

Can Committee Performance Be Measured?

CHAIR (Ms MORRIS) — I am the Senior Clerk of Committees. It is my privilege to chair the next session which is on whether the performance of committees can be measured. Our speakers are Dr Phil Larkin and Mr Francis Sullivan. Dr Larkin is a lecturer in public policy at the University of Canberra. In addition to his academic research, he has worked as a researcher for both Australian Senate committees and the Committee Office of the House of Commons in the United Kingdom. Mr Sullivan has been Secretary-General of the Australian Medical Association since 2008 and, prior to that, he was the Chief Executive Officer of Catholic Health Australia for nearly 14 years. Please welcome Dr Larkin.

Dr LARKIN — Thank you. Having also had the privilege to speak at an event to celebrate an anniversary of the House committees a couple of years ago, I am somewhat of a gatecrasher at these events. You have heard loads of people with extensive committee experience in the Senate. Mine is limited—a couple of shortish secondments; enjoyable but short—and that hardly qualifies me as an expert, and of course I am a Pom, so I also feel I am intruding slightly in that respect. I am moving back to London at the end of the year, so I will be gatecrashing rather less, regrettably. Before I go, I would like to abuse my position here to publicly thank the staff of both the Senate and the House who have been unbelievably generous to me with their time and cooperation with my research. They have unfailingly delivered information that I have been too daft and too useless to find for myself. They have given me their time, their resources and their support, and I would like to publicly thank them very sincerely for that.

I go on to the main task: can committee performance be measured? There is a short answer and a long answer to that. The short answer is yes, of course. If you rephrase the question slightly differently—can it be measured effectively—then the answer is slightly more complicated. I do not have extensive experience in committee work—many of the speakers have decades to draw on—so my speech will be slightly more general and a wee bit more esoteric perhaps, but, I hope, thought-provoking.

Before I start on the issue of whether you can measure committee performance, I would like to consider why you might bother trying. I think that is a good starting point. Again, there are two types of answer. The political science answer, with my academic hat on, is ‘because they are there’. Academic political scientists like to measure stuff. We like typologies, we like to categorise and classify things—strong committee systems, weak committee systems—and assessing committee performance could be just another aspect of that activity. In that sense measuring committee

performance provides a sort of care in the community role for academics—it keeps us off the street, it keeps us out of trouble. God knows what we would get up to if we did not have these things to keep us entertained.

More importantly, the reason for doing it relates far more to concerns about the quality of parliamentary processes and I guess democratic processes more generally. The reason you might want to measure committee performance is that committees are generally and increasingly seen as a good thing. They are seen to add something to parliamentary processes that other institutions of parliament do not deliver. So you might want to assess how well that role is being performed. Reflecting on that, a number of international democracy promotion bodies have explicitly identified committees in their assessment frameworks, and they have been looking at ways of trying to assess committee performance in various ways. I am in the middle of trying to write something which explains how they are not really doing it very successfully yet. I have not finished it but I can field some questions on that later, if you like.

To paraphrase one academic attempt to measure committee performance, the reason you might want to do this is because a strong committee system seems to be a prerequisite for a strong legislature, and strong legislatures are increasingly seen as a good thing. On that point, it is probably worth pausing for a moment to consider why we actually have committees at all. What are the positive things that they are thought to bring? Firstly, they provide a division of labour. If you have a number of committees, you can process more parliamentary business. You can have bills going through simultaneously rather than have them waiting in line to be dealt with one after the other. At least in relation to Westminster systems more generally, it is worth bearing in mind that committees, unlike in continental Europe for instance, have their roots not in the scrutiny of legislation but rather in the *ex post* scrutiny of government spending and government activity.

What else can they do? They can provide expertise. We heard quite a lot yesterday about the way in which committees that specialise according to their policy area or their type of legislation can develop genuine expertise, and with that they can better scrutinise legislation or they can better hold government to account. They are better equipped to ask government the sorts of difficult questions it might not want to answer. We heard various examples of that yesterday, as I say.

Linkage is an area that Professor Ian Marsh, who is now at the University of Tasmania and who many of you will have read or met, is very big on. In an era when party politics, parliaments, are seen as increasingly distant from the public, the fact that committees work publicly, take submissions, hold hearings and engage with groups and individuals that might be outside the normal political machinery is seen as

giving legitimacy and transparency to the process. In doing so, it is also improving the quality of legislation.

Consensus politics is again something we heard a lot of individual examples of yesterday. Although this is a Westminster system with classic adversarial traditions, committees can modify that adversarialism. The idea is that small groups develop an ethos of give and take; there is a shared esprit de corps, if you like. Moreover, because they rely on evidence submitted to them, that confronts the established party positions. Andrew Bartlett made that point quite forcibly in the session I chaired yesterday.

So, on to the main thing: how do you assess committee performance? Well, the obvious way is to look at their formal powers, look at the standing orders, and see which committees can do what. However, this is a very imperfect guide. I will use the famous example of the difference between Japan's Diet and the US Congress. The US Congress has probably the most powerful committee system in the world. The Japanese Diet's committee system is 'an exercise in futility', yet it is modelled on the US Congress. The two systems share very, very similar formal powers, yet one is incredibly powerful and the other is an exercise in futility. It is not so much the formal powers that are at issue but what you do with them. So the obvious thing is to look at what committees actually do.

If you look at the reports of the US Senate office or the UK House of Commons—which every year produces a telephone directory sized report on their annual activity and spending—you will find various records of what their committees got up to for the year. They list the number of reports tabled, the number of hearings they have held, the number of submissions they have received, the number of trips they have gone on and the amount of money they have spent. These reports shows activities, in some respect, and you could look at that. But I do not know that these input measures—which is what they are, even though they are treated as an output in this context—actually tell us a tremendous amount about performance in this respect. It does not tell you how effective the committee has been; it just tells you how busy they have been. Having said that, they can clearly tell us how ineffective they have been. If there have been no reports tabled, no questions asked, no witnesses heard and no submissions received then clearly that is useless. But the inverse—that activity equals effective performance—does not necessarily hold true.

A more sophisticated way is to look at the impact of committees on legislation. And that is okay; you can look at the number of amendments they make to bills that come through them. Obviously, not all amendments are the same. A handful of amendments to important and significant bills is far more relevant and a far better gauge of

performance than a load of minuscule amendments to insignificant bills. But you can weight that and control for that, so that is fine. However, I did mention all the other things that committees do. Examining bills is only one part of what committees do, so how you capture estimates in that? We heard a lot about estimates and how effective that has been. All that activity, and all references, would be excluded from that if you just looked at legislation and amendments.

So what else can you do? You can look at committee recommendations and compare the government responses to them. Somebody has actually tried doing this in the UK. The problem is that government never says: 'You're right. We would never have thought of that. What a fantastic idea. We shall do that immediately. Well done. Thanks very much'. I have never seen that. What we found when we did this was that they usually say: 'Yeah, all right. We'd already thought of that, so we are doing it anyway; we just haven't told you'. Occasionally they say, 'That's stupid', but rarely do you get an open-armed embrace of a committee recommendation.

You could always—and we did try to do this—look at subsequent legislation rather than just the government response. That, of course, assumes that you get a government response. You could look at committee recommendations that slowly drip-feed their way into legislation as a measure of influence. That is theoretically possible but it is actually quite hard. Even if you can track that, it is very hard to prove direct influence: maybe everybody did just think of the idea simultaneously. In the absence of the minister saying: 'You're right. Bang to rights, we would never have thought of that. It was your idea. Well done', you cannot actually prove that it was one person's idea. Again, that rarely happens. In the absence of that, you are assuming that the similarity between the two is actually influence.

It is also worth bearing in mind that we found that just bringing a subject up can cause change. The specific recommendations might be rejected, but the committee's activities have caused action to be taken. That also would not be picked up in that way. And then there is, of course, the possibility that committees can change public opinion and cause more indirect influence on government that way. Could you measure that? It is theoretically possible but incredibly difficult to do that consistently. You might be able to do it for individual instances, but to do that across a committee system over time would be unbelievably hard.

I have not told you how to measure committee performance—I am aware of that; I have told you how not to measure committee performance—and that is because if I had thought of how genuinely to measure committee performance I would probably be a lot more senior than I currently am! It is a tricky one. It really is extremely tricky. And, just to complicate things further, Robert Ray mentioned yesterday how estimates

actually caused change by public servants anticipating what was going to happen in the estimates committees. If governments start anticipating committee perspectives, that surely is the most effective committee system of all. How do you measure that? There would be no amendments. There would be no inquiries. There would certainly be no hostile recommendations. Everything would be perfect. The committee would agree with the government entirely. So, in any attempt to measure that, you would find it very hard to distinguish between an unbelievably inactive and weak committee system and an incredibly powerful one. I honestly do not know how you deal with that. How the hell do you measure that?

To end, just to add a further complication, I would flag another couple of problems. One is: what do you measure against? I have mentioned how you might look at committee influence on policy, and that is ultimately what committees—sort of—do through bills or reference inquiries, but that is only one aspect. I have also mentioned consensus. If you prioritise process over, or equal to, outcome, you then look at the internal committee process and judge the effectiveness of the committee system there. Certainly some people have done that. There are measures of deliberation in parliament now and ranking systems to do with that, the idea being that nice, consensual policy making is better than adversarial. The other thing is that, simply, there are no agreed benchmarks. How much committee influence is enough committee influence? Do you want more or less? When is too much enough? When is enough too much? I honestly do not know, and I am not sure that that is necessarily one that can be resolved in the abstract. Anyway, I will stop.

CHAIR — I call Francis Sullivan.

Mr SULLIVAN — Good morning, and thanks for the invitation. It is great to see present and former senators here. I was present the last time you had one of these, which was 10 years ago, because I have been fronting Senate estimates committees for 17 years, primarily as an advocate. I do not come to this discussion in any way as an academic reflector or someone with a burning passion for the intellectual nuances of the Senate. I come at this discussion as a practitioner to push a view, because that is what people like me do. We push a view because, at the end of the day, for us politics is about passion and voices and getting yours heard. That is what I said 10 years ago, and I knew it would work! What I really mean is that you use any opportunity, any forum and any vehicle to get that voice heard. So, when it comes to committees and their inquiries and their considerations, it is just another place.

Firstly, one of the difficult things for committees in managing their performance is actually balancing the passions that come before them. The second thing is that in any other organisation we are involved with, if someone said, ‘Hello, welcome to your

KPIs, your key performance indicators’, this is called how you stay employed. That is what a key performance indicator really is to people: if I get those, they can’t sack me. So if you look at the senators now in a new light: what do they have to really do not to be sacked? They don’t have to listen to me, they have to win. Every now and then they have to make sure they are at the right number on the ticket in order to win. This is their core business. That is why when you talk about performance, don’t forget what is in the back of their mind all the time, which is their obligations to the party, to their electorate and to their bank account. Like the rest of us, that is the mixture.

Then you get thrown into this job in the Senate on the committees. Now you have got this huge ambiguity, because the Parliament may have a set of expectations for senators on committees the Parliament in theory does—this is what you are meant to do: consider, reflect, review, judge and act. But as party members there is another set of expectations. It is manage the political issue of the day in that committee. I am trying to tell people how to suck eggs here but all I am trying to do is to show you how we then understand what really goes on when you go to a committee. You have got to put your view in the context of how it is going to be heard. We think most of what we say is being heard through a jaundiced perspective, it is not an academic exercise.

There are three areas for how you judge performance. The first is how does the committee perform? In my experience, the committees have fluctuated but generally there has been a trend towards more provocative interaction with the witnesses over time. I think a lot of witnesses get intimidated by that if you do not go that often and if you do not have a thick Irish Catholic hide like I do. If you are going there with an expectation that you are going to have a reasonable conversation you get a little frustrated. They do not ask you the right questions or they do not listen to your answer or the second senator asks exactly the same question or the senators are walking in and out of the room or there are only two there when it starts and you get this great apology that you have flown three people from across Australia to the hearing and there are more of you than them and it was your money, your time—people get frustrated with that and they begin to say, what is the point?

Another thing that can happen is the government said that this is a massively important issue and you have got a day and a half until you have the hearing and you have got 13 hours to get the submission in and then you spend a lot of resources on getting the submission up and you do not even get a gig. Or you get mentioned in the references but not in the text. A lot of people go, what is the point? Particularly at the end of the day when you have got a strong view and it does not matter anyway because the government has got the numbers and that is the majority report and then there is the minority report and then it goes into the Senate and falls on the numbers

anyway. People go, what is the point? So I think there is a bit of a people-management issue there that the Senate committees could work on by asking the people who are involved.

Secondly, I think it is always impressive when you see senators of different parties appearing to like each other—that is a great PR exercise. It shows that being civil is still a value in our parliament. I am not trying to be cynical. A lot of people do not realise that senators might actually like each other. They certainly do not know if that is true in the House of Representatives, but they still think it is possible in the Senate. It will be interesting to see how that develops. But be mindful of the fact that, when a provocative atmosphere emerges, in the end it is counterproductive because it influences the type of information that comes back from the witnesses. It flavours that information. It is not a place for politicians to grandstand—we have seen that over the years. Groups like mine and the one I used to work for planned for that, to be honest, and played into it, so it is not all one way. I do not think the two-party system has helped. I look forward to the day when we have a lot of mini-parties running the whole show together; that would be quite good. It would give you a chance to actually have a coalition of ideas and interests. Those are my thoughts on the performance of committees.

I know I am short of time, but I just wanted to say that what the committees produce by way of adding value is important, isn't it? If it is a legislation committee, you can seriously see it as a great opportunity for community groups. Committees represent the only time in my experience where, if you want to get amendments to legislation seriously examined, you can do so. You can go to a couple of senators and say, 'This is what we need to get changed here', and, depending upon their degree of interest in what you are on about, they may engage with you or they may say, 'Look, I'm not worried about the amendments yet. Let's talk about the high-level stuff; the amendments will flow through at the appropriate time'. Depending upon the experience of the senator, they can manage you really well—they can manage you right out of it. The idea of putting it before a legislation committee is really good, because at least if you put your concerns in a submission you have drafted already they have to be considered by someone. Then you can seriously get that debated in the committee or at least get it into a report. Oftentimes in politics if you have a criticism and a solution you are in the door. If you have only a criticism, people say, 'Hello? I'm tired'. But, if you have a solution, at least they will talk to you. It is like life—it is like managing an 18-year-old: if you have a solution you at least have another day in your life. I think legislation committees are good in that way.

On the subject of references committees, they are okay because they give some groups a voice, but you must enable the groups to speak. I have to say, it is all very

well for people like me, but there are many voices that do not get heard. I know committees try to bundle voices together, so sometimes there will be a hearing and there will be an array of people because the committee is trying to be respectful of all the submissions. The committee will consider that various groups genuinely have the same types of concerns, but if they are different groups they have different concerns. Governments like lobby groups to be of one mind. That is the government's need; that is not the need of the lobbies. So we need to think that through. I do not know how to do that; that is your problem. It is just an issue.

The trouble with that, of course, is that all of us have to have our members seeing us doing things, so when you turn up with this gang of people you have to think of a really clever way of getting your voice heard. So it becomes a competition of information rather than quality. Then most of us with any brains go outside and do a press release anyway and get ourselves into the media one way or the other.

I will finish up very quickly with two things. The last time I spoke at this—as I said, it was 10 years ago—we had just had the passage, or were in the process of the passage, of the GST. I had a lot to do with Senator Harradine at the time. You may recall that famous speech of his. I am sorry Senator Minchin left, because he would remember this day quite well. A few of us knew that Senator Harradine was going to do the speech that afternoon. He walked into the chamber and began his speech, and eventually said, 'With regard to a GST, a tax on my children and my children's children'—I think his words were something like this—'I cannot'. You may recall that. As he gave this speech, the word around the Senate grew that something strange was going to happen here, because I think they did not think he was going to do that. All of a sudden the government's benches started to fill, and one of the first people to walk into the room—I was sitting upstairs watching it—was Senator Minchin, because the government knew that now they had to deal with a new party. Senator Lees rang me that afternoon to say, 'It's wonderful; we'll be talking to you on Monday'. Monday never came, of course, because we were lobbying for a particular outcome on that GST. But the Senate committees were helpful in getting a lot of junior voices up in those debates. Also, it was a time of vibrancy and activity in the Senate. It has been repeated many times since, but for me it was a great learning experience about how someone not from a major party could be a voice. I am not saying whether his voice was right or wrong, but I am saying that something of his passion and potency is important in politics. That is three Ps!

To finish with, I would like to go to one thing. It is frustrating for many groups to find the same inquiry all the time. How many inquiries on aged care have we had? The best thing about the inquiries on aged care is that we are all there now. It has taken so long. We are all there and we all get it, so you do not have to worry about whether

elderly people are important. Secondly, you can always pull this one out of the drawer when you are in trouble, so I figure that that is why the reporting time is less. The real point I want to make—and I pick up Bill's point—is that, if you want to take an inquiry, you should look at its recommendations and work out if it has an impact. When we had that famous inquiry on mental health back in 2006, that was a massive inquiry. We have also had really good inquiries on poverty, if you recall. There was a good inquiry about the pension, which there was eventually action on some years later, so I really applaud the people who pushed that. We have to remember that the senators themselves have great commitment in these areas and work inside their own settings to promote things.

I want to say one quick thing in finishing. The mental health inquiry came up with 13 recommendations, and each of the recommendations generally had about three if not four sections to it. It was a great inquiry. Since 2006, only one of those recommendations has been enacted in full. In 2007 the Howard Government came up with its own package for mental health and did not refer to this thing at all. Supposedly in 2011 the Gillard Government is going to come out with a big mental health package. Will it refer to the 2006 inquiry or will it do what governments often do: redesign, recreate and refocus? If that is the case then we have a problem with a disconnect. If it is not the case then you can see that reports are used behind the scenes, although they may have to change and be nuanced. But something that worries me is that, although in 2006 so many resources—both parliamentary and community—went into something so profound and important, we are facing the same dilemma today. Let us all hope that that real thinking and passion is encapsulated in what the prime minister comes up with next year.

CHAIR — We have a few minutes for questions.

QUESTION (Mr DAWSON) — This is probably mostly for Dr Larkin but it does relate to Mr Sullivan's points about the view from the other side of the witness table—that is, I am thinking, as a performance indicator, of how the committee process and committee reports are received by their stakeholders and other people who have been involved. Often you see bureaucratic reports now where at the front there is a little sheet with a few boxes in which you are invited to make some comments about what you think of the report. I am just wondering if you are aware if any parliament or congress has tried to survey, in an orderly way, how their activities are received by the stakeholders who have contributed to them.

Dr LARKIN — In an orderly way, no. Having worked on committees, including yours, briefly, it is something you are aware of and you monitor, as you know, but I do not know of any surveys as such. I have been involved in an ongoing research

project which has canvassed opinions from people that submit to committee inquiries, and that is pending, to be honest, so I will have to get back to you on that one.

Mr SULLIVAN — If we do not get mentioned in a report, we want to know why. If our views are not at least dealt with, we like to know why. Over the years, we have found it is good to keep close to the person who is writing the draft and to be of assistance wherever possible, and that helps. As a lobby group you can often predict what the report will say; but, if you felt there was something seriously amiss there, you would usually try and pressure an elected member accordingly. But remember that the lobby groups that are well resourced and loud are always involved somehow. That is part of the political theatre and it is not always a value-add, I get that; but that is what happens.

CHAIR — Any other questions?

QUESTION (Ms MOULDS) — I am from the Law Council of Australia and have had some of the same experiences as Francis. We have had some positive outcomes when we have actually been consulted by the department prior to a committee hearing, which has led to government-sponsored amendments after the committee hearing, where the department was able to also give evidence acknowledging some of the concerns that the profession had raised. I just wondered: is that another outcome to throw into the mix in assessing the performance of committees?; and have the Australian Medical Association or other groups that you know of also been able to establish those positive working relationships with the departments, either prior to the bill being introduced, which I guess is the ultimate, or, if not, at least once the bill moves into the Senate?

Mr SULLIVAN — That is a great example of a successful lobby. If you can get that sort of outcome, congratulations. Yes, there have been occasions when a piece of legislation has gone in and we know there are great problems with it and privately the government has realised there might be an issue. I can remember a couple of times when we were asked to take the foot off the pedal a little bit in how we might express our views because a good result was going to come and, on other occasions, putting forward the amendment. Sometimes it comes down to who prefers to lead with an amendment. I think that, although not common, can happen. And I think the relationship with the department is fine. It is not really that relationship that matters in the end; it is the emotional engagement of the minister around having to make a change.

Dr LARKIN — I would just like to flag the role of pre-legislative scrutiny—bringing in a role for Parliament. What is the harm? We do not always have to legislate in

haste. If you are genuinely not sure and you do genuinely want to get stakeholder views, chuck out a draft, get comments on that and then introduce a bill for the technical working-out. Why not?

Mr SULLIVAN — I might just finish with a point I wanted to raise—I am sure it is of interest. The frustration a lot of people have now is with government putting in enabling legislation and leaving everything important to regulations. I have turned up at committee meetings where even the committee says: ‘Like, hello? There is nothing here of substance for us to address’. I think that is a real problem coming.

CHAIR — Please join me in thanking both our speakers for a very thought-provoking discussion.