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

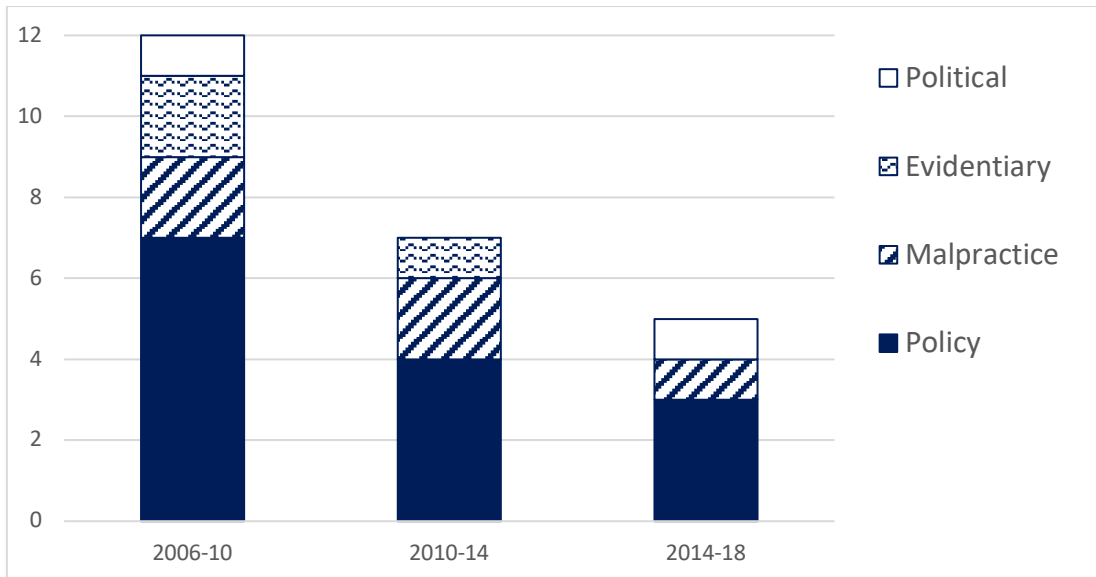
Figure 1 provides an overview of the trends in the types of minority reports made by JIC in the period 2006-2018. Appendix A provides a timeline of which committees resulted in minority reports of each category.

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 Elasmr 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 It 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 Committee⁴⁸ 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: <http://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 2009⁵⁰ | Law Reform Committee (57 th Parliament) | <i>Inquiry into Alternative Dispute Resolution and Restorative Justice</i> | Policy focused |
| June 2009 | Environment and Natural Resources | <i>Inquiry into Melbourne's Future Water Supply</i> | Two minority reports; both policy focused |
| November 2009 | Outer Suburban/Interface Services and Development | <i>Inquiry into the Impact of the State Government's Decision to Change the Urban Growth Boundary</i> | Policy focused |
| November 2009 | Rural and Regional | <i>Inquiry into Regional Centres of the Future</i> | Evidential |
| November 2009 | Law Reform Committee (57 th Parliament) | <i>Review of The Members of Parliament (Register of Interests) Act 1978⁵¹</i> | Evidential |
| December 2009 | Family and Community Development | <i>Inquiry into Supported Accommodation in Victoria for Victorians with a</i> | 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.

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

| | | | |
|--------------------------------------|--|---|---|
| 12 December 2012⁵² | Outer Suburban/Interface Services and Development | <i>Inquiry into Liveability Options in Outer Suburban Melbourne</i> | Malpractice/ Malfeasance |
| March 2013 | Law Reform Committee (57 th Parliament) | <i>Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers</i> | Policy focused |
| June 2013 | Outer Suburban/Interface Services and Development | <i>Inquiry on Growing the Suburbs: Infrastructure and Business Development in Outer Suburban Melbourne</i> | Malpractice/ Malfeasance |
| March 2014 | Electoral Matters Committee | <i>Inquiry into the future of Victoria's electoral administration</i> | Two minority reports; both policy focused |
| August 2014 | Education and training | <i>Inquiry into the approaches to homework in Victorian schools</i> | Evidential |
| September 2014 | Law Reform, Drugs and Crime Prevention | <i>Inquiry into the Supply and use of Methamphetamine s, Particularly Ice, in Victoria</i> | Policy focused |
| May 2016 | Electoral Matters Committee | <i>Inquiry into the conduct of the 2014</i> | Policy focused |

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

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