

## BOOK REVIEWS

### *Committees of Influence: Parliamentary Rights Scrutiny and Counter-Terrorism Lawmaking in Australia*

Sarah Moulds

Springer, 2020, pp 302, ISBN: 9789811543494

Scrutinising draft legislation for potential human rights violations is within the purview of federal parliamentary committees. Australia's model of rights protection at the federal level relies exclusively upon Parliament, which can be contrasted with other Western nations who have adopted constitutional or judicial protections.<sup>1</sup> Whether parliamentary committees provide sufficient protection to human rights has been the focus of debate in recent years, both in Australia and other common law countries.<sup>2</sup>

There is wide-ranging scepticism that Australia's 'parliamentary model' of rights protection is sufficient, particularly as Australian parliaments are dominated by the executive.<sup>3</sup> Some scholars have argued that rights protection of unpopular minorities fails when a parliament is dominated by an executive who seeks to be re-elected upon populace policies.<sup>4</sup> Others have questioned whether the judiciary has a legitimate role to play in rights protection.<sup>5</sup> The *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides an example of judicial involvement in rights-protection. Section 36(2) of the Act empowers the Supreme Court of Victoria to make a declaration that a statutory provision is not consistent with a human right. Such a declaration requires Ministerial action under s 37 and attracts public

<sup>1</sup> George Williams and Lisa Burton, 'Australia's Parliamentary Scrutiny Act: An Exclusively Parliamentary Model of Rights Protection' in Murray Hunt (ed), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart Publishing, 2017) 257, 257.

<sup>2</sup> Sarah Moulds, *Committees of Influence: Parliamentary Rights Scrutiny and Counter-Terrorism Lawmaking in Australia* (Springer, 2020) v.

<sup>3</sup> Ibid 14; Daniel Reynolds and George Williams, 'Evaluating the impact of Australia's federal human rights scrutiny regime' in Julie Debeljak and Laura Grenfell (eds), *Law-making and human rights* (Thomson Reuters, 2020) 67, 67–96.

<sup>4</sup> Hilary Charlesworth, *Writing in rights: Australia and the protection of human rights* (UNSW Press, 2002) 74–5; Hilary Charlesworth, 'Democratic objections to bills of rights' (2008) 20(3) *Sydney Papers* 124, 127.

<sup>5</sup> Alexander Williams and George Williams, 'The British bill of rights debate: Lessons from Australia' [2016] (July) *Public Law* 471.

scrutiny of the legislation in question.<sup>6</sup> Moulds' book aims to change the conversation, by looking inwards at what can be reformed in the existing system, rather than outwards at the efficacy of other systems.

*Committees of Influence* assesses the parliamentary model of rights protection in Australia through a case study of 15 counter-terrorism-related Acts. Specifically, Moulds explores the 'rights-enhancing' impact of federal parliamentary committees which, she contends,<sup>7</sup> limits the circumstances in which statutory powers that infringe on rights can be exercised.<sup>8</sup> This can be compared with an analysis of 'rights-remedying', where the powers that infringe on rights are removed, rather than limited.<sup>9</sup> In undertaking this case study, Moulds focuses on four committees that were prominent in scrutinising Australia's counter-terrorism legislation. These are: the Senate Standing Committee for the Scrutiny of Bills; the Senate Standing Committees on Legal and Constitutional Affairs, Legislation, and References Committees ('LCA'); the Parliamentary Joint Committee on Intelligence and Scrutiny ('PJCIS'); and the Parliamentary Joint Committee on Human Rights.<sup>10</sup>

There are three parts to the book. The first part sets out the methodology and introduces the four committees, as well as the 15 case study Acts by detailing their development and current usage. The second part applies the methodology and evaluates the rights enhancing role of parliamentary committees on the case study Acts. The third and final part of the book contains recommendations on how to improve the rights enhancing capacity of the individual committees, and the committee system as a whole.

Moulds argues that when the federal parliamentary committees work together as a system, they have a 'particularly strong' rights-enhancing impact.<sup>11</sup> This is in part due to the narrow scope of many committees when acting alone.<sup>12</sup> A significant reason for this finding, however, is that each committee has its own strength, roles, memberships, and functions, and

<sup>6</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 36(2), 37.

<sup>7</sup> Moulds (n 2) x.

<sup>8</sup> *Ibid* 5.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Ibid* 4.

<sup>11</sup> *Ibid* 17.

<sup>12</sup> *Ibid* 23.

that by complementing each other, the four committees have a greater impact.<sup>13</sup> For example, the PJCIS and LCA Committees have a better working relationship with key participants which attracts diverse membership and creates legitimacy within Parliament.<sup>14</sup> Unlike the other committees, the PJCIS requires its staff to have security clearance, which enhances its legitimacy in the intelligence community (which comprises of ASIO, ASIS, Australian Signals Directorate and others).<sup>15</sup> On this basis, Moulds argues that it is only by considering the way in which the committees interact as a system that ‘we develop realistic proposals for substantive improvement in the parliamentary model of rights protection’.<sup>16</sup>

Moulds’ book is a unique contribution to the literature on Australian parliamentary committees. Rather than focusing upon the effectiveness of a single committee, Moulds looks at the committee system as a whole — a first in assessing the impact of parliamentary committees in Australia. So far, other assessments of the efficacy of parliamentary committees in protecting human rights have focused only on single committees.<sup>17</sup> In the final chapters, the book sets out recommendations for both individual committees and the committee system overall, aimed at improving its rights-enhancing capacity. One of Moulds’ justifications for adopting a system-wide approach is her finding that by only making recommendations in relation to individual committees, the overall scope of improving Parliament’s rights-enhancing capacity is restricted.<sup>18</sup>

Moulds’ methodology is unique as it looks at three kinds of impact the parliamentary committees have upon legislation under review: legislative impact, public impact, and hidden impact. Legislative impact focuses on direct changes to the law such as amendments arising from recommendations.<sup>19</sup> Public impact looks for evidence of the committee’s

<sup>13</sup> Ibid 233.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid 108, 52.

<sup>16</sup> Ibid 231.

<sup>17</sup> See, eg, Adam Fletcher, *Australia’s Human Rights Scrutiny Regime* (Melbourne University Publishing, 2018); George Williams and Daniel Reynolds, ‘The operation and impact of Australia’s parliamentary scrutiny regime for human rights’ (2016) 41(2) *Monash University Law Review* 469, 469.

<sup>18</sup> Moulds (n 2) 231.

<sup>19</sup> Ibid 36.

work impacting public or parliamentary debate on a law.<sup>20</sup> Lastly, hidden impact, which is the most unique part of this research, looks at empirical evidence gained from interviews with participants in the parliamentary committee system. These interviews reveal the impact committees have at the developing and drafting stage of Bills.<sup>21</sup>

Moulds' work seeks to improve the rights-enhancing capacity of the parliamentary committee system but it does not go so far as to fully protect human rights.<sup>22</sup> Moulds justifies this limitation on the basis that her research is limited to rights-enhancing rather than full rights protection.<sup>23</sup> She also reasons that by reforming the existing system, change is more likely to be implemented and accepted by the various stakeholders.<sup>24</sup> Despite these justifications, Moulds could have taken her research further, and asked the question 'what changes are needed to fully protect human rights under the existing system?' This research would still be unique, as Moulds' methodology and analysis of the committee system can be applied to a broader question of this nature. By narrowing the scope of her research, Moulds' recommendations only go part of the way in improving the existing system of rights protection in the Commonwealth Parliament.

The nature of assessing anti-terrorism legislation also means that there is less of a focus on economic, social, or cultural rights.<sup>25</sup> By not addressing these rights, Moulds' research is limited in scope to only civil and political rights.<sup>26</sup> The result is that Moulds' research may not be indicative of the full rights-enhancing potential of the committee system. A study of enactments surrounding the rights of Indigenous Australians, for example, would be more appropriate to capture the impact of parliamentary committees on not only civil and political rights, but also economic, social, and cultural rights. Such a case study would be more indicative of the broader rights enhancing impact of parliamentary committees.

*Committees of Influence* develops a new approach to assessing the impact of parliamentary committees. Moulds' research sheds light on previously

<sup>20</sup> Ibid.

<sup>21</sup> Ibid 37.

<sup>22</sup> Ibid 289.

<sup>23</sup> Ibid 4.

<sup>24</sup> Ibid 284.

<sup>25</sup> Ibid 245–6.

<sup>26</sup> Ibid.

unexamined impacts of the parliamentary committee system and she methodically sets out her research to justify her thesis. Moulds clearly intends for this research to be the beginning of future studies into the role of parliamentary committees in rights protection in Australia. In the final paragraph she states, ‘I hope this book contributes in some small way to this important body of work’.<sup>27</sup> Moulds contends that the impact of parliamentary committees cannot be assessed without looking at them as a system. No doubt this contention will lead to a new area of work reassessing the role of parliamentary committees in rights protection.

*Felix Craig\**

<sup>27</sup> Ibid 292.

\* BA/LLB (Hons I) candidate, School of Law, University of Tasmania and member of the *University of Tasmania Law Review* Editorial Board in 2021.