Submission No 4

INQUIRY INTO LEGISLATIVE COUNCIL COMMITTEE SYSTEM

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INQUIRY BY THE SELECT COMMITTEE ON THE LEGISLATIVE COUNCIL COMMITTEE SYSTEM – PREPARING FOR THE NEXT 25 YEARS

Introduction

The Senate Department welcomes the opportunity to contribute to the inquiry being conducted by the Select Committee on the Legislative Council Committee System.

Committees are an integral part of the parliamentary process, and because each legislature develops its own procedures and culture, there is no one, unchanging model for effective committees.

Nonetheless, history has shown that parliaments can learn from each other. So the Senate Department is happy to offer comments on the issues raised in the discussion paper published to support this inquiry. In turn, I will look forward to reading the committee's report after it has been tabled and considering any implications there might be for the Australian Senate.

The committee system of the Australian Senate has been evolving since the first select committee (into steamship communication with Tasmania) was established in July 1901, and indeed it continues to develop as illustrated by recent procedural changes which strengthened the rights of individual senators to question the executive at estimates hearings (and which are discussed below).

On the other hand, the large number of inquiries being undertaken – a total of 82 in mid-February 2016 – presents new challenges to senators and the parliamentary staff who support them. While additional resources have been provided to the Senate Department in the 2015-16 budget, the number of senators remains constant and this has been reflected in difficulties in scheduling hearings and clearing draft reports. In addition to the quantity of references, the complexity of various inquiries has also posed challenges.

I note that the Legislative Council held a seminar on 20 September 2013 "to explore the historical development of the committee system, celebrate its triumphs and consider its future." In a similar fashion, the Senate Department marked the 40th anniversary of the Senate's current legislative and general purpose standing committees with a conference in November 2010. The proceedings were published in *Papers on Parliament*, number 54 (2010)[1] and provide a range of perspectives including from former and current senators.

Senate legislative and general purpose committees—an overview

The Department makes no comment about the current Legislative Council committee system or the direction it should take. On the question of whether there is scope to incorporate

[1] Papers on Parliament, number 54.

aspects of the Senate committee system, it may be useful to outline a brief history of the committee system and the salient features of the system as we see them.

Initially Senate committees were considered fact-finding bodies which generally undertook inquiries into significant policy areas and operated on a largely bipartisan basis. Perhaps as committees were not considered primarily forums for the pursuit of partisan political issues, chairs were generally government members (apart from the chairs of select committees). However, from the early 1990's there was pressure for a proportion of chairs of the standing committees to be allocated to non-government senators. In 1994 a bifurcated system of standing committees was established which reflected the composition of the chamber through allocation of chairs of the legislation committees to government senators while non-government senators held the chairs of reference committees. This system was also intended to reflect the composition of the chamber through differing membership of legislation committees, which effectively had a government majority, and references committees, which had a majority of non-government senators. This is the current system of Senate legislative and general purpose standing committees.

For a brief period from 2006 to 2009, when the government held a majority in the Senate, the Senate reverted to a system of single standing committees, all with government chairs. During this period, new inquiries on matters of policy or accountability certainly declined. However, the bill inquiries conducted during this time demonstrate that there is not a rigid connection between committee membership and chairing arrangements, and the capacity of committees to perform their critical role of scrutinising proposed legislation. For example, committees chaired by government senators still presented reports recommending amendment of government bills.

The main features of the current system are follows:

- eight pairs of committees are established under standing order 25 with a references committee and a legislation committee in each subject area;
- references committees inquire into matters referred to them by the Senate, other than matters to be referred to legislation committees;
- legislation committees inquire into bills, estimates, annual reports and performance of agencies;
- each pair of committees is allocated a group of government departments and agencies;
- each committee has six members, with the government party having the chairs and majorities on legislation committees and non-government parties having the chairs and majorities on references committees;
- six of eight references committees have opposition chairs, one is from the largest minority party and the eighth is a micro-party senator; allocation of these chairs is determined by agreement between the opposition and the largest minority party and,

in the absence of agreement, is determined by the Senate (one committee is currently the subject of an order in relation to its chair);

- committees with government party chairs elect non-government deputy chairs and those with non-government chairs elect government deputy chairs; the chair, or the deputy chair when acting as chair, may appoint another member of a committee to act as chair during the temporary absence of both the chair and deputy chair from a meeting;
- chairs have a casting vote when the votes are equally divided, as do deputy chairs when acting as chairs;
- the chair, or the deputy chair when acting as chair, may appoint another member of a committee to act as chair during the temporary absence of both the chair and deputy chair from a meeting;
- senators may also be appointed as substitute members, replacing other senators on committees for specific purposes, or as participating members, who have all the rights of members except the right to vote;
- if a majority of members of a committee is not present, participating members may be counted for the purpose of forming a quorum;
- provisions authorising other senators who are not members of committees to attend and participate in all estimates hearings;
- committees may appoint subcommittees with a minimum of three members;
- subcommittees have the same powers as the full committees, including the power to send for persons and documents, travel from place to place and meet in public or in private and notwithstanding any prorogation of Parliament or dissolution of the House of Representatives;
- the pairs of committees may confer together to coordinate their work, and the chairs of these and any select committees form the Chairs' Committee, which meets with the Deputy President in the chair, to consider and report to the Senate on any matter affecting the operations of the committees;
- each pair of committees is supported by a single secretariat unit.

The committees therefore have the capacity to perform any of the Senate's roles on its behalf.

The system allows a great deal of flexibility, particularly through the use of participating members. The price of greater flexibility, however, is a loss of the kind of committee cohesion that was evident in past decades when committees had a very stable membership and were more likely to operate in a largely non-partisan manner in the expectation of producing a unanimous report. With regular membership changes and a floating population

of participating members, the loss of some cohesion is evident in the incidence of dissenting or minority reports.

It would also be fair to say that the system is under pressure from its success. A Senate committee inquiry is regarded as a remedy of first resort, with the result that the incidence of referrals is at record levels. Committees must prioritise their work and seek extensions of time in order to deal with the large number of inquiries being fielded simultaneously (in excess of a dozen per committee at some times, and as high as 18 in one case).

Specific responses to issues raised in the discussion paper follow (although not necessarily in the order raised in the discussion paper).

A Parliamentary Privileges Act?

New Zealand joined the Commonwealth Parliament last year in enacting a Parliamentary Privileges Act. In contrast, the latest United Kingdom joint select committee on parliamentary privilege, unlike its 1999 predecessor, recommended against legislating for parliamentary privilege along Australian lines.

The common factor in New Zealand and the Commonwealth jurisdictions was the impact of specific court decisions on the scope of parliamentary privilege as it had been understood to operate. At a certain point, both Parliaments said, “Enough!” and legislated to overcome the effect of the various court decisions and to clarify the scope of parliamentary privilege as it was understood to operate by virtue of Article 9 of the Bill of Rights 1689. Thus both jurisdictions had specific reasons to legislate and both addressed issues that had arisen in their jurisdictions. In the absence of similarly pressing difficulties in this area, the UK chose to leave well alone.

In both southern hemisphere jurisdictions, the purpose of parliamentary privilege legislation might be described as marking out territory into which the courts may not intrude, rather than declaring powers or privileges *per se*. The legislation is thus more about the relationship between the Houses and the courts than it is about the internal operations of the institution of parliament or its elements, such as committees. It is not a source of power for those operations. For the Commonwealth Houses, the source of power is section 49 of the Australian Constitution which confers on the Commonwealth Houses, UK House of Commons powers, privileges and immunities as they stood at the date of Federation (with unlimited authority to legislate for these matters in future).

The different constitutional arrangements the Senate operates under make further comparison of limited utility. The value to the Legislative Council of the declaration of its powers in the *Egan* decisions, however, is inestimable in providing a level of clarity and certainty in its relationship with the executive government of New South Wales that has never been fully conceded by the executive government of the Commonwealth.

Privilege resolutions?

For the Senate, the Privilege Resolutions embody good practice in protecting the rights of witnesses appearing before Senate committees (among other things). Specifically, Privilege Resolution 1 is binding on committees in setting out a number of procedural rules to be followed.

The resolutions as a whole had their origins in the report of the Joint Select Committee on Parliamentary Privilege which reported in 1984. The committee made a number of recommendations for certain matters to be dealt with by legislation and others by resolution of the Houses. Proposed legislation gained impetus from decisions by judges of the NSW Supreme Court in the course of proceedings against Justice Murphy which had the effect of allowing in camera evidence given to a Senate select committee into the conduct of Justice Murphy to be used in court proceedings in a manner contrary to the common understanding of the prohibition in Article 9 of the Bill of Rights. The Parliamentary Privileges Act was passed in October 1987 and, early the following year, the Senate agreed to the Privilege Resolutions.

The two have no necessary connection. The resolutions are based on the power conferred on the Senate by section 50 of the Australian Constitution to make rules and orders with respect to the mode in which its powers, privileges and immunities may be exercised and upheld. They do not rely on the Parliamentary Privileges Act except to the extent that the resolutions set out matters which may constitute contempts and the Act specifies the threshold test for contempt.

For committee operations, the most significant of the resolutions is the first one which is entitled, “Procedures to be observed by Senate committees for the protection of witnesses”.

Matters covered include processes for inviting witnesses to appear, invoking formal inquiry powers, affording procedural fairness, and – for witnesses – requesting to give evidence in private session or to be accompanied by, and to consult, counsel. Procedures for objecting to answering questions are also specified, as are protections for persons who are the subject of adverse reflections by a witness. Special procedures for official witnesses include the right to refer questions to a senior officer or minister and protection against questions asking for opinions on matters of policy. The resolution concludes with an obligation for committees to investigate any allegation of adverse treatment of a witness or prospective witness in respect of evidence given or to be given.

The universal application of these procedures without amendment for just short of three decades is an indication of the soundness of the concepts they promote but, as with any procedure, their application to another jurisdiction would need close analysis of how they might work in that jurisdiction, and whether modifications would be required to take account of differences in culture or legal framework.

Scrutiny of legislation

A critical role of the Senate legislation committees is to scrutinise proposed legislation and recommend to the Senate whether a bill should be passed and, if so, whether there should be any amendments to the bill. Approximately 40% of all bills (including government bills and private senators' bills) are referred to legislation committees for inquiry.

Bill inquiries often serve to identify technical problems with bills and regularly lead to amendments to bills. Another key function of bill inquiries is to examine whether bills will deliver the stated policy aims. One recent example of this is the Legal and Constitutional Affairs Legislation Committee inquiry into a private senator's bill, introduced by Senator Xenophon, to amend the *Criminal Code Act 1995* (Criminal Code) in order to extend the retrospective operation of provisions that make it an offence to harm Australians overseas. While the committee report generally endorsed the stated aim of the bill, the committee also expressed concern about practical difficulties associated with prosecutions under the proposed provisions and recommended further consultation occur in relation to the bill before its consideration by the Senate.[2] A bill to achieve similar policy aims was subsequently introduced jointly by the Attorney-General and Senator Xenophon and passed by both Houses in November 2015.[3]

The inquiry process is particularly important if there has been a truncated consultation process with respect to the proposed legislation. Moreover, a bill inquiry can help to identify amendments to the bill or changes to the policies and administrative practices underpinning the legislation which may make the bill acceptable to a majority of the chamber.

Examination of bills and delegated legislation by legislative scrutiny committees

In addition to these specific bill inquiries, three legislative scrutiny committees examine all bills and delegated legislation introduced into the Parliament:

- the **Senate Regulations and Ordinances Committee** examines all disallowable delegated legislation against principles relating to personal rights and parliamentary propriety;
- the **Senate Scrutiny of Bills Committee** examines all bills against a set of accountability standards to assist the Parliament in undertaking its legislative function (these standards focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary scrutiny);[4] and
- the **Parliamentary Joint Committee on Human Rights** which considers the compatibility of all bills and delegated legislation with seven human rights treaties to which Australia is a party.

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2 Legal and Constitutional Affairs Legislation Committee, *Criminal Code Amendment (HarmingAustralians) Bill 2013*, 13 August 2015.

3 Crimes Legislation Amendment (Harming Australians) Bill 2015.

4 Further information about the work of the Scrutiny of Bills Committee is contained in the committee's annual reports.

An important contribution of these committees has been to increase awareness and consideration of fundamental principles of good legislating and human rights by ministers and departments who have carriage of most of the legislation considered by the Parliament.

The work of the legislation committees on bill inquiries links closely to the work of the Scrutiny of Bills Committee. Indeed there is now an explicit requirement for legislation committees to consider the comments of the Scrutiny of Bills Committee with respect to bills referred to them (Standing Order 25(2A)). Legislation committees also routinely consider any views expressed by the Parliamentary Joint Committee on Human Rights. The Regulations and Ordinances Committee also draws matters to the attention of relevant portfolio committees where this may assist their deliberations.[5]

Preparation of draft bills

The Senate has no equivalent to Legislative Council standing order 226(3) which provides for legislative drafting assistance to committees from the Office Parliamentary Counsel. In any case, it would be very unusual for a committee to include a draft bill as part of its report to the Senate though committees will often recommend legislative action in more general terms. It is also common for legislation committees to propose amendments to bills referred to them for inquiry. Recommendations for amendments are drafted by secretariat staff and may either propose specific changes to the bill or set out in more general terms the outcome to be achieved by amendments.

Assistance to non-executive senators with drafting of bills and amendments is provided by the Procedure Office of the Department of the Senate. A decision was made in the 1980's that the department should develop its capacity to provide this drafting support to non-executive senators. In 1984, the then Clerk of the Senate explained that, while the Office of Parliamentary Counsel was established to ensure that all legislative proposals before the Parliament were expertly drafted:

> In practice, the needs of the Government meant that only on rare occasions were the services of Parliamentary Counsel made available to private Senators and Members for either the drafting of Bills or the drafting of amendments.[6]

As a result, in 1982 the Department of the Senate sought and obtained funding "to engage specialist draftsmen to assist Senators in giving legislative expression to their own ideas."[7]

The department has maintained a small pool of officers with the technical skills required to provide this support to senators. Together with the permanent officers who are able to assist with legislative drafting, additional funding provided since 2013-14 has assisted with the

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5 See for example, Regulations and Ordinances Committee, *Delegated Legislation monitor* No. 5 of 2015, entry on Financial Framework (Supplementary Powers) Amendment (2015 Measures No. 2) Regulation 2015 [F2015L00370], pp 10 -11.

6 AR Cumming Thom, "Consultant Draftsman in Australia", *The Table: The Journal of the Society of Clerks-at-the–Table in Commonwealth Parliaments*, Vol. LII for 1984, p.43.

7 AR Cumming Thom, "Consultant Draftsman in Australia", *The Table: The Journal of the Society of Clerks-at-the–Table in Commonwealth Parliaments*, Vol. LII for 1984, p.42.

regular secondment of an officer from the Office of Parliamentary Counsel to undertake drafting tasks. Officers undertake six month rotations which has advantages in terms of professional development: both for Department of Senate staff and for staff of the Office of Parliamentary Counsel.

Budget Estimates

Questions 7 and 8 relate to possible changes to the budget estimates process to support the Legislative Council to fulfil its modern role as a House of Review. The discussion paper notes that, "In consultation for this paper, members voiced their dissatisfaction with aspects of the current process, namely the limited time available to ask questions in hearings" (p.13, paragraph 3.22). The Senate has grappled with similar issues and has recently made some changes to estimates procedures which are discussed below.

The examination of executive expenditure by parliamentarians is a key accountability mechanism and a central role for any parliamentary house of review. Nonetheless, there will always be a tension between the practicalities of parliamentary scheduling, the desire and ability of individual members to inquire into the details of government programs and expenditure, and the executive's desire to limit questioning. (In fact, a major challenge for all parliamentarians is how to understand increasingly complex and technical executive programs and the associated resourcing so that the right questions can be posed.)

A number of procedural changes in the Australian Senate agreed in June 2014 have increased the capacity of individual senators to question Ministers and officials and so hold the government of the day to account.

It should be noted that the adoption of a program and the time allocated to individual senators to question and probe areas of particular interest will always be a matter of negotiation for each committee. However, under the new orders of continuing effect agreed in 2014, provision is made for further hearings for estimates committees. In particular, Standing Order 26(4) has been amended so that

> …If a senator has further explanations to seek, items of expenditure shall not be closed for examination unless the senator has agreed to submit written questions or the committee has agreed to schedule additional hearings for that purpose.

Furthermore, under a procedural order of continuing effect:

> …an additional hearing of a legislation committee considering estimates is taken to be required if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet for that purpose, including for a specified period of time.[8]

There are usually approximately 70 estimates hearings each financial year. However, in the 2014–15 year, a total of 83 hearings were held which demonstrates an increase under the new order.

[8] 25/06/2014, *Journals of the Senate*, p.1005.

These orders have now been in effect for four sets of estimates hearings. As the *Procedural Information Bulletin* No. 287 stated after the Supplementary Estimates hearings held in October 2014:

> Apparently arising from some dissatisfaction with the early adjournment of some hearings in the budget estimates round and the allocation of a greater share of the call to government senators than had been the practice in the past (among other things) the new rules were invoked in some committees to ensure questioning continued on particular programs until senators had exhausted their questioning. While this did lead to some programs running behind schedule, there was nonetheless sufficient flexibility to accommodate particular requirements.

Several senators expressed reservations about the new procedures when they were introduced, on the basis that they created greater uncertainty about the timetabling of estimates hearings. However, in more recent estimates rounds most scheduling issues have been resolved by agreement within the particular committee. The new orders have therefore contributed to the "enforced reasonableness" which underpins the operation of committees in a multi-party chamber.

Confidential evidence and adverse comment

The discussion paper raises the issues involved in accepting in camera evidence including the difficulties of testing the veracity of that evidence and in providing parties the subject of adverse comments in such evidence with an appropriate opportunity to respond to claims made about them. The power to receive material in camera certainly raises issues of fairness to other participants in the inquiry which need to be carefully considered.

If the committee does not seek to make the evidence public, it still has the option of publishing only to the party the subject of adverse reflections in order to provide that party with an opportunity to respond. It is sometimes possible to do so without placing the witness or submitter in any difficulty. If not, similar outcomes might be achieved by putting the substance of the allegations to the party without details identifying the witness or submitter. Obviously, there are complexities here, since removing identifying details from evidence in order to protect a submitter or witness may make it more difficult for the other party to respond. Ultimately, these are matters for the committee to weigh up and make a judgement upon.

Another option available to committees is to initially publish evidence only to the party subject to adverse comment indicating that the committee intends to publish the evidence, together with any response that party provides, by a particular date. For example, the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru received evidence highly critical of contractors at the centre which the committee published with the responses provided by those contractors.[9]

[9] See for example submissions 61 to 64 and 67 to 71.

It should be noted that, while the Senate Privilege Resolutions provide for evidence to be expunged, committees very rarely agree to this now. This is due to the difficulties of seeking to remove references to evidence which will generally have been streamed live over the Australian Parliament House website: in practical terms it is no longer possible to retrieve such evidence or prevent its further publication. As a result, committees regularly consider receiving evidence in camera if it is anticipated difficulties may arise from its publication. The committee can then consider later publication. In particular, this gives the committee the chance to carefully consider the evidence, and to offer any party subject to adverse comment with an opportunity to respond, prior to publication.

While it is true that submitters and witnesses are protected by parliamentary privilege in relation to their evidence, there are often practical issues in bringing that protection to bear. For example, an employer may agree to reinstate an employee sacked for providing evidence to a committee but whether that employee can reintegrate to a workplace having provided evidence highly critical of his or her colleagues is another matter. There is also the difficulty of disentangling whether the adverse actions taken against a submitter or witness related to his or her participation in parliamentary proceedings or had another, quite legitimate basis.

Committees should retain the flexibility to take evidence in camera, or to publish evidence without revealing the identity of the submitter or witness, in order to allow them to perform their inquiry functions effectively. These options are particularly important where committees conduct inquiries relating to very personal matters where evidence of the experience of individuals is crucial to informing the committee and the reliability of the witnesses is not really in question. Indeed, at times the identity of submitter or witness can be irrelevant in weighing the veracity of the evidence.

Government responses

Since 1973 the Senate has expressed the view that the government should respond to the recommendations of committees within three months of the tabling of the committee report. Governments have on several occasions since reiterated a commitment to respond to reports in a timely manner. The President of the Senate periodically tables a report on government responses which have not been provided within the three months. In addition, the Senate has passed specific resolutions calling for the government to provide a response to a particular report in cases where there has been a significant delay.[10]

The discussion paper refers to a suggestion that debate on committee reports should be delayed until a government response is received rather than initiated as soon as the report is tabled. However, a system which allows debate both on the report and on the government's response, when it is received, enhances the rights of committee members and other interested senators. Delaying the debate on the report until the government provides a response might

[10] For example the resolution of the Senate relating to the government's response to the Community Affairs References Committee report on grandparents raising grandchildren: 24/11/2015, *Journals of the Senate*, p.3449.

create an incentive for governments to delay responding to reports on contentious matters in order to stave off further debate on those issues in the chamber.

Community engagement

While the key role of a parliamentary committee is to gather information and undertake the inquiry function delegated by the chamber, participation in this process by community members serves a range of useful purposes. In the first place, while parliamentarians have long had to deal reactively with lobbyists, committees can *seek* evidence from a variety of interested and disinterested witnesses with expertise and experience such as government officials, academics and community groups. In addition to gathering information, many committee inquiries also allow individuals and groups in the community, who might otherwise be very unlikely to influence policy or legislative changes, a chance to be heard. For some marginalised groups in the community, this process of being heard by parliamentarians may be almost as important as the more tangible outcomes of inquiries.

For the financial year 2014–15, a total of 8,494 witnesses assisted Senate committees undertaking estimates, bill inquiries and other references. Committee secretariats have developed expertise in maintaining databases of key officials, subject matter experts, advocates and community groups. In the past, the main means of raising awareness about committee inquiries was newspaper advertising, and while still used in a more targeted fashion, the main communication medium used nowadays are committee web pages.

The examples of more innovative community engagement provided in the discussion paper (such as round table discussions with key witnesses, online surveys and use of social media to publicise inquiries) are similar to approaches adopted by Senate, House of Representatives and joint committees. Committees in the current parliament have also had an increased focus on addressing barriers to participation in inquiries facing people with disabilities. This has been reflected in increasing use of Auslan interpreters and the translation of some key inquiry information into Easy English by the Community Affairs References Committee to facilitate participation in inquiries by people with intellectual disabilities.

No doubt the issue of how best to use scarce resources to support committees confronts all parliaments. Parliaments should also be conscious of the demands inquiries place upon submitters and witnesses. In particular, there are risks in imposing too great a burden, particularly on non-government organisations, through repeated requests to participate in inquiries especially if timeframes for the inquiry are short (as they often are for bill inquiries).

Perhaps even more important is that committees manage the expectations inquiries may generate. Inquiries are rarely an effective vehicle for providing individual redress, yet that is precisely what many submitters expect. Understandably, a report which recommends legislative or policy action may be cold comfort to submitters who have suffered personal or financial harm.

There is also the question of the “shallow” engagement which new technology enables versus engagement that actually supports committees and parliamentarians to perform their

functions. Arguably, the mass email campaigns that accompany contentious inquiries or the consideration of controversial bills do little to inform parliamentarians particularly in proportion to the administrative burden they generate. For example, it is probably no surprise to parliamentarians that views about euthanasia are sharply divided and passionately held on both sides of the debate. For committees, community engagement is not an end in and of itself. The key questions are surely, "What is the purpose of community engagement through the committee process?" and "How does it support parliamentarians, and ultimately the chamber, to perform their roles?"

Several committees have adopted resolutions in response to mass email campaigns which improve the capacity of the committee to manage large volumes of correspondence to inquiries. For example, committees have resolved to publish only a sample of form emails received sometimes with an indication of the total numbers received by the committee.[11]

Role of the secretariat

Senate Committee Office staff are generalists for reasons similar to those described in the discussion paper. While officers are attached to particular secretariats, the uneven workload between secretariats has meant that staff regularly assist other committees. It is also common, because of workload pressures, for an inquiry of one committee to be entirely managed from a different committee secretariat. In addition, variations in the usual workload of different committees have meant that the usual staffing of secretariats varies significantly. Currently, the largest secretariat supports the Economics standing committees and has eight staff whilst the smallest secretariat, which supports a joint committee and a select committee has four staff.

Experts have been used sparingly by Senate committees and, as committees cover such large and diverse portfolios, it would not be possible to engage experts in all of the fields their inquiries traverse. In truth, the expertise committees require to perform their roles effectively comes from submitters and witnesses. Having said that, there have been some highly technical areas where committees have engaged consultants or seconded specialist staff during the inquiry to good effect. Recent examples include:

- the Economics References Committee inquiry into Australia's innovation system where the committee engaged an expert consultant;[12] and
- the Rural and Regional Affairs and Transport References Committee inquiry into aviation accident investigations where an expert from the Department of Defence was briefly seconded to the committee secretariat.[13]

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11 See, for example, Community Affairs Legislation Committee, *Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 [Provisions]*, 11 November 2015, report, p.1.

12 Economics References Committee, *Australia's Innovation System*, 3 December 2015, report, p.2.

13 Rural and Regional Affairs and Transport References Committee, *Aviation Accident Investigations*, 23 May 2013, report, p.2.

One exception to the sparing use of expert advisors by Senate committees is the work of the legislative scrutiny committees (the Regulations and Ordinances Committee, the Scrutiny of Bills Committee and the Parliamentary Joint Committee on Human Rights) which have all retained specialist legal advisors. This reflects the technical legislative scrutiny remit of these three committees and the largely non-partisan approach these committees have traditionally taken in performing that role.

The issue of committees traversing such wide intellectual territory that no single content expert could cover the required ground is a perennial one. For example in 1972, soon after the establishment of the system of Senate standing committees, the Select Committee on Foreign Ownership and Control noted that:

> The committee have considered the appointment of a permanent adviser. It has been agreed that the terms of reference could not adequately be covered by such an adviser and it has therefore been agreed that advisers will be sought from Industry, Government or the Universities on a short-term basis as each area is investigated.[14]

Instead, the expertise that permanent committee secretariat staff provide relates to their ability to support committees, to develop the procedural knowledge to be effective committee clerks, to distil the key viewpoints presented to inquiries and to prepare reports that inform legislators.

[14] Quoted in RE Bullock, "The Australian Senate and its Newly-Expanded Committee System", *The Table: The Journal of the Society of Clerks-at-the–Table in Commonwealth Parliaments*, Vol. XL for 1971, p. 51.