

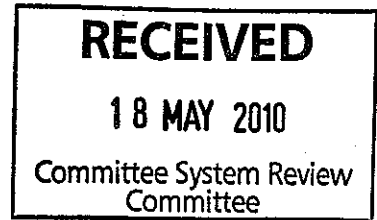
The Hon. Kevin Rozzoli AM

May 2010

**Review of the Parliamentary Committee System Select Committee
PARLIAMENT of QUEENSLAND**

Reference: To conduct an inquiry and report on how the parliamentary oversight of legislation could be enhanced and how the existing Parliamentary Committee system could be strengthened to enhance accountability.

From: The Hon. Kevin Rozzoli AM
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Associate Centre for Democratic Institutions.



Date: 18th May 2010

Introduction

Strong parliamentary sovereignty is synonymous with strong democracy and in today's world where parliamentary debate consists of government structured agendas and set piece speeches, committees have become a potentially valuable tool for democracy.

In democratic theory Parliament decides the course of the State, the Government administers its decisions and the public service implements them. While Governments are given an electoral mandate to govern it should still remain the prerogative of the Parliament, as the representative voice of the people, to determine the broad working parameters of policy. If any note of heresy is detected in the concept of empowering parliaments to represent the public interest it has been shown time and time again that a government's inability to control parliament through an absolute majority has proven neither fatal nor impeded the passage of good governance.

To fulfill this role in today's parliaments more emphasis must be given, particularly in unicameral Parliaments which do not have the checks and balances of a second House, to reinforcing its independence from executive control. To deliver this involves much more than improving the committee system, but making the committee system more efficacious is a good place to start.

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To fulfill this role in today's parliaments more emphasis must be given, particularly in unicameral Parliaments which do not have the checks and balances of a second House, to reinforcing its independence from executive control. To deliver this involves much more than improving the committee system, but making the committee system more efficacious is a good place to start.

A way forward

To do this the parliament, and thus de facto the executive, must ensure committees are properly resourced, that is, given adequate staff and accommodation, unfettered access to expert advice, including legal and fiscal advice, and an unrestricted capacity to call for public records in all but specified exceptional circumstances where the public interest requires non-disclosure, for example, genuine risk to the administration of justice or to national security.

In relation to papers and documents, expeditious access should be guaranteed, in accordance with the true spirit of freedom of information. Committees should also be free to call as witnesses whoever they think necessary to their inquiry, and all current restrictions whether by law or convention should be lifted, including those on personal ministerial staff. When a member of a Minister's staff is requested to attend nothing should be done to prevent or hinder their appearance.

Committee systems in Australia function well within their limitations. They generally produce good reports which I believe reflects the capacity of committee secretariats. While there are committee members who diligently apply themselves I believe there may be a substantial number who do not take the full opportunity available to them to personally learn from the submissions made to their respective committees. My own experience, which has been confirmed in informal discussions with committee staff, indicates that committee members choose not to read through all submissions unless it is a subject of particular interest or is politically important. There is also some evidence that members respond more to oral evidence than written submissions which seems to bear out the first observation. Such problems cannot be remedied by process. They are solely within the province of a members own diligence.

A great deal has been written and said about the functions of committees in the Australian context and Queensland, although it has come late to the scene, has itself been diligent in examining this area of parliamentary practice, for example, its restructure of April 2009. My impression however is that the present committee structure has grown out of perceived need rather than from any decision to build from a strategic approach. This current inquiry affords an

excellent opportunity to consider how committees can be constituted to serve, both the parliament and the people, in a more efficient and strategically aligned way.

In terms of examining other parliaments it is for my part sufficient to suggest that the New Zealand committee system has much to offer and is perhaps the most relevant area of study for an Australian parliament. I shall refer to some aspects of New Zealand practice during the course of this submission.

How the system may be improved

The areas which I wish to canvass, and which I believe offer something to the Australian parliamentary environment, are:

1. The contribution committee work can make to improving legislation.
2. The contribution of estimate committees.
3. The recognition given to committee reports
4. The allocation of time for committee work.
5. Engaging the public.

Pertinent to consideration of each of these issues is the present day quality of debate in most parliaments. Time and again at conferences this aspect has been identified as a matter of concern. Not only is it evident that ineffectual debate has damaged the image of parliament, it also brings into question the relevance, in the public mind, of our parliamentary institutions to the broader process by which a society exercises rights and responds to obligations, as mutual elements in administering public authority.

In any true democracy, these elements are critical to a free, well-balanced society and the effective and cost efficient expenditure of public monies. Parliament can and should have an integral role in strong and effective governance, but to do this they must not only be effective, they must be seen to be effective. It is of major concern that the public perception is of

parliaments that are ineffectual in making a productive contribution to responsive, democratic governance.

In most parliamentary democracies, the concept of sovereignty residing in the people is honoured mainly in the breach. Current jurisdictions provide for governance by a powerful executive, which at best seeks formal approval of its actions from parliament and periodic affirmation from the people at elections, often seen as a choice between the lesser of two evils. The concept of democracy is further founded in the right of everyone to take part in public affairs, including the right of all levels of the community to take part in the legislative process and to oversee the governance of their country. The democratic process should deliver:

- the right of citizens to good government,
- open and transparent government,
- public accountability for all who administer public authority, whether elected or not.

In a democracy much of this can be delivered through parliamentary debate. We must therefore ask ourselves, why in the public view, are we failing to deliver these outcomes?

To set the scene for much of what I have to say I would like to profile current debate in our parliaments.

Parliamentary debate takes several forms.

- Firstly, there are the occasional free-ranging debates on matters of great issue. Occasionally a government will allow a well-informed, thoughtful, non-partisan and representative dialogue, in which the community view is well articulated. These are generally called 'conscience debates' in which members are allowed a free vote. It is a feature of these debates that the government has not taken a position on the subject.
- Next there are the general debates, Address-in-Reply and Budget, which give members a wide scope to raise issues but which lack any central theme. Speeches are therefore set pieces each having little relation to other speeches.

- Thirdly there is debate on legislation, most of which is generated by government, in which speeches have a narrow field of focus as material must be relevant to the leave of the bill.
- Other opportunities are the ‘private member’ debates which include general business motions and bills, matters of public importance, urgency, private members’ statements, adjournment debates, and so on, for which available time is often limited.
- Finally, there are the ‘take note’ debates, for example, on the reports of standing and select committees.

The Macquarie Dictionary defines debate as,

- “1. A discussion especially of a public question in an assembly.
2. Deliberation; consideration.
3. A systematic contest of speakers in which two opposing points of view of a proposition are advanced.”

Parliamentary debates tend to lack the fundamental elements of this definition. Their outcome is determined, not by the strength of debate and the fruit of consideration, but by decisions taken before the debate occurs. In Houses controlled by government it is unlikely that anything raised in debate will influence the outcome. Many members arrive in the chamber shortly before they speak, deliver a set speech and leave. In such cases members speak to the record to provide opportunities for media statements, to take advantage of parliamentary privilege, balance the number of speakers, take up time, or to be seen as active. But nowhere is there a true coming together of minds to produce a better outcome.

The whole thrust of my submission is to increase the role and capacity of members to fulfil their role as legislators.

This is the profile therefore against which I pitch the following observations. A summary of my recommendations appears at the end of the submission.

1. The contribution committee work can make to improving legislation

Consideration of a major bill before broadly debating its need and scope reduces the opportunity for effective law.

All wisdom does not lie with those who draft laws for governments. There are many who can contribute to wise and beneficial law and this public interest, whether in new areas such as stem cell research or anti-terror laws, or a substantial re-write of say environmental law, industrial relations or the social welfare framework, has much to offer. Such important issues demand a wider and more informed debate than is presently experienced.

To gain value from this pool of knowledge, governments should facilitate free-ranging 'take note' debates before introducing legislation on major issues. Debating a subject before the government has adopted its position facilitates more objective consideration and therefore results in a higher standard of contribution. Members are able to apply their experience and take advantage of electoral input in suggesting ways to deal with the subject. The drafting of any consequent legislation will thus benefit from such a substantial body of objective material. A further initiative would be to coordinate these debates with forums on the internet to gather comment from the community, a matter which I will touch on later.

Not all legislation would necessitate such an approach. Bills would be classified either as 'public interest bills' or 'administrative bills'. Public interest bills would be those relating to new fields or major changes to existing principal acts, while administrative bills would be those not fundamentally altering the objectives of a principal Act. Bills would be classified accordingly and programmed for debate on these criteria.

While classification as an administrative bill would mean introduction and passage of the bill in the traditional way, classification as a public interest bill would generate a 'take note' debate and consideration by a standing legislation committee of the relevant portfolio.

The procedure would be as follows.

1. Cabinet identifies the need for major legislation in the subject area.
2. A 'take note' motion is drafted highlighting those aspects of the subject area for which it is believed legislation is required.

3. Notice of the motion is given and the commencement date of the debate set down for say three weeks hence. This will allow time for members to gather their material.
4. The motion is debated and cannot be gagged, ensuring all members who wish to do so the opportunity to speak.
5. When the debate is concluded the material is analysed by the relevant department and a brief prepared for cabinet. If cabinet decides to proceed, the relevant minister will prepare a bill for submission to cabinet.
6. If cabinet agrees to proceed the bill will be presented to Parliament and read a first time. The first reading debate will canvass the general principles and merits of the bill.
7. If the first reading is agreed to the Minister will move that the bill be sent to a legislation committee. The number of legislation committees necessary to cover the range of portfolios will depend on the size of the legislature.
8. The relevant minister shall participate in the committee's deliberations but not chair the committee. This concept has already been adopted successfully in New Zealand.
9. Legislation committees will have all the powers of a select committee and the reporting date will be determined in accordance with the size and scope of the bill but will not be less than three months. In New Zealand the time limit is six months.
10. The bill will be returned to the parliament where it will be read a second time. Debate will be confined to the changes to the bill as originally submitted.
11. There will be no Committee of the Whole House. Where the second reading debate identifies areas of amendment the bill the debate will be adjourned and the bill returned to the committee for resolution of the concerns expressed during the second reading debate.
12. Once the second reading has been passed the bill will be read a third time on the next sitting day in accordance with Standing Order 151.

This process would, I believe, produce much better legislation and facilitate the ultimate passage of the bill through a limited second reading debate. The concept of limited second reading debates has been canvassed previously at various conferences in line with the

suggestion that steps should be taken to ensure all legislation has extensive pre-introduction consultation, and that speaking lists for bills should be structured to cover the scope of matters in the bill rather than the present practice of disembodied speeches which often cover the same ground.

While it may seem to prolong the legislative process I believe this more thorough, methodical and consultative approach would result in better legislation, reduce errors which themselves cause delay and hardship, and be quicker and more efficacious in the long run.

Member's on the relevant legislation committee can therefore exercise their individual and collective responsibility to probe, gather evidence and information, and seek advice from relevant departments, agencies, the corporate sector and the broader community, while other member's have the opportunity to contribute ideas and comment at the 'take note', first and second reading stages. In executing this responsibility members have to balance the competing demands of their office, including the way in which they establish conduits to their constituencies but in doing so they become legislators. Only in this way can the parliament, the elected body of peoples' representatives, make a valid and valuable contribution.

2. The contribution of estimates committees

While parliaments almost always pass Appropriation Bills without dissent there must be a more active role for members in scrutinising budgetary provisions. It is my belief that most estimates committees act more as expenditure review committees for which there is undoubtedly a place. Consideration of the budget in any Australian Parliament seems more a political exercise than a financially forensic examination of the way in which the budget is structured to meet the aspirational goals the government expounds. They are pure exercises in executive control. Parliament is left only with the role of rubber stamping what is presented. The haste with which Leaders of Oppositions are now required to respond to such complex documents is a disgrace, given that the government has had many months and the services of hundreds of public servants to craft it. Budget debates are at best exercises in comment, there is no debate in terms of our Macquarie Dictionary definition, and members are given little assistance to understand the make-up of the budget. In the current format of budget debates members have no legislative role.

I see the answer in a two stage approach, the first stage being a budget committee, the second an expenditure review committee.

The Budget Committee would be established prior to the budget being delivered by the Treasurer. The Budget Committee would be made up of the chairs of the subject or portfolio committees and function in the same way as a legislation committee. The Committee would attend the lock-up to have the benefit of this pre-budget briefing. This is important, as in addition to the forensic examination of each specific budget area, consideration of the balance of expenditure across portfolios is also important.

After the Budget has been delivered debate on the Bill would adjourned for one week as was the custom some years ago. This gives the Leader of the Opposition time to analyse the budget papers and prepare a measured response. In the meantime the Budget Committee would commence hearings with the advisory support of officers of the Treasury. While the Committee would not have the power to recommend changes to the total amounts of each head of expenditure it could recommend variations within each head. The second reading of the budget would be restricted to three weeks from the date of the Leader of the Opposition's reply. The report of the Budget Committee would be tabled at the conclusion of the second reading and one week later the Committee of the Whole House would consider the detail of the report under Standing Order 135 for a further two weeks. After the report of the Committee of the Whole House has been adopted the Bill would be read a third time pursuant to Standing Order 151. This means consideration of the Budget would span seven weeks. Given that provision of finance for government services is the most important single duty of a parliament it would seem a not unreasonable time.

The second stage of financial consideration would take place at the beginning of each calendar year, when each portfolio committee would conduct an annual review of expenditure for the previous calendar year for those portfolios within its brief. These committees would function in much the same way as the current estimates committees except that the hearings would be restricted to one calendar month.

3. The recognition given to committee reports

If committee reports are to have real benefit to the community, debate on their recommendations must be allocated adequate parliamentary time and generate a specific government response. If it is worth establishing committees it is worth ensuring the public gets maximum value for the expense and effort that is given to the work of committees.

I have often quoted the following words of British MP Roy Jenkins in 1991 in which highlighted the essence of the problem. His words are as true today as they were then. He said,

“The real question is how much, if any, independent life should Parliament have, beyond providing the forum for the rituals of government and opposition. In theory, it is the cockpit of the nation’s life, where independent-minded legislators guard liberties and query the activities of the state and its servants. In practice it is a less bloody and useful arena in which committees are meant to help correct the balance. By gathering backbenchers across parties, they encourage them to think as parliamentarians, not as party yes-men. By enabling them to track particular departments for months or years, they give them a level of knowledge about government that few MPs would otherwise have. One chairman said they ought to be providing a third force in Parliament between the two big parties – and should get a third of the chamber’s debating time too.”

A calculation of the time devoted to debating committee matters, measured against the time spent in other debates, would show it to be much less than a third.

If committees are to become the ‘cockpit of the nation’s life, where independent minded legislators guard liberties and query the activities of the state and its servants, they must be given more emphasis and facility to fulfill this role than is now provided by stage managed parliamentary sittings.

A strong committee system has the potential to return greater sovereignty to parliaments through empowerment of the rank and file. Perhaps this is why governments are reluctant to give them a greater share of the parliamentary table. It is, however, imperative that meaningful debate on committee reports occurs in the House itself, with the government offering a measured response to each report detailing its level of commitment to the recommendations. Further efficacy would be delivered to committee work if their efforts could become the driving force of parliamentary activity, for example, if upon adoption of the report, the recommendations contained therein would bind the government unless amended or voted down.

This would have the effect of forcing government to make specific decisions to reject or amend recommendations with which it was not comfortable. A government would have to substantiate its reasons for not acting, and of course there may be many good reasons for a government taking no action, but the public has the right to know those reasons.

It would also encourage committees to frame realistic recommendations in terms of a government's capacity to implement them, and to express them in clear, unequivocal terms, set within a time frame in which the recommended action is to take place. I would also recommend that committees should have the power to initiate legislation in cases where no action to implement committee recommendations is taken within the recommended time frame. Of equal importance, and to ensure this happens, is the need for an effective follow-up mechanism to track government responses. It follows that committees should also have the power to reconvene a hearing if, after a reasonable period, the government's response is deemed inadequate.

Even government members should be concerned at the waste of time and effort whenever an excellent and well-received report disappears into the proverbial 'black hole'. And if the House, in the best of all possible worlds, was able to determine for itself, through a non-partisan agenda committee, the business it wished to consider and the time to be allocated to that business debate on committee reports might command the higher priority they deserve.

As I indicated earlier it is worthwhile to look carefully at the New Zealand committee system under MMP, which appears to serve both the parliament and the community very well. The switch to MMP brought significant change in the way their parliamentary committees functioned. I hasten to add that I am not advocating a switch to MMP in the Australian electorate; merely that it is useful to look at the committee system which has developed from it. Committees prior to MMP were smaller with an average of five members and always had a government majority. Committees are now larger, with mostly eight but sometimes up to twelve members and have the power to invite additional members to sit in on their proceedings. They do not always have a government majority. As a consequence the scrutiny role of committees has increased dramatically.

4. The allocation of time for committee work.

Another important development for consideration is the involvement of as many members as possible on committees, by making committee work an integral part of a member's duties, and so recognised as such by the general community. This would greatly enhance both the reality and perception of members of parliament as legislators.

Thus, instead of parliament only sitting on the days in the current calendar, without public recognition of the time spent on committee work, parliamentary sittings would be divided between days set aside for parliament to meet in plenary session and days set aside for committee hearings. In other words committee days would be publicly listed as normal parliamentary sitting days, increasing the total number of sitting days in a way which would better reflect members' parliamentary workload. Under this system all committees would sit on the days set aside as committee days and all members would be allocated a position on one or more committees. The position of chair should be seen as an opportunity to gain valuable knowledge and experience and become the training ground for later ministerial appointment. To be fair these positions should also be shared between government and opposition so that a pool of talent and experience is being nurtured on both sides of politics.

Participation on committees helps develop bonds of understanding and mutual respect between members across party lines. This can only be beneficial. Most committees already produce worthwhile results however their potential for greater impact on the democratic process has barely been explored.

The major problem with increasing the number and/or the workload of committees is the sheer physical demand on backbenchers. To overcome this, I would recommend a switch to subject committees, along the lines of the New Zealand model, covering the full range of portfolios and taking references on matters falling within their designated portfolios. These could align with the legislation committees mentioned above. To limit the total number of committees in this way would seem a far more efficient distribution of human resources.

All committees should have an odd number of members to ensure decisions are made without reference to a casting vote.

All members, including ministers, should sit on committees thus maximizing the pool of members to draw from and minimizing the number of committees on which any one member has

to serve. If members of parliament are to be regarded as legislators, seen by the public as their most important role, then this is an excellent way in which to engage them in this role.

Presently constituted Ad Hoc Committees should be abandoned and their references transferred to the relevant portfolio committee.

Working in committees provides a broad education basis for members on community issues and problems. Today many issues are multifaceted and depend for appropriate resolution on interlocking strategies between several portfolios. Related portfolios would be linked providing some degree of process with which to combat the stultifying effect of departmental silos.

While the provision for select committees would remain they would only be established in the rarest of circumstances. Domestic committees such as the Committee System Review Committee, the Speaker's Advisory Committee and the Standing Orders Committee would also continue as separate committees.

Engaging the public

Parliaments must make their processes more open to the public. This would enable them to be seen as truly representative, rather than as a group of delegates working in a rarefied atmosphere. This can be achieved by generating more informed public debate.

Committees already receive submissions by email so why not canvass evidence on specific issues via the internet, or seek comment from a wide range of sources on general questions. Its interactive nature could well prove a most useful tool. If not already in practice evidence could also be taken via video link thus opening up the potential for taking evidence from those living long distances away from Brisbane. In an outstanding example of public consultation the United Kingdom Parliament in 2002 established a committee to consider legislation in the area of domestic violence. An analysis of policy input up until that time revealed it had been confined to police, health and community workers, and peak bodies. Women actually suffering abuse had not been consulted. The committee set up an on-line forum which ran over a period of one month. During that time they received one thousand pieces of information from women who had suffered or were suffering domestic violence. This information was of great value to the committee and guided subsequent legislation in a number of significant areas. While the

identity of the women remained, anonymous information afforded by an independent and confidential registration process showed most of the women had never communicated with a member of parliament previously, never visited parliament, never been on-line, nor were they particularly computer literate. Nonetheless, given the opportunity they were anxious to have their say. In other words a target group was reached who would otherwise be shut out of the normal process. There is a significant lesson to be learnt from the United Kingdom experience.

The most spectacular way in which a parliament could open its processes to the public would be the establishment of its own free to air television channel. As well as showing parliament in session selected committee hearings could also go to air and, when not showing these activities, public interest information could be shown. The argument is often heard that the viewing public would not be interested but surveys conducted in countries where parliamentary footage is available has shown a surprisingly good following. Of course screening parliament late at night is hardly an encouragement for the general population to watch. This is why a dedicated channel is essential. Members of the public must be able to follow proceedings as they unfold, as they if they were sitting in the parliamentary gallery.

I thank the committee for the opportunity to make this submission and wish it well in its deliberations.

Summary of Recommendations

1. Committees should have unfettered access to expert advice, including legal and fiscal advice, and an unrestricted capacity to call for public records in all but specified exceptional circumstances where the public interest requires non-disclosure, for example, genuine risk to the administration of justice or to national security.
2. Committees must be able to call as witnesses whoever they think necessary to their inquiry. All current restrictions whether by law or convention should be lifted, including those on personal ministerial staff.
3. Governments should facilitate free-ranging 'take note' debates on areas of major legislative significance.
4. Take note debates should be coordinated with forums on the internet to gather comment from the community.

5. Upon adoption of a report the recommendations contained therein could bind the government unless amended or voted down.
6. Committees should have the power to initiate legislation in cases where no action is taken within the recommended time frame to implement committee recommendations.
7. An effective follow-up mechanism be established to track government responses. Committees should have, for example, the power to reconvene a hearing if, after a reasonable period, the government's response is deemed inadequate.
8. Estimates Committees should be replaced by a two-fold budgetary oversight mechanism being a Budget Committee and Expenditure Review Committees.
9. The parliamentary calendar to include days devoted entirely to committee hearings.
10. That all members including ministers be allocated committee duties.
11. That the concept of subject committees as practised in the New Zealand parliament be adopted.
12. Committee Chairs be divided equally between Government and Opposition members.
13. All committees to have an odd number of members to avoid the need for the chair to have an additional casting vote.
14. Ad Hoc Committees should be abandoned and their references transferred to the relevant portfolio committee
15. Committees should make maximum use of electronic tools to connect with the electorate including establishing a dedicated free to air parliamentary channel.



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