Having the Numbers Means Not Having to Explain: The Effect of the Government Majority in the Senate*

Harry Evans

In the 2004 federal election the coalition parties gained a one-seat majority in the Senate, taking effect on 1 July 2005. This was the first time in 24 years that a government would have such a majority, and before that it is necessary to go back to the early 1960s to find such a phenomenon. Because of the proportional representation system on which the Senate is elected, and which awards seats more nearly in proportion to votes than the single-member system of the House of Representatives, the normal situation in the Senate since the proportional system was introduced has been for no party to have a majority. This has allowed the Senate for most of its history to act with a measure of independence from the government of the day.

There was considerable apprehension about the implications of the government majority. The complacent and the partisan developed a stock phrase: 'The sky will not fall in and the sun will still rise tomorrow'. The apprehension, however, was not about celestial phenomena but the effect on the ability of the Parliament to hold the government accountable. There was a well-founded fear that a government majority would mean a decline in accountability. In the past, it was possible to believe that a government majority would not necessarily mean government control. The Fraser

* This article was published as chapter 10, 'The Senate', in C. Hamilton and S. Maddison (eds), *Silencing Dissent: How the Australian Government is Controlling Public Opinion and Stifling Debate*. Crows Nest, NSW, Allen & Unwin, 2007.

Government, with a majority of six from 1976 to 1981, never really controlled the Senate, because there were up to twelve coalition backbenchers who were willing to vote against the government, particularly on accountability issues, and there was therefore little fear of a major decline in accountability.

Since that time government control of its backbenchers has greatly increased. There has also been a significant concentration of power within the government in the office of the prime minister in recent years. The past was therefore not a good guide to likely developments. For the first ten years of the Howard Government, no coalition senator voted against it on any issue. Large hopes were held for 'rebel' National Party Senator Barnaby Joyce of Queensland, who was elected in 2004, but in the first twelve months of the government majority he voted against the government on only two bills, and one of those passed with support from other quarters. He also unsuccessfully moved, in the name of protecting small business, a motion to disallow government regulations concerning petrol retailing. One Liberal senator voted against the government legislation to overrule civil union laws in the Australian Capital Territory. Dissident backbenchers successfully rebelled over treatment of asylum seekers, and were vilified by party colleagues for their pains. These occasions were remarkable because unusual. The 'rebels' may soon use up their tolerable quota of rebellion. Party discipline has generally been iron-tight, particularly on accountability issues, which are not worthy of any of that precious quota.

It was also remembered that the coalition government, before the 2004 election, showed a strong interest in gaining control of the Senate by other means, either by changing the electoral system to ensure a government majority, or by changing the Constitution to allow legislation to bypass the Senate.[1] It was very clear that the government was keen on controlling the upper house, and it was highly unlikely that the purpose of that control would be to enhance accountability.

Accountability measures

Over many years the Senate built up a structure of accountability measures designed to compel governments to explain themselves and to submit to greater scrutiny. Those measures ranged from the insistence in 1901 on appropriation bills setting out details of proposed expenditure to the 2001 order requiring publication on the Internet of details of all government contracts worth more than $100 000. All of these accountability mechanisms were made possible by lack of government control of the chamber, sometimes in the form of dissident government senators. For example, in 1981, during the time of the Fraser Government majority, the Senate established a Scrutiny of Bills Committee to examine and report on all legislation, using civil liberties and accountability criteria. The government opposed the establishment of the committee, but was defeated by seven of its own senators voting with the non-government parties. If the current degree of government control had applied over those years, none of the accountability measures would have come about.

---

1 H. Coonan, *The Senate: Safeguard or Handbrake on Democracy?*, address to the Sydney Institute, 3 February 2003. Department of the Prime Minister and Cabinet, *Resolving Deadlocks: A Discussion Paper on Section 57 of the Constitution*, Canberra, 2003.

The fear was that the coalition government would use its majority to set about dismantling the accountability measures established in the past. The government had two options for doing so: simply to abolish those measures, perhaps in a disguised way (for example, by restructuring the Senate committee system); or to leave the structures in place but use its majority to ensure that they did not operate. Until mid-2006, when a restructuring of the committee system was announced, the second option was pursued, but the first option remains open to the government so long as its majority lasts.

According to classic notions of parliamentary government, the legislature imposes accountability on the executive through two main activities: legislating, if only by scrutinising and amending the legislative proposals of the executive; and inquiring into government activities and matters of public interest, partly to inform the law-making function and partly to expose government to public scrutiny, so that the public will know how they are being served.[2] Governments dislike both activities; they would prefer to pass legislation with the minimum of scrutiny and amendment, and to avoid the exposure of embarrassing mistakes or misdeeds. In recent times, governments have been able to use their tight control of lower houses, through ever-loyal party majorities, to avoid both streams of accountability in those chambers. Control of the upper house means that such avoidance can be virtually complete.

Legislation

For many years governments have had to accept that their legislation may be amended or rejected in the Senate after relatively lengthy scrutiny and debate. That situation was abruptly terminated on 1 July 2005.

Contrary to what governments would have us believe, outright rejection or obstruction of legislation has been relatively rare. In its last term without a Senate majority, the Howard Government had only seven pieces of legislation in deadlock between the two houses, such that the simultaneous dissolution provisions of section 57 of the Constitution could have been invoked to seek to pass them. Some bills in disagreement were subsequently passed by compromise. Considering that about 150 bills are passed per year, the area of continuing disagreement was relatively small. The bills were major items in the government's legislative program: partial repeal of the unfair dismissal laws, other industrial relations provisions, Telstra full privatisation, excision of islands from the migration zone, and changing disability entitlements. The more significant the legislation, however, the greater the scrutiny required, and the greater the requirement for support beyond the government parties, which after all represent only 40-odd per cent of the electorate. Most government legislation was passed without amendment or after compromise over amendments.

Now, however, it is clear that government legislation will be passed only in the form the government wants, and that non-government amendments will not be allowed,

[2] For such classic notions, see J. Uhr, *Deliberative Democracy in Australia: the Changing Place of Parliament*. Cambridge, Cambridge University Press, 1998, and the authorities cited at pp. 63–6, 70–4.

even where amendments have been supported in principle by government backbenchers.

The change is illustrated by before-and-after examples of the treatment of two pieces of related legislation. The government's first major anti-terrorism bill, the Australian Security Intelligence Organisation Amendment (Terrorism) Bill 2002, was passed only after extensive scrutiny and amendment in the Senate and compromise over many of the amendments. This treatment of the legislation was widely praised as ensuring that basic civil liberties were not fatally undermined and that the government's more draconian proposals were not passed. In 2006, however, the Telecommunications Interception Amendment Bill, greatly expanding the power of law enforcement agencies to intercept and access electronic communications, was passed after the rejection of all non-government amendments, including amendments for which government backbenchers had expressed support during committee examination of the bill. The same situation occurred with the Anti-Terrorism Bill (No. 2) 2005, which introduced for the first time detention without charge. Some government amendments to that bill were said to allay some concerns of government backbenchers, but other amendments for which they had expressed support were rejected. Even that degree of concession has now apparently disappeared. A package of fuel tax bills was passed unamended in June 2006, although government senators on a committee recommended that it not pass until outstanding issues were resolved, and other government senators expressed discontent with it. The government controls the legislative process and is able to get whatever it wants in the way of law-making.

The Senate chamber is not the only forum for scrutinising legislation. The system of subjecting bills to scrutiny in committees, including by hearing evidence from interested organisations and members of the public, was established by the Senate over many years to enhance government accountability for legislative proposals. This system is still in place, but the coalition government has used its majority to restrict the time available for committees to examine bills. The average time allotted declined from 40 to 28 days, which gives potential witnesses less time to prepare their submissions and to make their contributions in oral evidence. The government has also blocked the referral of some bills to committees. And the committees cannot amend bills, so their evidence and reports can simply be ignored, even when government members of the committees have expressed their support for changes to legislation, as the examples referred to indicate.

The coalition government also now has the ability to force legislation through the chamber by means of the gag, the termination of debate, and guillotine, the limitation of time for the consideration of a bill. The guillotine was used in periods of non-government majorities when the government could gain the support of other parties to set time limits for debate. Very often, these were 'civilised guillotines', in which the time limits were negotiated between parties. On one occasion, the Leader of the Opposition in the Senate moved the motion specifying the allotted times. Now the government has exclusive power to determine how much time will be allowed for debate, and has used that power on several occasions. From 1 January 2004 to 30 June 2005 there were no gag motions and only one guillotine; from 1 July 2005 to 30 June 2006 there were sixteen and five, respectively. The times allotted for major bills were less than those for bills of comparable importance in the past. The Anti-Terrorism Bill (No. 2) 2005 was given only six hours, the highly contentious Welfare to Work

legislation only seven hours, and the Radioactive Waste Management Bill three hours. By way of contrast, the Native Title Bill 1993 was considered for 50 hours with a 'civilised guillotine', and the Workplace Relations Bill 1996 for 49 hours.

A government with control over law-making has the power to alter the electoral law to favour its own re-election. The temptation is irresistible. A piece of electoral legislation passed in June 2006, shortening times for enrolment and increasing the limit on non-disclosable donations to parties, was seen by the non-government parties as the first instalment of such a project.

The number of days of meeting declined. In 2003 the Senate sat on 64 days, in 2005 on 57 (the 2004 sittings were shortened by the election). From 1 January to 30 June 2006 there were only 22 sitting days. This means that there is less time for non-government parties to devote to legislation and to exercise the accountability mechanisms available to them.

Inquiries

Until announcing a restructuring in June 2006, not implemented at the time of writing, the government left in place the structure of the Senate committee system. Under the existing system half of the subject-specialised standing committees have non-government majorities and non-government chairs. These committees, called references committees, were designed to inquire into matters referred to them by the Senate. The government, however, used its majority to control the matters referred to the committees for inquiry. It is clear that no inquiries will be allowed into matters which might expose dubious government activities.

Before 1 July 2005, for example, there were inquiries by references committees into the government's industrial relations advertising campaign, whereby $55 million of public funds were spent on advertising government proposals which had not even been *introduced* into Parliament, much less passed, and into the Regional Partnerships and Sustainable Regions Programs, under which millions of dollars in grants were given to private organisations and individuals for regional development projects, some of a dubious nature. In both cases, money had not been specifically appropriated for the purposes of the expenditure.

No such inquiries will be allowed in the future. Proposals for a range of inquiries in the Senate have been rejected by the government majority. These include proposed references to the references committees on the aviation safety regime and refugees and visa-holders which were rejected by the government on 2 March 2006, when government senators voted against the references in spite of some having expressed disquiet about the aviation safety issue. No ministers or government senators spoke to the motions, leading to charges of contempt for the committee system. In spite of that criticism, the same situation recurred, for example on 22 June 2006, when a proposed reference on the practical operation of welfare to work regulations was rejected with no reasons given. It is now expected that, if the committees are given any work to do, they will be like the House of Representatives committees, examining only matters referred to them, or approved, by ministers.

A lack of government cooperation with other inquiry processes has been evident. In the past the Senate has used orders for the production of documents as a major inquiry mechanism and information resource. Motions were passed requiring ministers to present to the Senate, or to Senate committees, documents about specified matters of public interest. If the government refused to produce documents in response to an order, the Senate could take other measures, such as committee hearings, to gain the required information, or impose procedural penalties, such as postponement of legislation, on the government. Even before gaining its majority, the government was building up a record of refusals to produce documents in response to Senate orders. Going back to just before the change of government, in the Parliament of 1993–96, 53 such orders were made, all but four being complied with. In the Parliament of 1996–98, 48 orders were made and five were not complied with. In the Parliament of 1998–2001, there were 56 orders, and 15 not complied with, in that of 2002–04, 89 orders and 46 not complied with. Since 1 July 2005 only one motion for production of documents has been agreed to. All others have been rejected.

For example, five motions for the production of documents were rejected by the government on 17 August 2005. A ministerial statement offered various grounds for refusing to produce the documents: the 'longstanding convention' that legal advice to government is not produced (this cannot be true because of the many occasions on which supportive advices have been voluntarily produced by government); the documents were cabinet documents (this ground is supposed to be confined to disclosing the deliberations of cabinet, not every document having a connection to cabinet); and the document concerned was 'not intended for public disclosure' (if a document *is* intended for public disclosure, presumably it would be disclosed and then there would be no point in calling for it). The view of the government is that 'requests' for documents should be made directly to ministers offices, but, even if such requests are met, this has the disadvantage that the documents are not tabled in the Senate and so their publication is not given the status of proceedings in Parliament.

A similar approach has been taken to requests by committees for information. A report on 13 October 2005 by the Finance and Public Administration References Committee on works on the Gallipoli Peninsula, a matter referred to it before 1 July 2005, reported the refusal of the government to provide relevant legal advices supplied to the government. This material disclosed a very large expansion of the grounds for refusal to provide such documents. At first the Department of Foreign Affairs and Trade attempted to argue that the documents could not be provided because Senate standing order 73 prohibits the asking of questions seeking legal opinions at question time. It was pointed out that this has nothing to do with the provision of documents to committees, that legal advices to government have often been provided in the past, and that under past Senate resolutions refusals to provide documents should be based on a ministerial claim of public interest immunity on specified grounds. The department then stated that the minister had refused to provide the material because of 'a longstanding practice accepted by successive Australian governments not to disclose legal advice which has been provided to government, unless there are compelling reasons to do so in a particular case'. It was pointed out that this 'longstanding practice' had in fact never been advanced before, and would

have prevented most of the cases of disclosure of legal advice which had occurred in the past. The response to this was simply a reassertion of the 'longstanding practice'.[3]

More recently there has been a tendency not to give any reasons at all for refusals to provide information. Following the 17 August 2005 episode, six motions for documents were rejected without any reasons given. If this lack of cooperation continues senators may just give up moving these motions.

Estimates hearings

In the past the major accountability mechanism of the Senate has been the estimates hearings. From their beginning in 1970 estimates hearings were an opportunity to question ministers and officers about any activity of government departments and agencies. They were a general inquisition into the operations of government. Successive governments have made the claim that when they were in opposition estimates hearings were confined to the estimates, questions about how much money would be spent on particular purposes, that since they gained office the hearings have been debauched from this pure purpose, and that the committees should be brought back to their original function. This is not true; the hearings have always ranged over any and all government activities.

In 1999 there appeared to be a concerted effort by ministers to restrict the estimates hearings to their claimed original purpose by declining to answer questions which were not about how much money was to be spent on particular functions. This led to a dispute which found its way into the Senate, to the Procedure Committee and back to the Senate again. The Senate adopted the report of the Procedure Committee, to the effect that all questions going to the operations and financial positions of government departments and agencies are relevant questions for estimates hearings. As the Procedure Committee made clear, this only reasserted what had always been the practice. In more recent times, when ministers and chairs of committees have indicated impatience with lines of questioning, they have been reminded of the 1999 resolution. In some cases they have been invited to move a motion in the Senate for the repeal of the 1999 resolution if they consider that the practice should be changed. So far this invitation has not been taken up, but the possibility now cannot be disregarded.

The 1999 incident also demonstrates an important aspect of the change brought about by the government majority. If a Senate committee encounters resistance to its inquiries, it can only report the matter to the Senate and it is then for the Senate to provide a remedy. In the past, where ministers have resisted inquiries in committees, the majority of the Senate has undertaken various steps to pursue the inquiries, including directing committees to meet again, directing particular witnesses to appear, instructing committees to conduct wider inquiries, ordering ministers to produce particular information and extending the length of question time in the chamber. These measures have the effect of raising the level of any dispute, and have generally been successful. In effect, if a government wished to be uncooperative it had to get

[3] This exchange is in correspondence and advices attached to the report of the committee, *Matters Relating to the Gallipoli Peninsula*, October 2005.

into a major fight in the chamber with the potential to disrupt its legislative program. This ability of the Senate to impose a remedy has effectively been removed because of government control.

The value of estimates hearings in improving accountability and probity of government has long been widely recognised. The hearings allow apparent problems in government operations to be explored and exposed, and give rise to a large amount of information which would not otherwise be disclosed.

It is often said that estimates hearings are largely devoted to party politics, with non-government senators attempting to put blame on ministers or particular officers and to win political points. This should not be a matter for reproach, and nor does it invalidate the hearings as an accountability process. Free states work through party politics. The ultimate safeguard against the misuse of power by a government is the ability of its opponents and rivals to find out about, and draw attention to, its mistakes and misdeeds. Accountability is not a refined process which operates on an elevated plane, above sordid politics. Accountability operates in the realm of politics.

The effect of the government control of the Senate was well demonstrated by the treatment in the February 2006 estimates hearings of the AWB Iraq wheat bribery affair. The hearings began with a declaration by the government that it had instructed all officers not to answer any questions about the matter. The only reason given was that it would be undesirable to have Senate committees looking at the affair while the Cole commission of inquiry was conducting its examination. It was explicitly stated that this was not a public interest immunity claim, that is, a claim that answering questions would be harmful to the public interest in some specific way. It was simply a refusal to answer. This was contrary to past Senate resolutions, which declared that ministerial claims to be excused from answering questions in Senate inquiries should be based on particular public interest grounds, and the claims would be considered and determined by the Senate. In the past, matters before commissions of inquiry were the subject of debate and questioning; such commissions are not courts and there is no question of the sub judice principle applying. Had the government's declaration been made before 1 July 2005 it is fairly certain that some action in the Senate would have followed. After its majority took effect the government was able to make its declaration secure in the knowledge that the majority of the Senate would not take any remedial action.

It might be thought that this episode did not disclose an accountability gap, because the Cole commission would be pursuing its inquiry. The most significant point about the Cole commission, however, is that it came about because of pressure from powerful bodies overseas, ironically starting with members of another legislature freer than our own, the US Congress, and flowing through the United Nations and its inquiries. Without that overseas pressure, a great deal of information about the matter would have never been disclosed, if the whole affair had become known at all. The accountability gap will be of greater concern in cases where such an external element is not present, the government is not forced to conduct its own inquiry, and the last remaining parliamentary avenue of inquiries, the estimates hearings, are frustrated.

The AWB matter could well be a model for further refusals to provide particular information in the estimates hearings, with no possibility of any remedy. It was

unprecedented in that an inquiry by a government-appointed commission had not previously been the basis for a general direction to officers not to provide information. There had been previous occasions of particular refusals to answer questions on various grounds, and of reluctance to answer questions because of other inquiries, but no general direction on that ground. It was a significant extension of past claims.

During the estimates hearings many questions are taken on notice by ministers or officers or placed on notice by senators. The committees are required by the Senate's procedures to set deadlines for answering questions on notice. To encourage ministers and departments not to ignore the deadlines, the Senate has a procedure known as the thirty-day rule. If answers are thirty days or more overdue, any senator can ask for an explanation in the chamber and initiate a debate. This potentially imposes a penalty of loss of legislating time. The procedure provides no remedy, however, against flat refusals to answer questions. The Senate now cannot impose any more effective remedy. The procedure is therefore not a significant disincentive for refusals to answer.

It has been suggested that more questions are now taken on notice and that fewer answers are provided, and more slowly provided, because ministers know that no more effective remedy can be taken in the chamber. Statistics have not been collected for a sufficient time to test this suggestion, but it appears that the practices of delaying answers to questions on notice and simply not answering them or providing non-responsive answers have become more common.

On 11 May 2006 the government passed a motion which had the effect of stripping two days from the time allotted for the main budget estimates hearings later that month. This may be the beginning of a winding back of the hearings. The May 2006 hearings were marked by several significant refusals to answer questions, and by responses to the effect that answering some questions would be too expensive. This placing of a price on accountability may be the beginning of a move to ration it.

The weakening of the estimates hearings as an accountability mechanism was illustrated by a motion in the Senate on 8 February 2006 to require the Managing Director of Telstra, Mr Sol Trujillo, to appear in an estimates hearing to explain his administration of the government-majority-owned communications carrier. The motion was rejected, although government senators had earlier said that Mr Trujillo should appear. Apparently they were pacified by an offer of a private briefing by him, again illustrating the government's control over when and how it will be accountable, if at all.

Effect on public service

Estimates hearings provide public servants with an opportunity to demonstrate their professionalism and to show how effectively they carry out their functions. In particular, they should be able to show that they have performed the role appropriate to public servants, of advising ministers and carrying out both ministerial and departmental decisions with legality and propriety. Difficulties arise when public servants are seen to be doing whatever ministers want and then helping to conceal illegalities or improprieties.

The inability of the Senate to pursue remedies for ministerial refusals to provide information, apart from posing a danger to accountability of government, also gives rise to a danger for public servants. It potentially deprives them of the opportunity to demonstrate their professionalism and capacity. It also removes a safeguard for public servants. Over many years reference has been made to the 'estimates test': if a person responsible for some government activity would not feel comfortable in defending that activity in the estimates hearings, then there is probably something wrong with the activity. Officers can use the test to check for themselves the operations in which they are engaged, but may also use it to deflect improper or inappropriate demands made upon them by the political wing of government, ministers and their ministerial staff. The political wing could be told that, while officers would provide appropriate assistance, they would also be obliged to explain their role at the next round of estimates hearings, and that ministers would have to take responsibility for explaining any politically based decisions and actions of dubious propriety. The 'estimates test' is now seriously weakened, because government does not need to worry about the Senate, and public servants may be told not to worry about the Senate either, and to get on and carry out their instructions.

Financial control

This undermining of the estimates scrutiny process has occurred in the context of a significant decline in parliamentary control of expenditure under the financial system put in place by the government since 1997. By a series of legislative changes supposedly of a technical accounting character, public finance has been transformed. In theory, and in accordance with the Constitution, Parliament annually appropriates money for specified purposes of government. Now in practice most government expenditure is funded from sources of money which are not annually subject to parliamentary approval. In the annual appropriations, money is allocated to outcomes which are so nebulous and vaguely expressed that the money can be spent on anything. For example, $3 billion was appropriated to the Department of Employment and Workplace Relations for 'higher productivity, high pay workplaces', a propaganda description which allowed $55 million to be spent on advertising the government's Work Choices legislation before it had appeared. In approving such appropriations, the Parliament is given no guarantees on what the money might be spent on.

A challenge was mounted in the High Court on the basis that the government's advertising campaign was not an authorised purpose of expenditure under the appropriations made by the Parliament for the Department of Employment and Workplace Relations. The majority judgement, in rejecting this claim, confirmed that appropriations are now a blank cheque, and the court will not correct this situation. It is Parliament's responsibility to ensure that expenditure is appropriate. The joint judgement of the majority was accurately characterised by dissenting Justice McHugh as authorising an agency 'to spend money on whatever outputs it pleases'.[4] Justices McHugh and Kirby, in the minority, pointed out that the majority repudiated the principle on which earlier judgements of the court were based, that expenditure was confined to the purpose specified by Parliament in the appropriation. The separate

4 *Combet v Commonwealth* [2005] HCA 61, reasons for judgement 21 October 2005, at 89.

judgement of Chief Justice Gleeson explicitly put the responsibility for control of expenditure back on to the Parliament:

> If Parliament formulates the purposes of appropriation in broad, general terms, then those terms must be applied with the breadth and generality they bear.[5]

In other words, if Parliament makes appropriations with vague descriptions of their purpose, it is Parliament's problem. Chief Justice Gleeson helpfully indicated what must be done:

> The higher the level of abstraction, or the greater the scope for political interpretation, involved in a proposed outcome appropriation, the greater may be the detail required by Parliament before appropriating a sum to such a purpose; and the greater may be the scrutiny involved in a review of such expenditure after it has occurred.[6]

The heavy responsibility resting on the Parliament to exert this kind of proper control and scrutiny over expenditure is now even less likely to be met with the government controlling the Senate. (Surprising, the Finance and Public Administration References Committee initiated, and succeeded in having passed, a reference to itself on the financial system, but this does not increase the chances of any changes.) The consequent ability of the government to spend as much money as it likes on whatever it likes greatly increases its power to keep itself in office, to reward obedience and to punish dissent.

Question time

Question time is the only part of parliamentary proceedings most people ever see, but is virtually useless as a forum of parliamentary inquiry and accountability. Notoriously, ministers are able to avoid answering non-government questions, while responding to government backbenchers' questions, prepared in ministerial offices, with barrages of propaganda.

Even this occasion has been significantly weakened by the government majority in the Senate. At the first sittings after 1 July 2005, the allocation of questions between the parties, which had in the past been determined by agreement between the parties, was changed by the government to give itself the great bulk of the time devoted to questions and answers.

The thirty-day rule also applies to questions placed on notice in the Senate, but is also not an effective remedy against simple ministerial refusals to answer.

In April 2003 a senator sent a letter to the Leader of the Government in the Senate asking him about procedures adopted by the government to determine whether it will release documents to the Senate. Having received no reply, in 2004 the senator put a

5 at 27.

6 at 7.

question on notice asking when the minister would respond to her letter. The letter and the question remained unanswered at the general election of 2004, so in the next parliament she placed the question on notice again. On two occasions she used the thirty-day procedure to ask in the chamber for an explanation of the failure to answer the question and the letter; on neither occasion did she receive either an explanation or an answer, except an off-the-cuff response in June 2005 when she summarised the letter. The Leader of the Government in the Senate retired in March 2006, with the question and the letter still unanswered, and the question was then redirected to the incoming Leader of the Government. Finally, in May 2006 the new minister responded that 'requests' for information would be considered on their merits. This is an extreme case, but differs from the general recent response pattern only in degree.

Integrity of processes

At one point it appeared that the government's majority had been used to threaten the very integrity of Senate inquiries.

The President (Senator Calvert, Liberal, Tas.) made a determination under the relevant standing order on 5 September 2005 according precedence to a motion to refer to the Privileges Committee a matter raised by the Finance and Public Administration References Committee. The matter involved evidence given by a mayor in the course of the committee's inquiry into Regional Partnership Program grants. The committee had evidence suggesting that the mayor's statements were untrue, and the committee was not satisfied with an explanation which he subsequently provided. Normally, motions to refer matters to the Privileges Committee are passed without debate following the President's determination. It was the intention of procedures for dealing with privilege matters adopted in 1988 to take them out of partisan controversy. The person concerned in this matter, however, was a member of the Liberal Party, and the government apparently decided to use its majority to reject the motion to refer the matter to the Privileges Committee.

The chair of that committee, Senator Faulkner, stated that this was a 'degrading' of the non-partisan method for dealing with privilege matters. A government senator stated in debate that there ought to be a prima facie case before the reference was made, but the procedures of 1988 were deliberately designed to avoid any judgement about a prima facie case.[7] The failure to refer the privilege matter to the Privileges Committee, unfortunate from an accountability view, may also have sent a message that committees may safely be trifled with if the trifler is of the right political allegiance.

Subsequently, it was put to the President in an estimates hearing for the Department of the Senate that he should adopt a process to ensure that privilege matters to which he gives precedence are referred to the Privileges Committee without debate and votes based on partisan considerations. The President accepted this suggestion. No further privilege cases have arisen so far to test the process.

7 Senate Debates, 7 September 2005, pp. 104–24.

Accountability in decline

The government majority in the Senate has greatly increased the ability of the government to do what it likes and not to explain itself except to the extent it chooses. The information available to the public on the performance of the government is now limited virtually to that which the government itself chooses to disclose. The accountability of government to the Parliament and the public, and the ability of would-be critics and dissenters to find out what is really going on, has been significantly reduced.

It is unrealistic to expect an investigative media to perform the role of a hobbled Senate. Many people, especially public office-holders, will not talk except in a protected forum. Only the parliamentary forum can offer the protection of parliamentary privilege, if, of course, it is allowed by government to have something to protect.

It would be unwise for supporters of accountability simply to wait until the electors change the situation. They should keep on raising accountability issues and vigorously pursue, by debate and by publication, every move to weaken the accountability procedures and processes which have been painstakingly built up over so many years by their predecessors.