THE PROCESS OF LAW REFORM: CONDITIONS FOR SUCCESS

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I INTRODUCTION

Changing the law can be a tricky business. Seen from the perspective of non-governmental organisations, law reform can mean years of lobbying governments and politicians for change; seen from inside government, law reform may signify months or years of consultation, drafting bills, and holding one's breath for Parliament; seen from Parliament, law reform may mean a relatively simple examination and passage of a Bill or months of political haggling; from the perspective of the public, law reform may appear variously political, idealistic, long and drawn out or hasty. Law reform is all of these things.

Most often when we think about the strict process of changing laws in Westminster systems our minds turn to parliamentary examination and passage of government sponsored and private member bills. However, beyond the focus on this one piece of the law reform process, it is worth remembering that proposed legislation often stems from much broader studies of larger legal and policy issues. This paper will fix its attention on the studies that often lie behind proposed legislation, focussing on three specific conduits for such law reform that are common to the Commonwealth /Westminster system: permanently established law reform commissions, parliamentary committees and ad hoc commissions of inquiry. These types of bodies frequently undertake broad-based studies of legal and policy issues, involving research and consultation, and leading to recommendations for change that often target legal and policy reform to government or even other, non-governmental institutions.

The question is: which of these forums for law reform is the most effective and responsive to today's changing and diverse society? Are permanent bodies such as law reform commissions the best means of instigating change and responding to issues as they arise? Many jurisdictions are currently struggling with this issue, questioning the usefulness of such commissions and, in some cases, abolishing them. On the other hand, are parliamentary committees — often driven by politics and the agenda of

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politicians — better? A frequently sought alternative, commissions of inquiry are also often expensive and cumbersome and can take years to reach a conclusion. These different forums are variously suited to perform in particular circumstances.

In the past, a large part of academic commentary on law reform has focussed on law reform commissions because of their history and transparency, and perhaps because such commissions are often staffed by legal academics who are eager to examine what makes law reform commissions tick, what makes them effective or can make them more effective. By contrast, parliamentarians and the judges who often head commissions of inquiry have spent less time expounding on the nature of their work. Nonetheless, parliamentary committees, commissions of inquiry and law reform commissions have all proven that they have the ability to produce wide-ranging proposals for law reform and the capacity to bend the ear of government or Parliament in different ways. This paper focuses on these three specific mechanisms for law reform because of their relative independence from government, the wide-ranging nature of their studies and the potential similarities in their mandate. These forums may be more easily categorised because they abide by broadly recognised ‘rules of the game’ across jurisdictions, yet numerous other effective mechanisms for law reform exist that are simply more difficult to pinpoint and draw inter-jurisdictional comparisons about: from permanent specialised agencies with ongoing mandates in a particular area of the law,¹ to initiatives undertaken by advocacy groups,² to internal government committees,³ to law reform through the courts⁴ — and multiple variants in between.

In bringing focus to bear on law reform commissions, parliamentary committees and ad hoc commissions of inquiry, this paper will delve into the conditions necessary for an effective and responsive law reform process in modern society, and assess the ability of these forums to fulfil those requirements. The focus will be on experiences in the Commonwealth world/Westminster system, drawing on comments from the vocal defenders of law reform commissions and attempting to expose somewhat less explored workings of parliamentary committees and ad hoc commissions of inquiry.

II FORUMS OF REFORM

Before launching into an examination of the key conditions for success in law reform, it is necessary to provide some context for each of the mechanisms under discussion. Each forum has its own history and processes which drive perspectives on their effectiveness. The following section provides an overview of what law reform commissions, parliamentary committees and ad hoc commissions of inquiry are and how they operate in Canada, Australia, New Zealand and the United Kingdom. However, each of these jurisdictions also has its own approach — this paper simply

¹ For example, Australia’s Family Law Council.
² For example, lobbying undertaken by organisations such as Amnesty International.
³ For example, the Canadian government’s Interdepartmental Working Group on Trafficking in Persons which seeks to improve the government’s response to trafficking by coordinating efforts in different departments, proposing policies and exchanging information with respect to law reform and other initiatives.
⁴ For example, courts in Canada may strike down legislation that is found to be unconstitutional, requiring the legislature to reformulate the law.
seeks to draw out broad generalities about how such forums operate in order to better examine what makes them effective in particular circumstances.\(^5\)

### A Law Reform Commissions

Law reform commissions are perhaps the most academically debated institutional mechanism for law reform in the Commonwealth world. First formally established in Canada, Australia and England in the 1960s,\(^6\) law reform commissions pioneered many of the inquiry techniques that are today considered par for the course when undertaking studies leading towards recommendations for law reform.\(^7\) In traditional form, law reform commissions were permanent, independent bodies, most often established by statute and funded by government. Such agencies were staffed by professional commissioners (most often lawyers) accompanied by research and administrative staff, and typically received their study mandates from government. They then undertook research and consultation, leading to a report containing recommendations that the government might or might not choose to implement.

The modern picture has evolved somewhat from those early institutions. Although law reform commissions have proliferated over the years and are now found throughout the Commonwealth at both national and subnational levels, this evolution/proliferation has not been linear. Some commissions have been abolished

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since their creation, others have been abolished and reinstated in different guise, while still others continue more or less as they were established. Most law reform commissions have also modernised — moving beyond the traditional study of generally more technical black letter law to become involved in increasingly dynamic, wide-ranging studies of social justice issues or emerging areas of law. Founding mandates today often include simplifying and modernising the law to make it more effective and efficient; improving access to justice; and removing obsolete, unnecessary, repetitive or defective law.

Although law reform commission goals remain broadly similar across jurisdictions, as they have evolved they have also begun to vary widely in terms of structure. Many commissions remain tied to a statute, while others are free-standing. Funding often still comes from government, but the non-statutory, less traditional law reform commissions have found other means of sustenance. The law commissions in Tasmania, Ontario, Alberta and British Columbia receive funding from various sources, including provincial/state law foundations, universities, professional bodies, and the provincial/state government. Finally, while some commissions continue to rely on the government to instigate mandates for study, today this is often done in consultation between the government and the commissioners. Many modern commissions choose their own mandates, although, again, often in consultation with the government. In terms of staffing, some modern law reform commissions see their strength in terms of a full complement of permanent staff, while others approach staffing in a more ad hoc project-specific manner.

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8 For example, the Law Reform Commission of Canada was abolished, then re-established as the Law Commission of Canada, then abolished again in 2006.
9 For example, the Law Commission of Ontario, the Victorian Law Reform Commission and the Tasmanian Law Reform Institute.
10 For example, the New South Wales Law Reform Commission, the Law Commission of England and Wales, the Law Commission of New Zealand and the Alberta Law Reform Institute.
11 Some of the less 'traditional' studies in recent years include:
   - Privacy law (Australian Law Reform Commission 2008)
   - Indigenous legal traditions (Law Commission of Canada 2005–06)
   - What is a Crime? (Law Commission of Canada 2003–05)
   - Custom and human rights in the Pacific (New Zealand Law Commission 2005–06)
   - Physical punishment of children (Tasmanian Law Reform Institute 03)
   - Family violence (Victorian Law Reform Commission 2002–06)
12 Australia, New South Wales, Victoria, New Zealand, England, Ireland and Canada (until abolished).
13 Tasmania, Ontario, British Columbia and Alberta.
14 Australia, New Zealand, England and Canada (until abolished).
16 Law Commissions Act 1965 (UK) c 22, s 3; Law Commission Act 1985 (NZ) s 6; Tasmania Law Reform Institute Founding Agreement s 4.
17 For example, the commissions in England and New Zealand have a Chairperson supported by four full-time Commissioners and significant research and administrative teams. New South Wales has a Chairperson and one full-time Commissioner accompanied by a number
Procedures for the conduct of law commission studies are generally well-established, although they clearly vary by jurisdiction. Often commissions produce an ‘Issues Paper’ as a first step, outlining the issues and basis for the study and calling for submissions from the public. This is generally followed by a ‘Discussion Paper’ during the consultation process, and ultimately, a final report with recommendations for the government, which is also made widely available to the public. In a few jurisdictions the Attorney-General or responsible Minister has an obligation to table this report in Parliament within a certain amount of time. However, law reform commissions are not responsible for implementation of their reports and have no power over the government to compel implementation. In rare jurisdictions the government has an obligation to provide a public response to the report. This was the case in Canada before the Law Commission was abolished, and is still the case in New Zealand.

Despite the proliferation of law reform commissions, and their transformation from more formal and restrictive law reform agencies to broader ranging agents of legal and policy change, many commissions have stormy relationships with their government — the 1990s saw many commissions ‘abolished, restructured or downsized’, and the Law Commission of Canada was abolished as recently as 2006. The driving factor behind the abolition or restructuring of law reform commissions is generally, ostensibly, one of funding. However, lack of funding is one of those problems that stems from a subjective choice on the part of government about where to place its priorities and many law reform commentators strongly criticise government motivations in this regard. Certainly, many commissions have met their fate based on a government’s decision to make efficiency gains and reduce duplication in face of the many alternative means of working towards law reform. Other commissions have more obviously been cut or transformed because the government had lost faith in their benefit or because of a difference in ideological goals. Law reform commissions are seen by their critics to be a luxury, or even as potentially elitist and detached from reality.

Faced with such opposition, proponents of law reform commissions have struggled to adapt to changing attitudes and prove that commissions are an effective means of
law reform. In many cases, new law reform commission models have emerged to take the place of more traditional agencies, having either been restructured by government or rising independently from the ashes in a new format. Others however, may have seen their latest incarnation abolished for good.

B Parliamentary Committees

Often conducting similar types of consultations, but in an entirely different setting, parliamentary committees have also taken a prominent place in the law reform industry in recent decades. Parliamentary committees are inherently creatures of Parliament, made up of parliamentarians and created by orders or motions in Parliament, and thus they necessarily approach law reform from a different perspective than law reform commissions, but history has shown that they can do equally innovative and broad ranging work.

Like law commissions, it is difficult to describe the work of such committees in a few generalisations — each House of Parliament has its own approach to committee work. The following paragraphs merely attempt to synthesise committee roles specifically relevant to the purposes of this paper. This discussion will provide an overview of how study-oriented parliamentary committees operate on a broad level, and, to some extent, distinguish the particularities of various Parliaments.

Broadly, there are four different types of parliamentary committees that engage in studies throughout the Commonwealth world. These are:

- Standing Committees — permanent committees established by Standing Orders in Parliament;
- Subcommittees — temporary committees established within Standing Committees for either the duration of Parliament or until the assigned study for which the Subcommittee was created is accomplished;
- Select/Special/Ad hoc Committees — temporary committees created by special motion in Parliament for completion of a particular study (although some such committees can become quasi-permanent);
- Joint Committees — either Standing or Special Committees made up of members from both Houses.

All of these committees are composed of parliamentarians from all parties, and are headed by a Chair/President and Deputy/Vice-Chair/President. The precise composition of membership is generally proportional to the party breakdown in the relevant House, although the number of members on a committee varies considerably between jurisdictions. The actual individuals appointed to committees are usually negotiated internally by party whips based on criteria such as seniority, a

23 In these pages we will not examine committees that undertake scrutiny of estimates and proposed legislation; instead, we focus on parliamentary committees that engage in broader inquiries leading to recommendations to government for legal reform.

24 Although there are exceptions to this rule: in the Australian Senate general purpose Standing Committees are composed of half government members and half non-government members. Parliament of Australia, ‘Chapter 16 – Committees’, Odgers’ Australian Senate Practice (12th ed, 2008).

25 In Canada, House of Commons Standing Committees have 12 members and a maximum of 15 on Special Committees. However, Australian House of Representatives committees can have anywhere between seven and 32 members.
member’s particular expertise or interest, or a simple need to fill seats. However, this internal party choice may be made official by a procedural coordinating committee such as Canada’s House of Commons Standing Committee on Procedure and House Affairs.26

Chairs, or Presidents, of parliamentary committees are most often also chosen behind the scenes, although they are officially elected by members of the committee. Chairs generally come from the government party, and Vice-Chairs usually come from the official opposition. Given the politically charged context of parliamentary committee work, the role of the committee Chair is to act as arbiter in the committee room and as the committee’s voice in Parliament. The Chair manages committee discussion, makes decisions on issues of procedure and evidence, and tends to play a coordinating rather than a partisan role. The Chair generally only participates in committee votes when needed to break a tie.27

Beyond the parliamentarians themselves, committee staff varies by jurisdiction and by type of committee, but generally includes a:

- Clerk who acts as procedural advisor and administrative officer and may also assist in drafting report;
- Secretary who deals with logistical details; and
- Research officer provided by the House of Parliament or the Library of Parliament, who provides briefing material; prepares background information/research, potential witness lists and possible questions for witnesses; drafts reports; and monitors government responses.

Committees may also hire outside consultants with expert research experience in the area of study, may have legal counsel to provide members with legal advice, or may have a press officer to deal with media outreach.28

While Parliament gives parliamentary committees their mandate, within that mandate, committees can often run their own show. Standing Committees frequently have broad mandates that leave them with wide scope to take up particular studies.

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27 O’Brien and Bosc, above n 5; Harris, above n 26, 639–41; Parliament of Australia, Odgers’ Australian Senate Practice, above n 24.

28 O’Brien and Bosc, above n 5; Canada House of Commons, above n 26; UK House of Lords, above n 26; New Zealand Office of the Clerk of the House of Representatives, above n 26, 21–23; Parliament of Australia, Odgers’ Australian Senate Practice, above n 24; Parliament of Australia, Senate Committees: Senate Brief No 4, above n 26; Harris, above n 26, 643; Peter C Grundy, ‘Parliamentary Committees – A Secretary’s Role’ (2003) 18 Australasian Parliamentary Review 95, 99.
while special/ad hoc committees have a specific mandate targeting a particular study. However, studies undertaken by Standing Committees generally need to be approved by an order of reference from Parliament, or indeed, Parliament may independently request that a Standing Committee undertake a particular study.

In terms of carrying out this mandate, once the committee receives its order of reference (either formulated internally or handed down by Parliament), the committee will instruct its research officer(s) to prepare background research and a list of important witnesses. Those witnesses are invited to appear, both to present submissions and to respond to questions from committee members. Committees also accept written submissions from individuals who cannot appear in person; occasionally encourage submissions from the general public; and for larger studies, may travel to hear relevant voices. Meetings are generally open to the public and recorded — ‘Hansard’ transcripts are published and often the meetings are available for viewing via webcast or the parliamentary television network. However, committees may also hold private in camera meetings which are closed to the public because of the sensitive nature of the testimony. Finally, parliamentary committees have the capacity to summon witnesses or to require that witnesses answer particular questions, although this power is rarely used.

The hearings concluded, the committee then instructs staff to prepare a report outlining the committee’s research, information gathered during the hearings, and a series of recommendations to government for reform. Committees generally attempt to agree to the report and recommendations by consensus, although in some cases this is impossible and a minority will draft their own dissenting report. The report is then finalised and tabled in Parliament, often officially requesting a government response. The government then generally has between two and four months to draft this response. However, despite the obligation to provide this response, the government has no obligation to actually implement the recommendations. The only power that the parliamentary committee has to compel implementation is to monitor government actions into the future and call the government periodically to account in follow-up reports.

Funding for the activities of parliamentary committees comes from Parliament itself. Often committees have to apply to a budget committee outlining the funding that they are requesting for a particular order of reference.

C  Ad Hoc Commissions of Inquiry

Commissions of inquiry are perhaps the most difficult of the three mechanisms to describe because of their ad hoc nature and the resulting reality that they vary greatly

29 For example, Australia’s parliamentary committee Hansards can be found at: <http://www.aph.gov.au/hansard/index.htm>.
31 Canada House of Commons, above n 26; Harris, above n 26, 651; Parliament of Australia, Senate Committees: Senate Brief No 4, above n 26; New Zealand Office of the Clerk of the House of Representatives, Parliament Brief: Select Committees, above n 26.
32 For example, the UK House of Lords.
33 For example, the Canadian House of Commons.
from one inquiry to another. Most important is a definition of what is meant by ‘ad hoc commissions of inquiry’. Inquiries abound in modern society and can be established both within and without government. This paper deals specifically with ad hoc public inquiries often referred to as commissions of inquiry or Royal Commissions. Established by government on an ad hoc basis, such commissions of inquiry are independent bodies intended to examine and put forward recommendations with respect to broad matters of public policy. They are most often put in place in response to a pressing issue immediately facing the nation.34

There are two broad types of commissions of inquiry: policy-oriented and investigative. Policy driven inquiries tend not to focus on one single event, but instead examine a broader issue through a fact-finding process of public hearings and submission that is similar to that already seen with law reform commissions and parliamentary committees. This paper will focus on policy-oriented inquiries rather than investigative inquiries, which are usually triggered by a particular scandal or event and tend to be more quasi-judicial in nature than the other mechanisms for law reform discussed previously.

Commonwealth nations have relatively similar approaches to the establishment and operation of commissions of inquiry, with a few technical differences. Firstly, commissions of inquiry may or may not be founded on statute. Traditionally in the Commonwealth world, such inquiries were labelled 'Royal Commissions' and were established by royal prerogative. However, over time royal prerogative has been displaced by statute.35 Non-statutory inquiries are still established on a regular basis, but do not have the same powers as those implemented under statute.

Due to their ad hoc nature and often central place in the public eye, commissions of inquiry are generally headed by a prominent person — often a judge, retired judge or senior lawyer, or sometimes a retired senior civil servant or prominent academic. Their staff varies widely, depending on the nature of the inquiry and the traditions of each jurisdiction. Generally, in addition to the Commissioner or Commissioners, there may be an Executive Officer to deal with administration and operations along with a small or large research staff. Commissions of inquiry in the UK may also appoint expert assessors for assistance.36

In terms of procedure, statutory commissions of inquiry are triggered by an Order in Council or Letters Patent. In the UK, individual ministers appoint inquiries, while in

34 Some examples of important policy-oriented statutory and non-statutory inquiries over the last few decades include:
   • Canada: Royal Commission on Aboriginal People (1996); Commission on the Future of Health Care in Canada (2002)
   • Australia: Royal Commission on Australia’s Security and Intelligence Agencies (1985); National Human Rights Consultation (2009); Victoria Inquiry into Prostitution (1985)
   • United Kingdom: Royal Commission on Reform of the House of Lords (2000)
   • New Zealand: Royal Commission on Genetic Modification (2001).

35 Australia has the Royal Commissions Act 1902 (Cth); New Zealand has the Commissions of Inquiry Act 1908 (NZ); Canada has the Inquiries Act, RSC 1985, c I-11; and the United Kingdom has the Inquiries Act 2005 (UK) c 12.

other Commonwealth nations this role is left to the Governor-General on the advice of Cabinet. In this context, the government chooses a Commissioner or panel of Commissioners, sets out the terms of reference, and provides funding for the process. The Commissioner in place, he or she then sets out the rules of procedure and makes them publicly available. The procedure for the establishment of government appointed non-statutory inquiries is much less rigid.

Inquiries themselves can take months or years depending on the scope of the submissions sought and public hearings held. The information gathering process also varies widely depending on the rules set out by the inquiry in question, although it always includes some degree of internal research and public consultation.

Once completed, the Commissioner drafts a report with recommendations for law reform or policy change and submits it to the government, also making the report widely available to the public. In terms of statutory inquiries, in the UK, the relevant Minister must table the report in Parliament, although elsewhere there is no such obligation. Like law reform commissions and parliamentary inquiries, recommendations made by commissions of inquiry are in no way binding on the government. In addition, the government has no statutory obligation to provide a public response, although in some countries, such as Australia and the UK, the government has a tradition of doing so.

III DO THESE FORUMS HAVE WHAT IT TAKES FOR EFFECTIVE AND RESPONSIVE LAW REFORM?

Having provided some background on the law reform mechanisms in question, this paper turns to discuss their success in meeting various conditions necessary for effective law reform. Much of the existing commentary on law reform commissions, parliamentary committees and commissions of inquiry has been developed by those intimately connected with the forum in question, and tends to focus on one mechanism, rather than engaging in a more comparative analysis. This paper attempts to step back a few paces to look at each of the forums to determine whether one may be more effective than another in particular circumstances.

One of the most obvious starting points for evaluating a law reform mechanism is its level of independence. This discussion works from the premise that law reform commissions, parliamentary committees and commissions of inquiry are independent, to instead focus on some of the more nuanced conditions for success. These include:

- **Appropriate triggers** — how are a law reform mechanism’s terms of reference triggered and framed?
- **Real consultation** — digging deeply, airing relevant issues and educating the public.
- **Focussing on the facts.**

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37 Grant, above n 5, 89, 93.
38 Inquiries Act 2005 (UK), c 12, s 26.
39 However, although there is no such statutory obligation in Australia, the government generally does table Royal Commission reports in Parliament — see Australian Law Reform Commission, Making Inquiries, above n 36, 157.
• Timely — law reform mechanisms must strike an appropriate balance between providing enough time for real consultation and research to take place, and not dragging on for too long, spending too much money.

• Recommendations — practical recommendations that will actually be implemented, or recommendations that push the envelope, spark new thinking and raise awareness?

A Appropriate Triggers
As stated above, one important aspect of determining the success, or effectiveness, of a law reform mechanism is the independence or appropriateness of its terms of reference. How are those terms of reference framed and who is the instigator of the particular study?

Because of their ad hoc, and often reactive nature, commissions of inquiry are perhaps the least independent of the three from this perspective. Commissions of inquiry are specifically established by the government to deal with a particular issue, thus their terms of reference are constrained in scope and directed in nature. By contrast, while orders of reference for parliamentary committees formally originate in Parliament, committees themselves often have a hand in constructing the terms of reference, either bringing their proposal for a study to Parliament or engaging in a discussion of what those terms mean after the fact. Law reform commission studies are either triggered by government instruction or at the instigation of the commission itself, depending on jurisdiction. But as already mentioned — this is often a fluid process involving discussion between the commission and government, no matter who the primary instigator for the study is.

However, independent mandates are just one piece of a more complex puzzle. Independence can even be a hazard if the body in question bears no thought to what issues are relevant to government and society, or what issues may be on the government's reform radar screen. Law reform agencies should always be looking to push the envelope, but must learn to strike a practical balance between ensuring that a report is not totally ignored and attempting to bring hidden issues out into the public domain. Not to do so could risk the agency becoming irrelevant or sidelined (or even abolished, in the case of law reform commissions) due to what critics may perceive to be its irrelevant, extravagant or extremist approach to undertaking studies.

Along the same lines, effective law reform must be based on mandates undertaken because of a real need for change, not because of politics or the need to generate a 'feel good' message or impression of accountability. From this perspective, commissions of inquiry often tread a fine line. While few would argue that costly inquiries are triggered on a whim of government, cynics might posit that some policy-oriented inquiries are triggered to create a sense of action and accountability by the government. Parliamentary committees could also come under fire from this


perspective. Some argue that such committees are often driven to choose studies purely by politics, or worse, that they may avoid tackling issues that are seen as too controversial or even too boring for political careers. But experience shows that although it might be easy for cynics to dismiss parliamentary committees on this basis, most committees — particularly those in the upper chamber — rarely let politics get in the way of generating valuable and often controversial studies. In Canada and the United Kingdom, Senators and Lords are not elected, which means that committee members worry less about politics and valuable sound-bites. Even in Australia, where the Senate is elected, studies show that Senators often have more independent control over their studies than the lower house and are thus often seen taking up significant issues for examination. The very fact that the mandate for studies comes from Parliament and often from within the committee itself differentiates parliamentary committees from bodies receiving a direct mandate from government — Parliament represents all political parties and the mandate for a particular study could even be driven by members of the opposition trying to push a controversial issue into the open.

Law reform commissions are probably the least likely of the three mechanisms to have a study triggered by politics. Many commissions develop their mandates themselves, perceiving that there is an issue that needs addressing from an independent perspective. Although mandates might be handed down by government or at least taken up in consultation with government (and some cynical voices suggest that government motivation for initiating law reform commission mandates may often be to take controversial issues off the front pages of the newspaper), law commissions are likely in the most independent position when it comes to finding neutral triggers for their studies.

B Good Consultation

... only from confronting the humanity of individuals face to face, of hearing their stories and of being immersed and deeply involved in such inquiries can one really 'get it'.

Each of the three law reform mechanisms under discussion undertakes consultations according to its own traditions in order to fulfil its study mandate — although the precise form that the consultation takes depends greatly on the time and resources allocated, the type of study and the ingenuity of the law reform mechanism itself. The starting point for any study always involves a list of 'usual suspects' from whom to invite oral or written submissions. These are the established voices in a particular area: the government, bar associations, academics and the major advocacy groups. Hearing from such bodies is always, and should always be, a priority — particularly as it establishes the groundwork for the investigators, providing them with the information that they need to form the basis for the study.

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43 Halligan, Miller and Power, above n 5, 39.

However, concern arises when investigators stop digging there. Because of time, resource, or even creativity restraints, law reform mechanisms may neglect to hear from some of the less established, or less vocal stakeholders on an issue. This might particularly be so for a parliamentary committee seeking to provide a quick overview-study rather than an in-depth investigation. Commentators note that parliamentarians are often pressed for time, have many studies on the go in different committees and occasionally simply want to hear from the groups that have been lobbying them for a study to ensure that those interested voices are heard. In a politically charged environment, some members may also clearly be more at ease with established groups because they know what to expect, whereas wildcard 'fringe' organisations may generate fears of creating a circus in the committee room.45

In some situations it is perfectly normal for a law reform mechanism to only hear from the usual suspects. Some studies are simply not of interest to the wider community because they focus on a change to a more technical law or because the issue in question does not dig deeply into social policy. In these situations, it may be prudent to limit consultations to the few groups who have an obvious stake in expressing an opinion on the issue. However, as soon as a study goes deeper into issues of social policy, wide consultation is necessary for developing meaningful law reform proposals. Former Professor at McGill University, J N Lyon, put it well in 1974 when he wrote:

> Realistic and responsive priorities cannot be established in isolation from the major points of contact between the legal order and the people. Inevitably, the process of reform must plant its feet firmly on the ground in the community, where all the messy, insoluble problems are found, if it is ever going to realise its potential. Those who claim the right to set priorities must go out into the slums, the welfare offices, prisons, criminal court, family court, small claims court, children's aid societies and elsewhere to experience how the legal system can be used to subvert community and destroy human values, and to get a sense of where and how the law might serve to alleviate and possibly overcome some of these injustices.46

This clearly means reaching beyond the usual suspects, digging deeply to hear from communities at the ground level to get at the heart of a study. It sometimes also means going even beyond the smaller organisations and implicated citizens to inform non-engaged members of the public of the issues and involve them in discussion.

As such, law reform bodies need to think about when it is necessary to branch out beyond the list of primary witnesses and how to do so, taking time and resource constraints into account. Staff may need to invent creative solutions to reach out to communities and groups of disadvantaged individuals who might not usually have the opportunity to get their voices heard.47 In contrast to the pessimistic view of parliamentary committees outlined above, one good example of such deep

45 Siobhan Leyne, 'The Changing Role of Parliamentary Committees and the Place of the Community' (Paper presented at the Seminar on the Twentieth Anniversary of the Establishment of the House of Representatives Committee System, Canberra, 15 February 2008) 72–73; Marc Bosc, 'E-Democracy and the Work of Parliamentary Committees' (2004) 26, 28. As an example, consider the case of a parliamentary committee examining immigration entry requirements for 'entertainers' and the various groups that might want to have their voices heard in the committee room.
investigation can be found with the Canadian House of Commons Subcommittee on Solicitation Laws. This Subcommittee’s mandate was to investigate Canada’s prostitution laws and to propose recommendations for reform. The study ranged over three years and involved much more than hearing from government, police and prominent academics. Rather, the committee held numerous hearings in Ottawa and across Canada, speaking to various levels of government, academics, police associations, health workers, service organisations, affected community members and sex workers. Parliamentarians got off Parliament Hill and out of hotel conference rooms to tour affected neighbourhoods at night and to speak to sex workers in their own environment, both off and on record. This deep consultation gave committee members an insight into the issue that would have never otherwise been possible and had a significant impact on the final report.

However, generating this kind of consultation is not an easy task. As noted by former President of the New Zealand Law Commission, Justice Bruce Robertson, ‘[i]t takes considerable skill sometimes to assess who can be affected and who can make a contribution’. In particular, it involves staff determining what the barriers to participation are for groups disadvantaged by language, cultural differences, gender, disability, education, etc and how to surmount them. Law reform agencies must recognise that, in comparison with more well-established advocacy organisations, some smaller groups have neither the time, resources nor knowledge to prepare well-written or well-researched submissions. Because the stories of the poor, vulnerable, socially disadvantaged or politically marginalised are not known, or are misunderstood, law reform bodies need to constantly question who is missing from the picture when organising consultations.

Marcia Neave, former Chair of the Victorian Law Reform Commission and head of a 1985 Inquiry into Prostitution, notes that ‘[p]eople whose lives have been affected by the law are likely to see it very differently from lawyers and judges.’ Gaining this real life perspective is crucial to any in-depth study. Giving such individuals an opportunity to participate can also lead to an increased flow of submissions to law reform agencies as word of the study and its open consultation process is spread.

But how does a law reform mechanism go about opening up its consultation process? The means of doing so are various, and are either deeply engrained or may

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48 For more information on this study see the Subcommittee’s website: <http://www2.parl.gc.ca/CommitteeBusiness/StudyActivityHome.aspx?Cmte=SSLR&Language=E&Mode=1&Parl=39&Ses=1&Stac=1736071>


52 Dermody, Holland and Humphery, above n 44, 55.
require imagination each time a study begins. Sometimes wide-reaching consultation is
statutorily mandated, as with the New Zealand Law Commission, where s 5(2) of the
Law Commission Act 1985 (NZ) calls on the Commission to ‘take into account te ao
Maori (the Maori dimension) and... also give consideration to the multicultural
character of New Zealand society.’ At other times, a body may make a specific
commitment to deep consultation in the context of a particular study. For example, the
Law Reform Commission of Western Australia set out a Memorandum of
Commitment during its study into Aboriginal customary laws (2006), promising to
honour local cultural protocols and practices, and ensure respect for Aboriginal stories
and cultural knowledge and the views and aspirations of Aboriginal people. 53 Most
recently, the Australian Law Reform Commission (hereafter ‘ALRC’) recommended
that inquiries looking into matters that may have significant impact on Aboriginal
communities should be required to consult with those communities early on to
establish appropriate procedures. 54

Beyond such engrained means, law reform agencies should make efforts to ensure
that the consultation process remains an open process. Those seeking broad
consultation should attempt to create an environment of trust. This may entail
ensuring that in addition to formal hearings, alternative, informal hearing processes
are organised. 55 This may be difficult in the context of commissions of inquiry and
parliamentary committees, given the historical formality surrounding such
proceedings and their more inquisitorial nature. 56 But, as demonstrated by the
Canadian Subcommittee on Solicitation Laws, even this historical reality is beginning
to shift. Policy-oriented commissions of inquiry have also shown the potential to break
down such barriers in the past. One example is the 1985 Inquiry into Prostitution in
Victoria, which took 11 months to speak to sex workers, community members, welfare
groups, lawyers, doctors, service organisations, politicians and police in both public
and private settings. The Commission received 171 written submissions, held three
public hearings, and interviewed 115 sex workers, and 17 managers of brothels/escort
agencies, visited over 30 brothels, and travelled to New South Wales and Western
Australia. 57

Of the three law reform mechanisms, law reform commissions appear to have most
fully grasped the benefits of, and knack for, organising, informal information-
gathering sessions. But times are changing, and parliamentary committees, and some
innovative commissions of inquiry have certainly begun to follow suit.

One thing that all law reform agencies need to be concerned about is ‘submission
fatigue’ experienced by either organisations overtaxed for input, or those have made
all these submissions before in other forums but whose voice is never reflected in final
reports or who have seen too many reports and recommendations but never any

53 Law Reform Commission of Western Australia, The Interaction of WA Law with Aboriginal
/reports/ACL/FR/Appendix_F.pdf>.
55 Neave, ‘The Ethics of Law Reform’, above n 50, 23; Roslyn Atkinson, ‘Law Reform and
Community Participation’ in Brian Opeskin and David Weisbrot (eds), The Promise of Law
56 Leyne, above n 45, 67–68.
implementation on the part of government. This is a real issue that can sometimes throw up barriers to participation in new studies — maybe particularly for parliamentary committees given traditional mistrust of politicians. It was certainly the case of the Subcommittee on Solicitation Laws, whose members had to convince some service organisations and groups of sex workers of the value of testifying before yet another government/political body investigating the sex industry and legal reform — that hopefully this time the committee could make a difference where other studies had failed.

Examples of excellent deep consultations that have effectively reached out to vulnerable groups show that good consultation is a goal that is within reach. Those that have succeeded generally highlight yet another reality — that being inclusive is not simply a passive obligation. Good consultation involves actually reaching out to communities to solicit responses — helping or even enticing targeted individuals to participate rather than only giving them an opportunity to do so. To achieve this goal, law reform bodies must determine how best to inform the public of the study. Simply advertising the study on the agency’s website or through a press release is often not enough. The usual suspects may come forward, but the most marginalised groups are unlikely to become aware of the study until it is too late (if ever).

Law reform commissions around the world have established particularly good precedents for reaching out to targeted communities, with agencies such as the Law Commission of Canada (now abolished) and the ALRC engaging with the public through press releases, radio and television spots, surveys and opinion polls, convening roundtables and focus groups, performing plays, and setting up targeted electronic discussion groups.

Policy-oriented inquiries have also occasionally proven able to reach out. The Victorian Inquiry into Prostitution explicitly went beyond the submissions that it received to contact sex workers and others with knowledge of the issue. It also ensured publicity through newspaper, television and radio interviews, as well as radio talk-

58 Leyne, above n 45, 79.
59 In addition to the Canadian Subcommittee on Solicitation Laws and the Victorian Inquiry into Prostitution, there are many examples to draw from, including the 2004–05 Australian Senate inquiry into children in institutional care, which received over 740 submissions, many of which were confidential and chronicled individual tales of abuse; and the Victorian Law Reform Commission’s 2001–04 study on sexual offences which developed various innovative methods of reaching out to Aboriginal women, non-English speaking women, new immigrants and individuals with cognitive impairments. For more information about these studies, see: Dermody, Holland and Humphery, above n 44; Senate Community Affairs Committee, Inquiry into Children in Institutional Care, Parliament of Australia <http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/index.htm>; Marcia Neave, ‘Making Law Reform Work – The Promise and Limits of Law Reform’ (2007) 13 *James Cook University Law Review* 7; and Victorian Law Reform Commission, *Sexual Offences* http://www.lawreform.vic.gov.au/wps/wcm/connect/justlib/Law+Reform/Home/Completed+Projects/Sexual+Offences/.
back programs. The non-statutory 2009 Australian National Human Rights Consultation was also successful in widely publicising its activities and actively soliciting submissions from more marginalised communities, including organisations representing the homeless, the disabled, prisoners, immigrants and asylum seekers, and aboriginal peoples. Through its efforts the Consultation received over 35,000 submissions, becoming the largest national consultation ever undertaken in Australia.

Commentator opinions diverge on how well parliamentary committees have proven able to actively reach out to relevant communities. As a first step, most parliamentary committees prepare a preliminary witness list and contact those organisations that they feel are relevant. The committee will issue a press release (Australian committees often go a step further to regularly publish information on their studies in the press) and send out a notice to individuals and organisations on their mailing list. However, beyond such initiatives, most parliamentary committees rely on passive reception of submissions — much thus depends on how extensive the preliminary witness list is. One advantage lies in the all-party nature of committees, which usually means that the witness list is broad enough to satisfy all political preferences. The final result may not be as active a solicitation of responses as may be desirable, but many observers note that as a result of these initiatives parliamentary committees are often successful at reaching out 'widely and deeply' and taking in responses from a good variety of interest groups.

As already hinted above, another very important indicator of good consultation is effective use of technology. As we move further into the age of technology, law reform mechanisms are taking advantage of the opportunities that the internet and
other mediums provide for enhanced consultation. Hotlines, blogs, and various forms of e-consultation such as emailed submissions, discussion forums and online surveys are all means of heightening interaction and consultation with a public that may not otherwise become involved. E-consultation is a particularly effective means of reaching out to communities when faced with resource constraints.

Some law reform commissions are particularly astute at maximising the benefits of technology for their consultations. For example, the ALRC has a 'Talk to Us' link that facilitates electronic submissions and enables online discussion. The ALRC's 2006-08 study on privacy also made full use of modern technology, including a website specifically targeting young people, an online forum, resources for teachers considering law reform as part of their curriculum, and a two day phone-in that took in over 1300 responses. This study was the ALRC's largest ever, with 250 meetings or roundtables taking place across Australia and abroad, and almost 600 written submissions. Before it was abolished, the Law Commission of Canada also proved innovative in its use of technology when reaching out to the public, commissioning a documentary about Canadian Aboriginal legal traditions, facilitating contests for high school students, and developing an online quiz for its project on electoral reform, among many other initiatives.

Although perhaps not quite as creative in their approach given their more formal structure, parliamentary committees have also become better at using new technologies for wider consultation in recent years. Many use videoconferencing on a regular basis rather than spending money on witness or committee travel and some are starting to dabble more seriously in online consultation. E-consultations are slowly becoming more common. In Canada, they have been used in the past although they are still not the norm. E-consultations were also recommended in a 2001 report of the Australian House of Representatives Standing Committee on Procedure although the practice has yet to become widespread. However, e-consultations have now gained widespread acceptance by parliamentary committees in the United Kingdom.

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67 Hughes, above n 40, 801; Bosc, above n 45, 30.
68 For example, in 2010 the Australian government significantly reduced the Australian Law Reform Commission’s budget, causing it to streamline inquiries and consultation practices by, among other things, focusing more on e-consultation.
70 Hughes, above n 40, 801.
71 One example is the targeted website built by the British Columbia Legislative Assembly Select Standing Committee on Health to reach out to youth during its 2006 study on childhood obesity and physical inactivity: Select Standing Committee on Health, British Columbia Legislative Assembly, A Strategy for Combating Childhood Obesity and Physical Inactivity in British Columbia (2006).
73 Building on experiences in 2002 when a UK committee was struck to examine legislation on domestic violence set up an online forum that received 1000 'pieces of information from women who had suffered or were suffering domestic violence.' (Kevin Rozzoli, 'Evolution of the Committee System in the House of Representatives' (Paper presented at the Seminar on the Twentieth Anniversary of the Establishment of the House of Representatives Committee System, Canberra, 15 February 2008) 94). See also John Baczynski, 'House Committee Use of Information Communication Technology' (Paper presented at the
To date, commissions of inquiry have not been quite as creative in their use of the internet and other mechanisms to reach out to potential witnesses, and this may be one of their drawbacks in terms of fostering widespread and interactive consultation. This reality may stem from their more formal construction and the fact that they often seek targeted information. However, there are opportunities for success if one considers positive examples of non-statutory, policy-driven inquiries such as the Australian National Human Rights Consultation, which solicited online submissions, used online discussion forums, commissioned a national phone survey, and regularly contributed to online media and social networking media to enhance its consultation process.74

Nevertheless, despite the obvious benefits, it must be noted that e-consultations also come with built-in drawbacks: they open the floodgates to communication, leading to a potentially unmanageable number of submissions.75 E-consultation is also of little assistance to people living in remote communities who may not have internet access. As such, the benefits and disadvantages of opening the doors in this manner must be taken into consideration at the start of each study, with e-consultation carefully tailored to meet specific needs.76

Transparent consultation is also often a critical component of good consultation. As noted by Justice Bruce Robertson, ‘the best outcomes will flow from totally open and unrestrained sharing of ideas and possibilities as work in progress.’77 Of course, transparency must be balanced against the need for confidentiality. In certain circumstances law reform mechanisms are better served by offering in camera hearings to ensure that those who might feel threatened by the process to come forward. But transparency must be the baseline.

Keeping a consultation transparent is relatively simple compared to some of the other criteria listed above. At a minimum, it involves maintaining transcripts of hearings and making them public (in today’s world, this means putting them online). Going a few steps further, law reform mechanisms should also consider televising or webcasting hearings and making a concerted effort to keep the media interested and involved. Maintaining this kind of transparency heightens accountability and can also open the door to further submissions, as the public can more easily engage with the study and its subject matter.78

Parliamentary committees are particularly good at generating transparency. Transcripts of committee hearings are available online within days, and meetings are generally open to the public and are frequently webcast or televised. Written submissions are also made available to the public in some jurisdictions.79 By contrast,
transcripts of meetings conducted by law reform commissions are not necessarily made immediately available to the public in the same way. However, law reform commissions have a particularly open report-writing process that is not generally followed by parliamentary committees, publishing issues papers, consultation documents, discussion papers, and sometimes even interim report before the final report. This allows the public to see where the commission is heading before the final outcome, giving individuals an opportunity to intervene with submissions if necessary.80

Policy-oriented commissions of inquiry are also often relatively transparent, depending on the particular procedures put in place. They are generally open to the public, with transcripts, background material and submissions available on the commission website. Some inquiries are so much in the public eye that they may even be regularly televised.81

One final criterion for generating good consultation is having sufficient time to truly investigate an issue. In theory, commissions of inquiry may be best suited to this as they are established with a specific study and goal in mind, hopefully accurately calculating the amount of time needed to accomplish that goal. In practice, inquiries often take longer than predicted. Law reform commissions also generally have ample time to carry out real consultation for their studies, often accorded long deadlines and extensions.

It is parliamentary committees that may have the most difficulty in this regard. Like law reform commissions, parliamentary committees often have multiple studies on their agenda but less time to carry them out. One reality in the world of politics is the parliamentary clock — when an election is called or when parliament is prorogued, all committee work dies on the Order Paper. This can mean that a study that has been going on for months will evaporate into thin air. It may recommence with the start of a new parliamentary session, but it may not; and even if it does, committee membership may have changed, taking the study in a potentially new direction or simply necessitating the education of new members on information that had been gathered before. As such, some parliamentary committees may place more emphasis on getting a study done than on digging deeply. For these reasons, special ad hoc parliamentary committees might be better placed for carrying out in-depth studies as they at least only have one study on their agenda compared to Standing Committees, where studies compete for agenda time. On the other hand, ad hoc committees may die along with their study with the end of Parliament, while Standing Committees have the advantage of knowing that they will be reconstituted in a new session. The Senate or House of Lords might also be a better place to carry out more in-depth studies, as members in Canada and the UK are unelected and thus have more time and energy to devote to deep consultation as well as not needing to worry about politics to the same extent as

80 Graycar and Morgan, above n 15, 406.
81 Peter K Doody, ‘Commissions of Inquiry, Fairness, and Reasonable Apprehension of Bias: Protecting Unnecessary and Inappropriate Damage to Reputation’ (2009) 22 Canadian Journal of Administrative Law & Practice 19, 31. This may be the case more so with investigative (as opposed to policy-oriented) inquiries dealing with an immediate scandal, such as Canada’s 2004-06 Commission of Inquiry into the Sponsorship Program and Advertising Activities, which was followed religiously on television by a large segment of the Canadian population in Quebec.
their elected counterparts. Certainly, what is clear is that although some parliamentary committees manage to undertake deep consultation over a number of years,\textsuperscript{82} others reduce what could be deep examinations of an issue into just a few short months.\textsuperscript{83}

Ultimately, deep consultation is a difficult task to accomplish but certainly not impossible. Time and resource constraints are always a practical barrier, but law reform commissions, parliamentary committees and policy-oriented commissions of inquiry have proven that they are able to reach out into dark corners to hear voices that might otherwise go unnoticed. The groundwork is there, it just needs to be followed more consistently. Real consultation is an important aspect of effective law reform — it gets the facts on the table and gives the public ownership of the legal or policy reform in question, providing one means of battling submission fatigue and encouraging engagement with both the final report and the hoped-for implementation of the report's recommendations.\textsuperscript{84}

\textbf{C Focus on the Facts}

However, good consultation is only half the battle when it comes to information-gathering for a law reform study. The other half is research — real research that digs deeply to uncover the facts upon which law reform proposals are based. As noted by Sir Geoffrey Palmer, former Prime Minister of New Zealand and President of the New Zealand Law Commission, '[t]here is always a tendency when formulating proposals for change to fail to consider rigorously all the options and analyse the state of the facts.'\textsuperscript{85} As such, law reformers must remember that before focussing on the final outcome, they need to sort out the social facts\textsuperscript{86} and understand the relevant statistics. They need to see the entire picture and identify the real problem(s) before launching into a search for policy solutions.\textsuperscript{87} Indeed, sometimes the most important legacy of a law reform study is not the recommendations themselves, which may or may not be implemented, but the publication of the facts underlying an issue, serving as education for the public and future reformers.

The extent to which research can overturn preconceived notions about the issue under study is one indication of how important independent research is. As noted by

\textsuperscript{82} For example, the Canadian Subcommittee on Solicitation Laws or the Canadian Senate Standing Committee on Human Rights' 2007 study on children's rights which stretched over two and a half years.

\textsuperscript{83} For example, in 2008 the Australian Senate Standing Committee on Legal and Constitution Affairs completed an inquiry into the effectiveness of the Commonwealth Sex Discrimination Act in eliminating discrimination and promoting gender equality in just six months, holding only three days of hearings.

\textsuperscript{84} Atkinson, above n 55, 166.


\textsuperscript{87} Michael Kirby, \textit{Law Reform: Past, Present, Future} (Speech delivered at the Alberta Law Reform Institute, Edmonton, 2 June 2008), 16; Hughes, above n 40, 795. Clearly, this discussion of 'real research' raises (but does not delve into) the important issue of research methodology, which is unfortunately too large a subject, with too broad an existing literature, to be tackled in this paper.
David Weisbrot, President of the ALRC for 10 years, '[w]hen such research is undertaken, it is very interesting to note how often the received wisdom is challenged. As only one example, parliamentarians and staff of the Canadian Subcommittee on Solicitation Laws began their study into prostitution by attempting to uncover a portrait of what prostitution actually looked like in the country. One of the committee's major surprises was to discover early on that although street prostitution is the image that dominates the imagination, in fact, street prostitution only accounts for 5 per cent to 20 per cent of prostitution in Canada. This was a significant indication of how perceptions can colour reality and how law reformers need to be aware of the true profile of an issue to understand the depth and scope of a problem before seeking appropriate solutions.

Analysing and interpreting the facts is equally important. When determining the effectiveness of a law reform agency it is important to understand the extent to which the agency in question has relied on the opinion of others in doing its research and coming to its conclusions, and the extent to which it has undertaken the fact-finding and research itself. Again, time and resource constraints are a real issue, and there is no need to re-invent the wheel. If the research already exists then it does not need to be duplicated. However, law reform agencies must know how to interpret research and evidence from witnesses to determine whether bias is present and to what extent there may remain gaps in the existing knowledge. Consciously or subconsciously, witnesses present facts in a manner that is favourable to their perspective — it is up to law reformers to take that information and turn it upside down to see what lies underneath. Information gathered, especially by parliamentary committees, so often depends on the questions asked and how witnesses choose to respond. Unless questions are asked and answered in a systematic or entirely unbiased manner, it is easily possible for important nuggets of information to go unnoticed or unsaid. In the context of parliamentary committees, it is particularly important to remember that politicians may have their political blinkers on or not wish to believe the evidence of an individual who contradicts their worldview.

The importance of appropriately interpreting evidence is well demonstrated by Nathalie Des Rosiers, former President of the Law Commission of Canada, who recalled this conversation in her notes:

90 Graycar and Morgan, above n 15, 411-19.
Had an interesting conversation today regarding Close Personal Adult Relationships Project. I was explaining the project to MC, a biologist... I explained to him that interdependent relationships were good for society because statistics show that people in relationships are healthier than people who are alone. He laughed: 'You read the statistics all wrong — it is because healthy people have relationships and sick people don't — that is the proper reading of your statistics and it is a fact of nature.' In fact, the statistics could be interpreted either way. Maybe there is no correlation between the two facts at all. This is the pitfall that law reformers need to be aware of — both in their own interpretation and in listening to the interpretations provided by witnesses.

Hand in hand with this, law reformers need to be careful not to place too much reliance on anecdotal evidence from witnesses. While some advocates may get their point across more effectively by providing emotive examples, it is important for law reformers to be attuned to how messages are communicated to ensure that they base their conclusions on real research and not just personal illustrations. In general, it may be easier for law reform commissions to get down to the facts because their research and submission process is less tied to direct testimony, whereas parliamentary committees and commissions of inquiry are bound by what they have heard, to a certain extent. However, again, the Victoria Inquiry into Prostitution belies this point, providing a good example of a policy-oriented inquiry that placed great emphasis on independent research. That inquiry undertook extensive research into prostitution through interviews with sex workers, and specifically into youth involved in prostitution, drug abuse and prostitution, and the environmental effects of prostitution.

Linked to discussion about the need for law reform mechanisms to engage in real research, is debate surrounding the level of expertise needed by law reformers. Some commentators argue that it is best to have investigators with general knowledge so that they do not bring preconceived notions to the agency's studies and so that the agency has a good general base of knowledge for all of its work. Others argue that it is better when law reformers have a certain degree of expertise in the field that they are examining so that they can bring the best possible minds to the issue. No matter what, it is important to remember that even when law reformers are not experts themselves, all law reform mechanisms are backed by some form of expert research staff that can be bolstered when specialised knowledge is required.

Certainly, members of parliamentary committees are rarely experts in the particular field of study. They are politicians from a variety of different professional backgrounds who are hopefully on a committee because they have some familiarity or association.

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92 Des Rosiers, above n 50, 164.
93 Former Commissioners with the Australian Law Reform Commission, Jenny Morgan and Reg Graycar, note that in the family law context, fathers' groups testifying before parliamentary committees tend to rely on anecdote and personal history, while women's groups attempt to avoid the personal by providing more empirical research. Graycar and Morgan, above n 15, 411-19.
94 New Zealand Law Commission, above n 5, 5; Gilligan, above n 5, 302; Doody, above n 81, 21.
95 See discussion of this issue in Reg Graycar and Jenny Morgan, 'Equality Unmodified?' in Margaret Thornton (ed), Sex Discrimination in Uncertain Times (Australian National University E Press, 2010) 175.
with the subject matter, but possibly not. This wide variety of experiences accordingly brought to the committee table may be an advantage, but it is not necessarily an 'expert' advantage.96 Interestingly, in Canada a premium seems to be placed on having expertise on committees, with Parliamentary Secretaries generally designated to sit on the committee in their field (although Ministers do not sit on committees).97 By contrast, in Australia, Parliamentary Secretaries as well as Ministers are generally barred from sitting on committees due to concerns about conflict of interest.98

Law reform commissions each have their own approach to providing expertise. While some commissions are staffed by full-time commissioners who have been in their position for many years, other commissions are staffed by commissioners who are appointed on a part-time basis and may have expert knowledge of the area that they have been asked to examine.99 In addition, there is an ongoing debate about whether law reform commissioners should be lawyers or not. Law reform commissions have been traditionally headed by lawyers because being on the commission involves dealing with the law and they are thus seen as experts. But some jurisdictions have moved to appoint a wide variety of interdisciplinary experts as commissioners.100 Certainly, law reform is not only about the law but also the underlying social, scientific or economic facts that lie behind that legal reform. As such, many commentators argue that in order for law reform to be pragmatic and balanced it must be complemented by a non-legal perspective that can maybe better relate to societal needs and influences such as economic disadvantage, power issues, etc. Changes that are made based on the law alone are unlikely to respond to such needs.101 In support of non-legal commissioners, Justice Bruce Robertson has stated that he is persuaded that we can do better and more effective work if, in the appointment of Commissioners and in engaging research staff and consultants, we embrace people from other disciplines. Wider perspectives can only be advantageous in assessing the present and recommending productive change for the future.102

By contrast, commissions of inquiry are still often headed by judges and lawyers. This approach may be logical in the context of investigative inquiries, which are often quasi-judicial in nature and founded on a much more adversarial process than the

96 Rodrigues, above n 65, 256; Cash, above n 91; Halligan, Miller and Power, above n 5, 237–38.
97 O’Brien and Bosc, above n 5; Canada House of Commons, above n 26.
98 Parliament of Australia, Odgers’ Australian Senate Practice, above n 24; Harris, above n 26, 635; Australia House of Representatives, above n 26.
99 This issue is currently a hot topic for the Australian Law Reform Commission, which saw its complement of full-time commissioners reduced to one in 2010 amid discussion of budget cuts and focussing on project-specific expertise.
100 For example, the New Zealand Law Commission, the New South Wales Law Reform Commission, the now abolished Law Commission of Canada and the Law Reform Commission of Ireland.
102 Robertson, above n 49, 9.
other two mechanisms. However, the argument is less clear when it comes to policy-oriented inquiries.

D Timeliness

Another factor in determining the effectiveness of a law reform mechanism is whether or not it manages to provide enough time for real consultation and research without dragging on for too long, spending too many resources. This is a common and very practical complaint about many law reform agencies and bears serious consideration. Not only can overly lengthy studies cost the taxpayer too much money, a study that drags on for too long may lose the initiative behind its original mandate — if too much time elapses the driving reasons behind the reference may disappear, relevant stakeholders or the government may lose interest, etc.

Perhaps the worst law reform offender in this category is the commission of inquiry, although policy-oriented inquiries are not as bad as investigative. Inquiries are often given set deadlines, but the sheer volume of information that they must process often leads to them lasting longer than expected. In its recent study on inquiries, the New Zealand Law Commission noted that inquiries in New Zealand can often go on for three times longer than initially forecast. Only three in the last 30 years met its reporting deadline. Inquiries are also a very expensive law reform mechanism because their ad hoc nature entails significant start up costs, they often require highly-paid professionals at their helm, and their investigations are often highly elaborate in nature.103

Law reform commissions are significantly more efficient in terms of time and money. They tend to reach a conclusion within a reasonable time and are substantially less expensive, in large part because they are permanent institutions that do not have to start from scratch with each study.104 Of the larger federal commissions, the ALRC spends approximately $3.5 million (AUD) per annum,105 the Law Commission of Canada spent approximately $3.5 million (CAD) in its final year,106 the Law Commission of England and Wales spends approximately £4.4 million per annum107 and the New Zealand Law Commission spent approximately $5.1 million (NZD) per annum.108 However, it is true that some studies drag on for far too long,109 such as the New South Wales Law Reform Commission’s 1987-98 study on neighbour relations110 or its 1991-99 review of the Anti-Discrimination Act.111 The 2000 review of the New Zealand Law Commission’s operations also criticised the Commission for taking too

103 New Zealand Law Commission, above n 5, 32; Sackville, above n 5, 285-87.
109 At the same time, it must be recognised that some studies are forced onto the backburner when Commissions are overwhelmed with multiple study mandates, some with tighter deadlines.
long, with the extreme example given of the Commission’s study on the codification on the law of evidence,\textsuperscript{112} which took 10 years to complete (1989-99).\textsuperscript{113}

Parliamentary committees are perhaps the most timely of the three law reform mechanisms, likely because they have set deadlines established in their mandate,\textsuperscript{114} each new request for funding is closely scrutinised by opposition parties in Parliament, and most importantly, because of the committee’s constant awareness that the study could lapse if Parliament falls or an election is called. As noted earlier, parliamentary committees are frequently involved in a race against the parliamentary clock. Just because a study lapses does not necessarily mean that it cannot be picked up again in the next session — but that future is not as certain as finishing the study in the time available. As such, parliamentary committee studies range all over the shorter end of the map in terms of the time that they need for completion. Some studies wrap up in weeks and are unlikely to meet the ‘real consultation and research criteria’, others wrap up in months, and other committees have managed to see their more in-depth studies survive over a few years and more than one Parliament.\textsuperscript{115}

\section*{E Recommendations}

[The] parliamentary dustbin is littered with the unremembered words of inquiries into important policy options.\textsuperscript{116}

Obviously, one of the most important roles of any law reform mechanism is to produce clear and coherent recommendations for the government and others to implement. As has already been noted, governments never have an obligation to implement recommendations; however, they sometimes at least have an obligation to provide a public response. The reality is that many recommendations languish in the dustbins of history, some are only partially implemented, and some may be picked up again and implemented years later, no longer in the context of the study. It is a rare recommendation that is implemented straight away. Whether a recommendation is implemented depends on many things: the law reform mechanism itself and the strength of the particular recommendation; the level of faith that the government has in the law reform mechanism; support in government for the initial order of reference, the government’s priorities at the time that the recommendation is released; etc. As noted by founding Chairman of the ALRC and former High Court Justice Michael Kirby discussing an ALRC recommendation on the \textit{Bankruptcy Act}, some

\begin{itemize}
  \item \textsuperscript{113} Palmer, above n 85, 13, 109.
  \item \textsuperscript{114} Although they may also request extensions.
  \item \textsuperscript{115} For example, the Canadian Subcommittee on Solicitation Laws was established in October 2003 and managed to revive its study through three Parliaments to finally report in December 2006. The Canadian Senate Standing Committee on Human Rights’ study on children’s rights also survived two Parliaments, running from November 2004 to April 2007.
\end{itemize}
recommendations may simply not be ‘sexy’ enough to capture the government’s attention and inspire implementation.\(^{117}\)

But what ultimately makes for a good recommendation and thus an effective law reform agency? Some commentators emphasise that a good law reform recommendation is one that is practical and can be feasibly implemented. A common complaint with respect to some law reform agencies is that they do not seem to have fully considered the practical implications of what their recommendations demand: what is the cost of implementing that recommendation and what resources will be involved?\(^ {118}\) From this perspective, law reform commissions may not be very successful, as they are not generally known for having their recommendations implemented and their recommendations may be disconnected from the realities of governance.\(^ {119}\) The ALRC and the Law Commission of England and Wales are considered successful examples of the genre, and their implementation rates hover around 60–70 per cent.\(^ {120}\) The development of apparently impractical recommendations may be one of the reasons that law reform commissions have had such a rocky history, as governments are not always willing to invest in commissions that do not provide practical solutions. Michael Kirby notes that the original Canadian Law Reform Commission was most certainly abolished for this reason.\(^ {121}\)

Parliamentary committees and commissions of inquiry may have the upper hand in this regard. Operating in a less academic environment and more attuned to what the government might be willing to implement (particularly in the case of parliamentary committees), these bodies may have a better sense of what is both practical and possible in terms of recommendations. Commissions of inquiry are also established for a specific purpose by government and operate very much in the public eye. Their recommendations are subject to intense public scrutiny, and are thus more likely to be implemented than not. However, because of the less permanent nature of parliamentary committees and commissions of inquiry, no systematic studies show their relative implementation rates.

Without denying the benefits of practical and implementable recommendations, a number of commentators argue that one has to look beyond such short-term black and white criteria to consider the long-term deeper worth of reports and recommendations issued by law reform mechanisms. Maybe it is just as important for recommendations to push the envelope of law reform to spark new thinking and public awareness.\(^ {122}\) David Weisbrot argues that law reform mechanisms should be ‘implementation-
minded, but should not become implementation obsessed.\textsuperscript{123} Maybe more important than implementation, is the quality and relevance of the recommendations. The role of such agencies is not to make the government happy but to be forward-thinking, generate good research, educate the public, provide assistance for the judiciary, and provide ideas and sustenance for advocacy groups. The implementation of new legislation is only one of the agency's many goals.\textsuperscript{124}

It is true that more theoretical, forward-looking recommendations can spark change in thinking about an issue, starting a cultural shift, reframing legal debates and raising public awareness. At some point this may lead to legal change, but not necessarily immediately. As noted by Nathalie Des Rosiers, ultimately, '[s]uccessful implementation demands change in attitudes in the general public as much as it requires convincing powerful decision-makers.\textsuperscript{125} Another former President of that Commission, Roderick Macdonald, comments that 'when an agency has succeeded in changing the way a problem is being conceived and debated, real follow-through and implementation will always have a moving horizon.'\textsuperscript{126} Sometimes just undertaking a study can be influential in itself, getting the word out about an issue and changing how people think about it. Even if recommendations are ignored by government, they may be taken up at the lower level and generate a movement for change that the government may have to come to grips with sometime in the future.\textsuperscript{127}

\begin{footnotesize}
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\item \textsuperscript{123} Weisbrot, 'The Future for Institutional Law Reform Consultations', above n 66, 36.
\item \textsuperscript{124} Murphy, Law Reform Agencies, above n 5, 60–61.
\item \textsuperscript{125} Des Rosiers, above n 50, 170.
\item \textsuperscript{126} Macdonald, 'Continuity, Discontinuity, Stasis and Innovation', above n 5, 95.
\item \textsuperscript{127} Hughes, above n 40, 804; Roderick Macdonald, 'Law Reform and its Agencies' (2000) 79 Canadian Bar Review 99, 105–06; Brian Opeskin, 'Measuring Success' in Brian Opeskin and David Weisbrot (eds), The Promise of Law Reform (2005) 202, 218; David Weisbrot, 'The Role of the ALRC in Influencing Legal Change' (2007) 19(1) Legalitate 5; David Weisbrot, 'The Future for Institutional Law Reform Consultations', above n 66, 36; Robertson, above n 49, 14; Leyne, above n 45, 74. A good example of this process may be the global debate over the spanking of children. Since spanking was first prohibited in Sweden in 1979, approximately 29 states around the world have abolished corporal punishment, often by repealing the defence of reasonable correction allowed to parents in national criminal legislation. The lobby group for abolition has grown strong and vocal, but Australia, Canada, the United Kingdom and the United States remain significant holdouts, with advocates often arguing that change needs to start with education, not legislative change which would simply open the floodgates to litigation. In 2003, the Tasmanian Law Reform Institute recommended abolishing the Criminal Code defence available to parents, but this recommendation has not been implemented. Nevertheless, this recommendation, and many like it around the world, has contributed to the lobby movement, sparking the very education and awareness-raising that anti-abolitionists argue for and providing further support for legal changes happening elsewhere in the world. The clamour for change is audible and the number of countries amending their law each year clearly an indication of a groundswell of support. (For more information, see: Global Initiative to End All Corporal Punishment of Children, States with Full Abolition (2009) <http://www.endcorporalpunishment.org/pages/frame.html>; Coalition on the Physical Punishment of Children and Youth, Joint Statement on Physical Punishment of Children and Youth (2004) <http://www.cccw-cepb.ca/sites/default/files/publications/en/JointStatementReportE.pdf> (endorsed by more than 220 professional organisations in Canada); Tasmania Law Reform Institute, Physical Punishment of Children, Final Report No 4 (2003).}
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Clearly it is not as easy to judge the success of recommendations that do not suggest black and white changes to the law.\textsuperscript{128} Those who argue that law reform mechanisms should not be judged simply on their implementation rate point to various other indicators of how such mechanisms have made their mark in society, if not in legislation.\textsuperscript{129} One is the number of times that reports and recommendations are cited by courts and in journal articles.\textsuperscript{130} Certainly, parliamentary committees place great stake in how their reports are received by stakeholder communities, often judging their success by how much their reports are cited by such organisations after the fact.\textsuperscript{131} As with implementation rates, law reform commissions are better than parliamentary committees at actually keeping public record of such statistics, and they do look promising. The Law Commission of Canada was cited in judgments 10 to 25 times a year before it was abolished,\textsuperscript{132} and the Law Commission of England and Wales was cited over 40 times by English courts in a recent two-year period.\textsuperscript{133} In one instance, the Court of Appeal was specially convened to hear eight joined appeals on damages for non-pecuniary loss for personal injury in response to a report by the English Commission.\textsuperscript{134} The reports of the ALRC have also become so ubiquitous that they are frequently cited by Australian courts, including the High Court. ALRC reports have been cited by Australian courts 60 to 80 times per year since 1998, and in 64 major decisions.\textsuperscript{135} While still sitting on the High Court, Justice Michael Kirby noted that courts frequently turn to law reform commission reports in their decision-making:

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Naturally, I frequently do so. Often law reform reports give the best and most accurate and detailed picture imaginable of the state of the law at the time of the report. The recommendations for change can sometimes, but not always, be reflected in judicial accretions where Parliament's log-jam has proved impenetrable.\textsuperscript{136}
\end{quote}

Perhaps a prime example of how law reform agencies have a real and concrete influence is the ALRC's 1986 report on Aboriginal customary law.\textsuperscript{137} Recommendations were never implemented by the government and the report never received any comprehensive response from Parliament or government. Nevertheless, the report had significant influence on a broader level: it had a real impact on the public (this report has the highest number of hits on the ALRC website), was

\textsuperscript{128} Macklin, above n 101.
\textsuperscript{129} See discussion in Graycar and Morgan, above n 15, 403–10.
\textsuperscript{130} Weisbrot, 'The Future for Institutional Law Reform Consultations', above n 66, 37; Opeskin, above n 127, 218.
\textsuperscript{132} Opeskin, above n 127, 219.
\textsuperscript{133} Michael Sayers, 'Co-operation Across Frontiers' in Brian Opeskin and David Weisbrot (eds), The Promise of Law Reform (Federation Press, 2005) 243, 252.
\textsuperscript{136} Kirby, 'More Promises of Law Reform', above n 119, 29.
frequently cited, and, according to many observers, including Michael Kirby, may very well have influenced the High Court’s landmark decision in *Mabo and Others v Queensland (No. 2)* (1992) 175 CLR 1.\(^\text{138}\)

It is unclear which law reform mechanism outperforms the others from this awareness-raising perspective. The evidence noted above shows that law reform commissions have had significant success in generating awareness about the issues that they tackle in forums other than government and even instigating change by alternative means. However, commissions of inquiry also operate squarely in the public eye given the high profile of their subject matter and their reports often generate significant publicity, giving inquiries an important awareness-raising role.\(^\text{139}\) By contrast, parliamentary committees are not as visible, but their more controversial reports still often play out in the media and under very public scrutiny. For example, the Australian Senate Select Committee for an inquiry into a certain maritime incident's 2002 report was an important medium for providing the public with information about the 'children overboard' affair,\(^\text{140}\) even if the committee’s recommendations were ultimately not as useful. Parliamentary committees are also very important as a tool for educating parliamentarians — those on and off the committee. Parliamentary committee studies expose influential parliamentarians to important issues that can spark an urge to pursue the concern in their daily work, in caucus or publicly in the House.\(^\text{141}\)

Ultimately, many law reform agencies (particularly law reform commissions and parliamentary committees) may take up studies in full, sometimes cynical, knowledge that their recommendations may never be implemented, acting on the hope and expectation that the report itself will raise important issues, generate good research, push the envelope and put increased public pressure on persons and bodies of influence.

However, despite the undeniable importance of this ‘soft law’ approach, it is important to remember that law reform mechanisms must be realistic in their goals — they risk becoming irrelevant if too theoretical and impractical in their recommendations. As noted by J N Lyon, ‘[a] model of law reform that neglects systematic treatment of implementation and declines accountability in terms of actual results felt by people in the real world is a model that requires serious re-thinking.’\(^\text{142}\)

Beyond this discussion of whether recommendation implementation rates are a full indicator of the success of a law reform mechanism or whether one must also consider


\(^{139}\) Doody, above n 81, 21.

\(^{140}\) In the lead-up to the 2001 federal election, the Howard government alleged that asylum seekers approaching Australia by ship had thrown children overboard to ensure that they were rescued and taken to Australia. For more information on this study see the Committee website: <http://www.aph.gov.au/Senate/committee/maritime_incident_ctte/index.htm>.


\(^{142}\) Lyon, above n 46, 430–31.
the extent to which recommendations or the inquiries themselves raise awareness and push the envelope, there are other indicators of what makes for a good recommendation. Foremost of these is whether the recommendations are tough and independent or whether certain law reform bodies tend to produce slanted or political recommendations, or worse — weak recommendations that are simply bland statements of compromise because law reformers could not come to agreement. Producing tough and independent recommendations is a relatively easy task for law reform commissions and commissions of inquiry. Law reform commissions are sufficiently independent from government that they are generally known to tread their own path and produce balanced recommendations. Commissions of inquiry are also powerful bodies created with a specific mandate for reform. Occasionally Commissioners are accused of bias, but despite such anomalies, commissions of inquiry are widely respected institutions headed by individuals who are appointed precisely because they are seen as non-political and independent.

Recommendations put forward by parliamentary committees are most vulnerable to attack in this regard. These committees are inherently political bodies and may be dominated by one political stream of thinking (in a majority government) or made up of such an amalgam of political parties that no agreement on a strong recommendation is possible and all that is produced are bland statements of compromise. This was the accusation lobbed at the Canadian Subcommittee on Solicitation Laws, which spent three years studying prostitution in Canada, producing a report that was high on factual content, but which many sex worker advocacy groups criticised as weak and ineffectual in terms of its recommendations. Compromise due to lack of agreement is not the only concern. Another problem with parliamentary committees is that members may be unwilling to take risks when putting forward recommendations for fear of the ramifications when the time comes for re-election.

In the end, the impact of politics on a committee’s recommendations is simply a reality for parliamentary committees, leading to the conclusion that parliamentary committees are better tasked with less politically-charged studies. Clearly, the composition of Parliament has a large role to play in how politics affect committee studies: whether there is a majority or minority government and whether the particular Parliament, parliamentary session or House of Parliament is acrimonious or not. As has already been noted, committees from the upper chamber are generally more likely to work cooperatively than those in the lower house — this is even the case in Australia’s elected Senate. Senators and members of the House of Lords tend to be more independent of the party line, working together on committees to find common ground and push for innovative reform. All of this must be factored into determining whether a parliamentary committee is capable of producing strong and independent recommendations.

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143 For example, Justice Gomery, who headed the investigative Canadian Commission of Inquiry into the Sponsorship Program and Advertising Activities, was found by the Federal Court to be biased against former Prime Minister Jean Chrétien and some of the findings from the Inquiry’s 2005 report were set aside. For further information, see: Doody, above n 81, 36–45.


Finally, whether or not the government has an obligation to respond to law reform agency reports is an important indicator of the effectiveness of reports and recommendations. An obligation to respond is not an obligation to implement, but it does have the potential to place the government in the hot seat, at least for a short while. Most of the time, governments have few obligations to respond — the New Zealand government is one of the only governments that has to respond to recommendations put forward by its law reform commission.\textsuperscript{146} Neither are there statutory obligations on government to respond to commissions of inquiry, although there is certainly a tradition of doing so in Australia and the UK. Of the three mechanisms, only parliamentary committees have real power to compel a government response, giving parliamentary reports an added bit of strength. However, the kind of response provided is another factor to consider. While the Australian government tends to provide itemised, recommendation-by-recommendation responses, the Canadian government is often less thorough. Sometimes the government responds in a few pages to a hefty report, sometimes it only provides platitudes rather than explicitly responding to each recommendation.\textsuperscript{147} It is a rare government response that fully canvasses the issues and provides an itemised, comprehensive response as to why it will or will not implement the recommendations.

\section*{IV PUTTING IT ALL TOGETHER}

Absolute conclusions are hard to draw from the above discussion. Ultimately, success is relative when it is understood that different law reform mechanisms are suited to different tasks. One way to put this evaluation into perspective is to ask whether permanent or ad hoc law reform bodies are more effective. The arguments for permanent law reform mechanisms are numerous — as highlighted by Justice Michael Kirby, ‘permanent law reform bodies keep the flame of ideas alight.’\textsuperscript{148} The idea is that permanent law reform mechanisms (notably, law reform commissions) allow for the creation of institutional memory, the establishment of a true culture of independence, the development of research and consultation skills, as well as a compilation of useful databases. Proponents of permanent mechanisms emphasise that such bodies are more cost effective, have the opportunity to establish greater visibility and credibility than their ad hoc counterparts, and can build long-term relationships with interest groups that might otherwise quickly develop submission fatigue. Permanent mechanisms also provide continued availability of information to the public, where websites for ad hoc agencies disappear over time, and their documentation often with them. Finally, permanent mechanisms have greater capacity to follow-up on their recommendations, keeping their eye on implementation into the future.\textsuperscript{149}

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\textsuperscript{146} Although this is not a statutory obligation, but is contained in instructions to Cabinet.


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However, ad hoc agencies have their own benefits. While some issues may be better dealt with in a cohesive, forward-looking manner by a permanent agency that can work with longer-term objectives, standing back to scrutinise the larger picture, sometimes areas in need of reform only become obvious at a crisis point. This is when an ad hoc body may be best equipped to step in as required and deal with the law reform issue of the moment. In many ways, the ad hoc nature of some law reform agencies may be beneficial to their ability to think outside the box, operating in the public eye with a staff hired expressly to deal with the issue at hand in an expert manner rather than approaching law reform as a full-time, ongoing job.\textsuperscript{150}

More specifically, law reform commissions are best suited to proactive, long-term, systemic examinations of a legal regime as they have the ability to stand back and look for gaps, link projects over time and develop an ongoing dialogue with stakeholders. They cannot drop everything else at a moment’s notice to deal with a crisis situation. By contrast, commissions of inquiry are best suited to zooming in as required in a reactive manner to deal with immediate issues with concentrated and focussed attention. The ability of commissions of inquiry and parliamentary committees to hear from witnesses in a more formal setting may also be useful in certain circumstances, while in others it may be best to allow for a more flexible approach with in camera submissions and a more relaxed environment intended to inspire trust and confidence.\textsuperscript{151} In many ways, standing and ad hoc parliamentary committees can often provide a happy medium between law reform commissions and statutory inquiries — provided that the issue in question is not overly political — as they have the useful ability to provide timely and practical reports that require a government response.

This paper measures success as effectiveness, looking at when and whether law reform mechanisms meet certain conditions: relying on appropriate triggers, undertaking deep consultation, focussing on the facts, responding in a timely fashion and making ‘good’ recommendations. The conclusion is that one must carefully take ones measure of the proposed study before choosing the most suitable forum and then ensure that the tools are in place for the law reform mechanism to most effectively meet these conditions. In addition to the three law reform mechanisms under discussion here, multiple other mechanisms constantly push the envelope and contribute to reform: public protest, advocacy groups, ministerial and governmental committees, and even the courts. Law reform is not a monolithic business and having multiple options available is perhaps the best way of ensuring that there is an appropriate means of reaching a solution for each kind of problem. The difficulty lies in avoiding duplication, ensuring that these bodies function as effectively as possible and knowing how to call on the most valuable body as needed.

\textsuperscript{150} Neave, ‘Institutional Law Reform in Australia’, above n 7, 257; Macdonald, Recommissioning Law Reform, above n 22, 870–71.