



Parliamentary committees: The Return of the sausage machine?

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On 20 June 2006 the Leader of the Government in the Senate, Senator the Honourable Nick Minchin, announced the Coalition Government's proposal to reform the Senate Committee system, reducing the number of committees from 16 to 10 with the removal of Senate reference committees.

According to Senator Minchin, the rationale behind the proposal was to address the poor functioning of the Senate committee system. This would be achieved by removing the unnecessary duplication resulting from having a pair of committees (legislative and reference) covering each of eight portfolio areas. Furthermore, with the addition of two new portfolio areas (thus bringing the total number of committees to 10), Senator Minchin argued that the scope of the committees' work would be broadened.¹ While the membership and chairing of the committees would reflect the composition of the Senate (thus indicating that the committees would be chaired by a Government Senator and have a Government majority) Senator Minchin was adamant in his view that the Government 'continues to support the Senate's role as the house of review.'²

Not surprisingly, Senator Minchin's views were not shared by Senator Chris Evans (ALP), the Leader of the Opposition in the Senate and Senator Bob Brown, the Leader of the Greens. Both Senator Evans and Brown used strong language to characterise Senator Minchin's proposal. Senator Evans asserted that it would 'emasculate the Senate Committee system – the key accountability instrument in the Australian Parliament' with the move representing 'a nail in the coffin of the Senate's capacity to hold this government to account...'³ Senator Brown told the Senate 'the government wants to bomb the Senate committee system—this bastion of inquiry on behalf of the public into the nation's affairs so that we have informed democracy and review of government decisions...'⁴.

¹ Senators Helen Coonan and Nick Minchin 2006 'Proposal to Reform the Senate Committee System' *Joint media statement* 20 June 2006

² *Ibid.*

³ Senator Chris Evans 2006 'Howard Government Emasculating Senate Committee System' *Media Statement* 20 June 2006.

⁴ Senator Bob Brown 2006 *Hansard*, Senate 20 June 2006 p. 71.

While Senators' Minchin, Evans and Brown's views are constructed in terms of the effective functioning of the Senate, they are *so* closely linked to their current party political interests, that they must be considered with some caution. A Government with a majority in both Houses of Parliament typically looks to ways to simplify the passage of its legislation and the processes of governing; oppositions and minor parties typically seek ways to limit the influence of the Government. The opinions expressed by all three Senators are consistent with these positions.

With some distance from party politics (but an interest in a strong and active Senate), the Clerk of the Senate, Harry Evans, was cited in the media as raising concern about the impact of the Minchin proposal on the Senate's capacity as a house of review, indicating that there had been a 'contraction of accountability opportunities, but not major nobbling – yet.'⁵ An editorial in the *Australian* presented a similar position to Mr Evans and continued to argue that Senator Minchin's proposal 'raises many concerns that will trouble Australians.'⁶

Despite the interest that the Minchin proposal generated from those close to the business of the Senate, its impact in the wider arena of public debate has been limited. So, does it really matter?

The Senate Committee System⁷

While the capacity to refer bills to Senate committees has always existed it was rarely used before the 1970s at which time a number of legislative and general purpose standing committees were established. Between 1970 and 1989 the work of these committees increased but remained ad hoc, generated by individual senators and involved only a small number of the bills under consideration by the Senate.⁸ In 1989, the first of a number of significant changes to the role of the Senate committees took place when a system was established for the reference of bills to committees. This

⁵ Michelle Grattan 2006, 'Majorities aside, the Senate is still a house with a mind of its own', Age 21 June 2006.

⁶ Editorial 2006 'Accountability's Loss' Australian 22 June 2006.

⁷ For an excellent detailed analysis of the Senate Committee system, see John Vander Wyk and Angie Lilley (2005) *Reference of Bills to Australian Senate Committees*, Papers on Parliament No. 43, June 2005.

period of reform also saw the merging of Estimate Committees into the Senate committee system. Estimate Committees have long been seen as a crucial to the Senate's capacity to keep the Executive to account for proposed government expenditure. Greater coordination across the committee structure has been associated with heightened capacity for review of the Executive.

In 1994 a new lease of life was given to the committee system following a Senate Procedure Committee evaluation of the responsiveness and competence of the Senate committee system and a number of significant changes ensued. Under the 1994 system, 16 standing committees were established with a pair of committees responsible for the same subject area. One half of these pairs were eight legislative committees with responsibility for the scrutiny of the government's legislation program and appropriations. The legislative committees consisted of six senators: three government members, two opposition members and one member from the minority groups and independent senators. Each legislation committee had a government chair and a government majority.

The other half of these pairs were eight reference committees, responsible for inquiring into and reporting on general matters, as required by the Senate. With varying terms of reference, the scope of these inquiries differed significantly, including as broad a sweep as the evaluation of policy areas and assessments of the implementation of government programs. In contrast to the legislative committees, reference committees had two government members, three opposition members and one member from the minority groups and independent senators. The position of the chair was shared between the official opposition and the minor parties on a ratio of three to one.⁹

The implications of the 1994 reforms have been characterised by Australian parliamentary scholars as significant, representing a real shift in power away from the

⁸ Vander Wyk and Lilley, *Reference of Bills to Australian Senate Committees*, p. 1.

⁹ Michael Beahan, 1994 'Can the Senate Cope with Executive Accountability', *House Magazine* (Canberra) 13(July 6), p. 6-7; and John Uhr. 1998 *Deliberative Democracy in Australia: The Changing Place of Parliament* Australia, Cambridge University Press, p. 148.

Executive whose capacity to influence the majority report of Senate reference inquiries, through party discipline, had been undermined.¹⁰

The Minchin proposal removes reference committees and with it the capacity of non-Governing parties to both chair and be in a majority on Senate committees. Despite Minchin's claim that these changes are designed to reduce duplication, a far more likely explanation is that it is intended to enhance the Government's capacity to implement its policy program by limiting the scope of non-Government Senators to initiate control over policy agendas that are under consideration of Senate committees. It is difficult to imagine any Government not taking this opportunity to shore up its control over the Senate, particularly given the release of embarrassing Senate committee reports into issues such as the notorious 'children overboard' affair. The question the remainder of this paper addresses is what the impact of the reforms will be on the functioning of the committee system and their role in the democratic process.

The Role of Committees in the Democratic Process

Vander Wyk and Lilley (2005) have identified three key functions for Senate committees under the 1994 system:

- Facilitating direct public participation in the legislative process through informing, educating and influencing legislators;
- Provides a flexible environment for legislators to consider the policy implications and the details of bills; and
- Makes more effective and efficient use of the time of legislators and of the Senate.¹¹

The retention of the legislative committees means that the Minchin reforms will not *necessarily* alter these three functions. Nevertheless, it seems inevitable that the remaining Government dominated committees will be less receptive to policy and

¹⁰ Uhr, *Deliberative Democracy in Australia*, p. 148 and Ian Marsh, 2001 'Can the Political System Sustain the Strategic Conversations Australia Needs' *Australian Journal of Management* (Special Issue) 26, p. 166.

legislative positions that do not match those of the Government, or to embarking on controversial inquiries at all. This is reinforced by Government majorities being able to select witnesses and shape the course of inquiries. While it is doubtful that this will result in a complete failure to either engage the public or genuinely consider the policy and legislative implications of Government initiatives, in all likelihood, the capacity for a meaningful challenge to the Government originating from Senate committees will be significantly diminished. Dissenting views will still be aired through the committee system, but Government Senators only criticise Government policy in exceptional circumstances. Furthermore, while it may well achieve more publicity than the majority – or a consensual – report, it would be unusual for the non-Government minority dissenting report to be given the same weight as a majority report of a Senate committee.

The trend towards a Senate committee system that is less critical of the Government is consistent with the move towards Executive dominance that took place once the Government regained control of the Senate after the 2004 election (with the Senate electoral term commencing in July 2005). It has widely been reported that debate over legislation within the Senate has already become more circumscribed with Government led legislative inquiries more limited in their timing and scope.¹² The tendency for minor party or opposition Senators to negotiate effectively for changes to legislation effectively ceased the day the Government held a majority in the Senate.¹³

There has always been some debate over the pros and cons for Australian democracy of a powerful Senate. Paul Keating in his infamous comment about the Senate being ‘unrepresentative swill’ clearly did not think a powerful Senate was of benefit to the governing of Australia. Keating’s comments sought to bring into disrepute the electoral system (Proportional Representation) that resulted in party representation in

¹¹ Vander Wyk and Lilley, *Reference of Bills to Australian Senate Committees*, p. 4.

¹² Senator Natasha Stott Despoja, ‘2006 ‘The Senate is a sausage factory’ *The Advertiser* 3 July 2006.

¹³ For example see Gordon Reid, 1973, ‘The Trinitarian Struggle: Parliamentary-Executive Relationships’ in Henry Mayer & Helen Nelson *Australian Politics: A Third Reader* Cheshire, Melbourne, p. 515 and Liz Young, 1997, *Minor Parties, Major Players: The Senate, the Minor Parties and the 1993 Budget* Department of the Parliamentary Library Monograph, Canberra, Australian Government Publishing Service.

the Senate differing from that of the House of Representatives and was an expression of his experience of being a Prime Minister dealing with an activist Senate.

The underlying debate is about whether a concentration of power in the Executive arm of Government serves the people better than a system where checks and balances limit the Executive's power. One of the key advantages of a concentration of power is that it establishes a chain of accountability in which Cabinet's (and therefore the Government's) position as the primary political decision maker remains clear. Not only does this ensure an ease of governing that most Governments appreciate, but also a capacity for the electorate to be clear on who they are judging for any political decisions at election time.

The political reality, however, is that our system of government provides significant opportunities to temper the power of the Government of the day through the Senate. When this House is under control of the Government, party politics and its associated discipline generally means that its influence remains dormant, although history points to renegade Senators who still look for opportunities to use their influence. One notable contemporary example is Senator Barnaby Joyce who appears to be less amenable to party discipline. Another is the current debate over immigration which has seen Government Senators threaten to cross the floor and vote with the opposition to halt the passage of legislation, resulting in an unprecedented defeat for the Government when it withdrew the Migration Amendment (Designated Unauthorized Arrivals) Bill 2006. These examples reflect broader issues than the power or otherwise, of the Senate and are, however, the exception rather than the rule.

When the Senate is not under the control of a Government majority, the opportunities for it to act as a check on Government legislation are significantly amplified. This ability to use the Senate to challenge the Government of the day was deliberately written into our Constitution. It reflected a pragmatic need by the founders to entice the smaller states into joining the new nation by giving them a guarantee that their interests would not be overrun by the more populous states of NSW and Victoria. This was manifest through creating an upper house that gave equal representation to

each state, thus allowing all states to have a significant voice in the national parliament. The decision to provide the Senate with significant powers also reflected the view of the founders that governmental power should be dispersed to ensure that individual rights are protected.¹⁴

One of the major concerns about a parliament controlled by the Executive is that the passage of legislation is poorly scrutinised in a process that has commonly been equated with the functioning of a sausage machine.¹⁵ These are the sorts of concerns currently raised by critics of the Minchin proposal and more generally, directed towards the Howard Government's attitude to the Senate. Only time will tell whether these concerns are well founded. The behaviour of current Government Senators, however, suggests that party discipline is not being well enforced resulting in an activist Senate, albeit on a more limited range of legislation than the minor parties or the opposition would like. Unsurprisingly, it is likely that while the Government of the day controls the Senate, initiatives to limit the influence of the Senate, like the Minchin reforms, will continue. It is hard to imagine a Government putting up with any accountability mechanism it can possibly do away with.

In all this conjecture, it would be a mistake to underestimate the Australian public. Voting trends over recent years have clearly indicated that Australian voters do not trust the major parties and have developed a tendency to take out what can best be described as an insurance policy in the Senate (and also in the States). This has been expressed through ongoing support for minor parties, particularly the Greens and the Australian Democrats, limiting the chances of a major party gaining control of both houses of the Australian parliament. It has also been expressed through the tendency to vote differently in State elections, thus denying a nationwide monopoly to any major party.

¹⁴ Brian Galligan, 1995, *A Federal Republic: Australia's Constitutional System of Government* Cambridge University Press, Melbourne, chapter 3; John Uhr, 1995, 'Proportional Representation in the Australian Senate: Recovering the Rationale', *Australian Journal of Political Science* (Special Issue) 30, p. 133-5; Campbell Sharman, 1999, 'The Representation of Small Parties and Independents in the Senate' *Australian Journal of Political Science* 34(3), p. 83.

¹⁵ David Lovell, 1994, *The Sausage Makers? Parliamentarians as Legislators* Department of the Parliamentary Library Monograph, Canberra, Australian Government Publishing Service.

The 2004 federal election was somewhat anomalous with the Government winning a majority in both Houses. Since the 1960s, the trend has been for Governments to fail to win a majority in the Senate. The reason for this can be found in a combination of factors including the popularity of the Government, Labor's poor showing and a significant demise in the popularity of Democrats, of which the Greens were not able to take full advantage. Similar voting patterns would need to continue for the composition of the Senate to retain a Government majority in the medium to long run and there is no real evidence to suggest that a trust between the electorate and the major parties has been reinstated.¹⁶ If these trends do not continue, then there will be a return to a Senate where the Government does not hold a majority and along with it, the reinstatement of mechanisms, such as a rigorous committee system to keep the Government and its legislative program held to account.

Postscript - 30 August 2006

At the time of drafting this paper, in late July 2006, the changes to the committee system were yet to be brought to the Senate for endorsement.

On 10 August 2006, a Report of the Procedural Committee (*Restructuring the committee system*) was tabled in the Senate and was subsequently debated on 14 August. The Committee considered the Minchin proposal, assessing the practicality of the new structure. While the Committee report agreed to the merging of the legislative and reference committees, it did not support the establishment of two additional committees. Thus, the number of committees will be reduced from 16 to eight, with a Government Senator in the Chair and the Government holding a majority in each committee.

Responses to the change with the Senate debate were consistent with the party political interests of various Senators. The Opposition, Greens, Democrats and Family First party, all voted against the proposal. However, holding a majority in this House, the Government prevailed. While the debate in the Senate was passionate, the media

¹⁶ It should be noted that as only half the Senate is elected every six years (except when there is a double dissolution), it may well take two elections before this pattern would reappear.

was disinterested and this significant change to our parliamentary process took place without any further stirring of public debate or interest.

The changes will come into effect on 11 September 2006.