

Merrin Thompson is Principal Council Officer, NSW Legislative Council

Through the lens of accountability: referral of inquiries by ministers to upper house committees*

Merrin Thompson

Introduction

The New South Wales Legislative Council is alone among upper houses around Australia in providing for the referral of inquiries to committees by a minister of the Crown. The resolution establishing the standing committees upon the commencement of each parliament states that a committee ‘is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House’, and that a committee ‘may inquire into and report on any matter relevant to the functions of the committee which is referred by a Minister of the Crown’.¹ While such references are common amongst lower houses, they stand at odds with the Senate model of referrals only via the chamber itself, and challenge core principles of bicameralism that emphasise the role of the upper house in holding the executive government to account. Allowing the government of the day to determine the work of an upper house committee is anathema to the principle that the house of review is independent of executive government and is master of itself and its subsidiary bodies. It is the autonomy of the upper house which enables it to examine the matters it sees fit. Yet ministerial references to Legislative Council standing committees have been in place for 25 years and are taken for granted by members of all political persuasions as a valuable component of the Council’s committee system. This paper defends the Legislative Council’s provision for ministerial references to standing committees, using the Law and Justice Committee as a case example. Referring to historical debates informing the establishment of the committee system, it reveals that the Council’s standing committees were intended by both government and opposition members to

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be different to the adversarial, ‘problem’-focused committees of other upper houses, and rather, to work cooperatively with ministers to develop more effective policy. The paper then explores the views, gathered via interviews, of former committee members, parliamentary clerks and the head of a government department, with regard to the risks and benefits of ministerial references in the context of the upper house. It is argued that, whilst the provision challenges important conventions concerning the independence of the upper house, it nevertheless has a legitimate and valuable place in a house of review. The reasons are, first, it is supported by procedural safeguards which uphold the control of the house over the work of committees; secondly, it is complemented by a range of mechanisms which enable the Legislative Council to fulfill its scrutiny role; thirdly, it enables detailed investigation of policy issues and the development of informed policy proposals; and fourthly, it facilitates deliberative democracy through the engagement of minority interests in the policy process. The paper argues that, by occurring in the context of a second house elected by proportional representation, the provision for ministerial references facilitates the power-sharing relationships characteristic of strong bicameralism, by providing a mechanism by which the executive can and does cede some control over the consultation and deliberation process. Thus, by facilitating the engagement of non-executive actors in the policy process, ministerial references enrich the review function of the upper house. The methodology used is of semi-structured interviews with key informants whose views are essentially opinion-based. Thus, its analysis cannot be said to have a factual or objective basis. Perhaps a more effective evaluation of the impact on the independence of the upper house would be achieved by comparing the outcomes of committee work on similar policy matters in different jurisdictions. Nevertheless, the interviews and analysis yield compelling arguments about the place of ministerial references in an upper house and interesting insights into the role of the upper house and its committees.

Review of the literature

Bicameralism and the accountability of government

A substantial focus in the literature on bicameralism has been on the role of the upper house in holding the executive to account. As one commentator argued, ‘effective parliamentary scrutiny of the executive lies at the heart of a system of parliamentary government.’² Since the United Kingdom Bill of Rights 1688 established that the Crown required the approval of the parliament to govern, the business of has not simply been to make laws but also to scrutinise the government of the parliament day, thereby safeguarding against poor administration and the abuse of power.³ It is well recognised, however, that that the domination of the lower house by the executive limits the scrutiny exercised by that house, such that a second house which is differently constituted and thereby less likely to be government controlled is a vital forum for accountability.⁴ A key vehicle through which the accountability function of upper houses is exercised is through

committees, whose role is to undertake inquiries on behalf of the parliament and conduct the annual budget estimates process. Lovelock and Evans underscore the value of parliamentary committees in scrutiny of the executive by observing that while anyone can undertake inquiries by asking questions and considering answers, 'parliamentary inquiries are distinguished by the power of parliament to compel witnesses to attend and to answer questions, and the protection of the inquiry process by parliamentary privilege.'⁵

The role of the upper house and its committees in policy development

While the literature on bicameralism has much to say about the accountability role of the upper house and its committees, their role in policy development has not been explored in a substantial way. One noteworthy contribution is made by Halligan, Power and Miller, who substantiate this role in relation to both houses. In their comprehensive study of the committee systems of the Australian parliament, they argue that while the ultimate role of parliament is to hold the government to account, committees of both houses also fulfill other traditional parliamentary roles by contributing to lawmaking and detailed consideration of public policy.⁶ They argue that committees have contributed significantly to the revival of parliament as an institution over the last four decades, enabling members of parliament to 'find new and effective ways of pursuing policy agendas', and for non-government parties to engage in meaningful deliberations about public policy.⁷ They go on to affirm the bipartisan work that is not characteristic of the accountability function.⁸ Writing alone, Halligan suggests that, '[t]here remains huge untapped potential for parliamentarians to further explore the strategic dimension of investigation, often on a cross-party basis.'⁹

The upper house, committees and deliberative democracy

The engagement of non-government actors in the policy process is the core of deliberative democracy. Like Halligan et al, John Uhr highlights that parliament can be and is so much more than the holding of government to account. In his 1998 book, Uhr links deliberative democracy with parliament's representation of minority interests and its engagement of them in political debate, observing a 'ladder of parliamentary business which moves between reactive parliamentary mechanisms of government accountability through to proactive parliamentary mechanisms contributing to public appreciation and debate over law and policy'.¹⁰ In a 2008 paper, Uhr explicitly links deliberative democracy to bicameralism through the representativeness of upper houses elected via proportional representation, which has enabled a broader range of parties to take their place in the legislature, thereby engaging them and the public more broadly in deliberative processes.¹¹ In this context, Uhr suggests that bicameralism 'is about power-sharing relationships', and argues that 'strong bicameralism describes an institutional environment for multiparty political deliberation that can nurture effective political negotiation and generate feasible policy compromises.'¹²

Ministerial references to committees

Little attention has been given in the literature to ministerial references to committees. While the Senate makes no provision for referral of inquiries by a minister, the House of Representatives does, and they are standard practice in other lower houses. The Senate's discomfort about the possibility of government control of its inquiries is readily apparent in the literature. Writing in the context of the Howard Government's changes to the structure of Senate committees made possible by its watershed majority in both houses, former Clerk of the Senate, Harry Evans, points to the general dangers of executive control of upper house committees:

In this situation, there is a danger of a parliamentary committee system becoming a mere stage set, with committees inquiring only into matters determined by the government on terms of reference approved by ministers, the conduct of inquiries determined in accordance with the government's wishes, evidence selected according to the government's view of the subject and reports written to reflect that view. In short, a committee system can become a mere echo chamber in which the government simply listens to its own voice.¹³

If the executive's ability to refer inquiries to upper house committees is so unusual, and the risks of executive control are so serious and clear, how did the provision for ministerial references to NSW Legislative Council committees come about, and what role were they intended to have within the context of the upper house? These questions will be explored following a description of the Council's committee system.

The Legislative Council committee system

The Council has two complementary sets of standing committees that undertake inquiries on its behalf: the Law and Justice, Social Issues and State Development Committees, known collectively as the 'standing committees'; and a set of five 'general purpose standing committees' or GPSCs, each of which conducts scrutiny over specific government portfolios. Both sets exist for the life of the parliament in which they are appointed. In addition, alongside its Privileges and Procedures Committees, the Council provides for select committees to inquire into matters referred by the house, which then cease to exist once they have reported to it. The standing committees are government dominated by design, and undertake policy-oriented, in-depth, longer-term inquiries into complex matters, generally operating on a consensus basis with bipartisan findings and recommendations. By contrast, GPSC committees have a majority of non-government members and are generally characterised by inter-party conflict. Their inquiries are more accountability-focused, examining controversial decisions and matters of government administration, and tend to be shorter-term. The GPSCs are also responsible for the annual budget estimates process.¹⁴ The resolution establishing the standing committees sets out that they *must* inquire into matters referred by the house and *may* inquire into matters referred by a minister.¹⁵ Prior to 2007 the resolution set out that a committee 'shall' inquire into matters referred by either the house or a minister.¹⁶

The change from 'shall' to 'may' in relation to ministerial references was made in order to clarify the power of a standing committee to decide not to adopt such a reference.

The establishment of the standing committee system

The provision for ministerial references to Legislative Council standing committees has existed as long as the modern standing committee system, which was established with bipartisan support in 1988. In the early to mid 1980s, several debates took place in the Council that informed the establishment of the modern committee system. While these debates did not specifically address the issue of the source of references, a reading of them indicates that both government and opposition members sought a role for these committees which gave detailed consideration to substantive policy issues such as 'drug addiction', and 'indigenous people'.¹⁷ Also, while opposition members at least sought an accountability role for the committees, they envisaged that the committees should not be used as a mechanism by which to embarrass the government, but rather, should work cooperatively with ministers to investigate matters 'which will give the government of the day the opportunity to show initiative, to solve problems, and to plan for the State's future.'¹⁸ The Select Committee on Standing Committees was given the task of designing the new committee system and, after considering various models including that of the Senate, it proposed a new approach that was less adversarial and more forward-looking.¹⁹ Its unanimous report, released in 1986, recommended that references be initiated by the Council, the government, and committees themselves, with the succinct explanation that, 'undue restrictions on the reference mechanisms cannot be justified.'²⁰ The Standing Committees on Social Issues and State Development were established in 1988 under the Greiner Liberal/Country Party Coalition government, followed by the establishment of the Standing Committee on Law and Justice in 1995 under the Carr Labor administration. The more accountability focused GPSCs were appointed in 1997.

Ministerial references: views of interviewees

Twenty-five years on from the establishment of the Legislative Council's standing committees, how are ministerial references perceived by key stakeholders? Are they operating as they were intended, and what are the perceived risks and benefits of such references? Have the risks associated with allowing executive references been realised? In order to examine these questions, semi-structured interviews were conducted with three former members of the Law and Justice Committee: a government chair, an opposition member and a cross-bench member. In addition, seven former or serving parliamentary clerks were interviewed including the present Clerk and Deputy Clerk of the Legislative Council, two former Clerks, the Clerk of the Law and Justice Committee, and the Clerk of the Senate. Finally, the head of a government department gave his perspective as a senior policy actor involved in the initiation of references and the consideration and implementation of

their recommendations. The interviews focussed on participants' views of such references within an upper house and the risks and benefits of the provision. These elements are explored from the perspective of two clear groups of participants — those with reservations about ministerial references, and those in support of them. The former group comprised three clerks, while the latter comprised several, each of the members and the head of department.

Views on the place of ministerial references in an upper house

Two clerks had strong reservations about ministerial references. For these participants, allowing the executive to direct the work of a committee constitutes a dangerous handing over of control by the house to determine its own agenda and undermines the role of the upper house in holding the executive to account. For example, the Clerk of the Senate described the provision as 'anathema' to the Senate model:

The idea of a minister ... giving a reference, which is basically an instruction to a Senate committee, has never been part of our procedures. The Senate owns its committees and only the Senate can direct what they do. In a very practical procedural way it recognises that Senate committees are delegated bodies of the House ... Everything that they do is subject to the direction of the House.

A third clerk expressed ambivalence about the provision, sharing the above views whilst also recognising the policy contributions of the Council's standing committees.

By contrast, all those who supported ministerial references saw them as a non-controversial and valued element of the Council's committee system. Each of the members was puzzled by the fact that ministerial references could be seen to be inappropriate. Asked to respond to the 'anathema' position, these interviewees pointed to the perceived benefits of ministerial references — as outlined below. Several also pointed to the procedural safeguards which they saw as maintaining the house's control over its own agenda: the requirement that a committee resolve to adopt a reference and the corresponding ability not to adopt it; the requirement that once adopted, the committee report the reference to the house, at which point the house can pass a resolution to amend or reject the reference;²¹ and the capacity of the house, should it be so concerned about a reference, to make an instruction about how an inquiry should be carried out.²² Noting these safeguards, one senior clerk explained his position as being that, 'I don't think the executive should tell a committee what it must look into, but I see no problem in it making a recommendation on what it could inquire into'. Several participants also argued that while the government might refer the inquiry, and might have the chair and 'the numbers' on the committee, the presence of opposition and cross-bench members means that the government controls neither the inquiry process nor its outcomes. Two senior clerks argued that, rather than undermining the Council's role as a house of review, the provision facilitates that role by enabling detailed investigation of complex policy issues.

Perceived risks

Participants identified several closely interrelated risks associated with ministerial references to upper house committees. In keeping with their fundamental concern about inappropriate executive control of the upper house, the interviewees with reservations about ministerial references pointed to the first risk that the mechanism is open to exploitation, such that committees might be misused for party political purposes and become a tool of the executive. It was suggested that such references will inevitably be safe, non-controversial ones that keep backbench members busy and maintain the government's agenda. A second, related risk was articulated by one clerk in terms of opportunity costs: that government-referred inquiries might divert committee resources from the core upper house role of holding the executive to account. Finally, another clerk with reservations identified the risk that the executive might use the committee as 'fall guy' on controversial policy issues: rather than initiating its own approach to a difficult policy issue, by referring it to a committee, the government keeps it at arms' length and lets the committee 'take the heat' for difficult decisions.

Perceived benefits

Those in support of ministerial references identified a number of interrelated benefits. The principal benefit identified by both clerks and members is that they enable detailed investigation of complex policy issues and provide a well-informed potential way forward for policy. Each of the members clearly valued the opportunity to examine in detail sometimes controversial policy issues. They also valued the cross-party process of inquiries, whether or not they proceeded on a consensus basis. A second perceived benefit was that ministerial references inform committee members and other parliamentarians on matters that may come before parliament. The members saw that, in undertaking an inquiry, not only were they informing themselves on issues, they were also informing their parliamentary colleagues. The committee clerk observed that members see a report prepared by a parliamentary committee as having particular authority and feel comfortable relying on its content because they are familiar with the inquiry process. Another clerk highlighted recent examples of debates informing conscience votes on legislation for adoption by same-sex couples and altruistic surrogacy, during which the majority of members from across the chamber made extensive reference to committee reports. Thirdly, both members and clerks underscored the value of engaging diverse community members, interest groups and experts in the inquiry process via submissions and public hearings. This was seen as a more transparent and inclusive process compared with consultations conducted by government agencies. A fourth perceived benefit was that these inquiries informed the executive. Here, the head of department suggested that the authority attached to committee reports makes it easier for a government and its individual members to make decisions about particular policy issues. From his perspective, ministerial references have proven particularly helpful in respect of issues with both a social and legal dimension, which he suggested governments often have trouble grappling

with. In his view, parliamentary committees are able to look at the issues more objectively, at least in part because of their diverse membership. He reported that in his experience, the standing committees generally come up with sensible and informed recommendations that are both respected and readily digested, and that are not necessarily identified with any particular party.

Responses to perceived risks

Several interviewees who supported ministerial references were asked to respond to the risks identified by those against it. While the weight of opinion amongst the group that supported ministerial references was that in the vast majority of cases the provision was used with integrity, both the former chair and two senior clerks acknowledged that there had been instances of misuse by the executive. The former chair reported that she had observed other committees seek a certain outcome for the government (of which she was then a member) from particular inquiries. The instances where clerks recalled misuse included an inquiry into a federal government issue in the lead-up to an election, and a further three where a ministerial reference was perceived to have been made to ‘head off’ an inquiry by a non-government dominated committee. In relation to the latter, it was noted that if the house had been so aggrieved about a reference it could have stepped in, and in one instance did so by amending the terms of reference and issuing an instruction to delay the commencement of the inquiry.²³ Both clerks were firmly of the view that these abuses were in the minority, and that on the whole, the mechanism had been appropriately utilised. Responding to the perceived risk that government-referred inquiries divert committee resources from the core upper house role of holding the executive to account, both senior clerks argued that there has been a strong accountability element to many inquiries referred by ministers, which commonly examine the performance of government and make recommendations for the improvement of administration. One clerk expressed his confidence that both the standing and GPSC committees are effectively resourced.

Interestingly, responses to the risk that a committee might be used by the government as the ‘fall guy’ for controversial policy debates and decisions were generally pragmatic. Both the former chair and cross bench member accepted that the government ‘diverted flack’ from itself during several Law and Justice Committee inquiries, while the latter underscored the significant input of diverse stakeholders, the depth of consideration of the issues, and the questioning of participants from a number of viewpoints, suggesting that, ‘to some extent the airing of those conflicting views is as important as anything.’ The committee clerk spoke about the members’ commitment to the process despite their disparate views. She saw great value in the committee conducting itself as a microcosm of the house, with its diversity of membership and views, coming together to consider an issue in detail on behalf of the house. Finally, a senior clerk agreed that the ‘fall guy’ suggestion did seem to be the case for many of the recent Law and Justice Committee inquiries, but saw this as a ‘win-win situation’: ‘It’s good for the

development of public policy, it's good for the reputation of the committee system and the House, and it may as a by-product be good for the government as well.'

Discussion

This paper has considered the unique provision for ministerial references to upper house committees of the NSW Parliament, examining the debates informing the establishment of the standing committee system, and analysing the views of a number of parliamentary clerks and committee members and a senior public servant on the risks and benefits of the provision. It is noteworthy that broadly, those who had worked within the Senate model of committees had reservations about ministerial references, while almost all those whose experience was of the Legislative Council model strongly supported it. On the one hand, this points to a limitation of the study: it could be said that each participant was likely to defend the system within which they worked. On the other, the convergence in the strong support of a number of clerks, the senior public servant and each of the members also points to some value in the provision as well as the legitimacy attached to it in that legislature. While the debates documented earlier do not refer to ministerial references as such, it can perhaps be inferred from them in tandem with the report of the Select Committee on Standing Committees that the provision for ministerial references to Legislative Council standing committees was introduced with a noble purpose supported by all parties at the time: that these committees would work differently to those of other upper houses which were narrowly focused and adversarial, and rather, would work constructively with the government of the day in the interests of better policy and administration. The interviews suggest that in the vast majority of cases, this purpose has been upheld over a period of 25 years. Thus it can be said that while the provision does constitute a significant break with convention, it has been governed by alternative conventions that have nevertheless operated effectively to uphold the integrity of the standing committee system.

A principal concern about the provision for ministerial references is that they subvert the authority of the house, which is privileged to determine its own agenda and that of its subsidiary bodies. On first thought it is alarming that an upper house has resolved this way, conferring certain powers on ministers in relation to the work of committees. However, as several interviewees pointed out, a number of procedural safeguards ensure that the control of the house has been retained: the resolution of the house establishing the committees provides that a committee may — or may not — adopt the reference from the minister, and gives the house right of veto. This means that the reference operates as a request, not an order, by a minister. The fact that the house has acted to amend an inquiry's terms of reference and to delay its commencement is testimony to the fact that the Council's autonomy and authority remains intact.

With regard to the capacity of a committee to decline a reference, it noteworthy that this was clearly delineated as recently as 2007 because it was considered by the Clerk at the time that the wording that a committee 'shall' undertake an inquiry

referred by a minister was inconsistent with the authority of a committee as a subsidiary body of the house. While there had not been any instances where a committee sought to decline a reference but found that it could not, it was considered important to clarify that committees are not subject to executive direction. Since then, amendments to references have occasionally been made, and there has been one instance where a reference was not acted upon by a committee — in a decision related to committee workload rather than political considerations.

Interviewees provided a number of counterarguments to another key concern that ministerial references detract from the accountability function of the house of review. There has been a strong element of scrutiny built into many inquiries referred by ministers, such that while they might be forward looking and investigative, rather than reactive and problem-focused, they nevertheless illuminate and make recommendations on what needs to improve in government administration. Also, even if the government chair is very disinclined to air criticism of government (as has only rarely been the case), the presence of opposition and cross-bench members on a committee ensures scrutiny of the issues. Further, these references are counterbalanced by strong accountability mechanisms in the Council, including: the provision for referral of inquiries by the house to standing and select committees (as with the Senate); the provision for self-referred and house-referred inquiries to the non-government dominated GPSCs; the annual budget estimates process; the power of the house to call for executive documents; and question time. Adding to the procedural legitimacy of the provision is that it was introduced by a house elected by proportional representation and without a government majority, and has remained in place under the same conditions since that time, to the extent that it is taken for granted as both valuable and uncontroversial by clerks and members alike. Governments of both persuasions have made use of it, and if it were abused by the government of the day, the non-government majority could overturn it.

Two benefits of ministerial references identified by participants are reflected in the literature. The first is the in-depth investigation of policy issues which was validated by both Halligan et al. and Uhr as a valuable role for parliamentary committees, while the second is the way that such references facilitate the engagement of community members and interest groups in the policy process. Yet, arguably, these perceived benefits could also apply to other inquiries, whatever the source of referral, and whether they are undertaken by an upper or lower house committee. Together, two important factors point to the unique and valuable place that ministerial references can take in an upper house. The factor concerns the representativeness of the standing committee undertaking the inquiry, which comprises three government, two opposition and one cross bench member (and a government chair with a deliberative vote). On Uhr's analysis, such multi-party deliberation is made possible by the system of proportional representation by which the Legislative Council is elected. This kind of deliberation is much less likely to occur in a lower house, because of its majoritarian composition and the executive's clear domination of processes there. The second important factor is that the

committee — and the various inquiry participants — are effectively invited to the policy table by the executive through the process of a ministerial reference. The interviews suggest that the provision for ministerial references facilitates the ‘power-sharing relationships’ that Uhr sees as characteristic of strong bicameralism. While in making a reference the government is in no way handing over control of a policy issue, it is ceding authority over at least part of the consultation and deliberation process, and is inviting a range of non-executive actors, both in the parliament and in the community, to have some influence. In this forum, Uhr suggests, effective negotiation can take place and successful compromises can be reached, which may go on to inform future policy and legislation. Thus, the outcome of policy development can actually be heightened through the ability of a committee to receive a reference from the executive. Arguably, these practices are consistent with the role of a house of review, enriched as it is by a membership which is more representative of the community than that of the lower house. This role is to hold the executive to account and to give informed consideration to matters of legislation and policy. In this sense, rather than being an anathema, not only are ministerial references to committees of the Legislative Council a procedurally legitimate provision; they are also a valuable means by which it fulfils its review function. Looking through the lens that accentuates the accountability role of the upper house, it may appear strange that ministers work collaboratively with parliamentary committees and actually share some of their power with non-executive policy actors for altruistic reasons. On the other hand, it is encouraging and enlightening that to date governments have largely upheld the integrity of the Legislative Council’s standing committee system, inviting others to assist them to pursue more effective policy, just as it appears the architects of the system intended. ▲

Endnotes

¹ Paragraph 5(1)(a) and (b), Standing Committees: Appointment of Committees, *Legislative Council Minutes*, 9 May 2011, pp. 75–7.

² B. Harris (2006), ‘Parliamentary scrutiny of the executive — a proposal for constitutional reform’, *Canberra Law Review*, 9, pp. 19–44, p. 19.

³ H. Evans (2007), ‘The Senate, accountability and government control’, paper for the Australian Research Council Project, Strengthening Parliamentary Institutions, Australian National University Parliamentary Studies Centre, Canberra, p. 1.

⁴ H. Evans (2009), ‘The role of the Senate’, in P. Waring (ed.), *Harry Evans: Selected Writings*, Papers on Parliament No. 52, Department of the Senate, Parliament House, Canberra, pp. 93–9, p. 97.

⁵ L. Lovelock and J. Evans (2008), *New South Wales Legislative Council Practice*, The Federation Press, Sydney, p. 487.

⁶ J. Halligan, J. Power and R. Miller (2007), *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Melbourne University Press, Melbourne, pp. 10 and 4–5.

⁷ *Ibid.*, p. 2 and 4.

⁸ *Ibid.*, p. 5.

- ⁹ J. Halligan (2008), 'Parliamentary committee roles in facilitating public policy', *Australasian Parliamentary Review*, 23(2), pp. 135–56, p. 152.
- ¹⁰ J. Uhr (1998), *Deliberative Democracy in Australia: The Changing Place of Government*, Cambridge University Press, Melbourne, p. 96.
- ¹¹ J. Uhr (2008), 'Bicameralism and democratic deliberation', in N. Aroney, S. Prasser and J.R. Nethercote (eds), *Restraining Elective Dictatorship: The Upper House Solution*, University of Western Australia Press, Perth, pp. 11–28, p. 25.
- ¹² Uhr (2008), *op. cit.*, pp. 24 and 25.
- ¹³ Evans (2007), *op. cit.*, p. 10.
- ¹⁴ Lovelock and Evans, *op. cit.*, pp. 529–30.
- ¹⁵ Paragraph 5(1)(a) and (b), Standing Committees: Appointment of Committees, *Legislative Council Minutes*, 9 May 2011, pp. 75–7. The resolution also provides (under paragraph 5(1)(c)) for a Standing Committee 'to inquire into and report on any annual report or petition relevant to the functions of the committee which has been laid upon the Table of the Legislative Council', however this provision has never been utilised.
- ¹⁶ Paragraph 9(1)(a), Government Business: Notices of Motions, *Legislative Council Minutes*, 8 June 1988, pp. 173–6.
- ¹⁷ *Legislative Council Debates*, 17 March 1982, p. 2685.
- ¹⁸ *Ibid.*, 17 March 1982, p. 2684; *Ibid.*, 28 February 1985, p. 3963.
- ¹⁹ *Ibid.*, 19 November 1986, p. 6619.
- ²⁰ Select Committee on Standing Committees of the Legislative Council (1986), *Standing Committees*, NSW Legislative Council, p. 37.
- ²¹ The authority for the first safeguard lies in paragraph 5(2) of the resolution establishing the standing committees, which sets out that whenever a committee resolves to inquire into a matter referred by a minister, the terms of reference or the resolution is to be reported to the house on the next sitting day. See Standing Committees: Appointment of Committees, *Legislative Council Minutes*, 9 May 2011, pp. 75–7. Committees are a creature of the house, so in relation to the second safeguard, the house retains final authority over any references. It is also possible for the house to refer the inquiry to another committee. See Lovelock and Evans (2008), *op. cit.*, p. 558.
- ²² Standing Order 182 sets out that the house may give an instruction to a standing committee to extend or restrict its terms of reference. See Lovelock and Evans (2008), *op. cit.*, p. 558.
- ²³ In 2005 the Minister for Police referred an inquiry into public disturbances at Macquarie Fields. The house amended the terms of reference by removing a requirement to investigate the extent to which the actions of a member of parliament compromised police operations in the Macquarie Fields area. The house subsequently issued an instruction to the Committee to delay the commencement of the inquiry until the conclusion of any police operational review and police investigation into the emergency call response. See Lovelock and Evans (2008), *op. cit.*, p. 558 and Standing Committee on Social Issues (2006), *Public Disturbances at Macquarie Fields*, Report No. 38, Legislative Council, p. iv.