The Federal Parliament 1988–2013[1]

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To Professor Gordon Reid and Dr Martyn Forrest the years 1966 to 1986 were the most active and dramatic in the history of the Federal Parliament.[2] The 25 years from the opening of the new Parliament House in 1988 were also to be years of intense activity and years with their share of drama. The prime ministership was to change hands six times, there were to be 14 changes in the leadership of the opposition, executive governments were to face many challenges, including those thrown up by the management of the economy and by global financial developments, and governments were to commit armed forces to overseas service in 13 conflicts or causes. The gender balance in both the Senate and the House was to change significantly, members of each House were to consider a large range of bills of legal, social and economic significance and to conduct hundreds of inquiries into issues of importance, the nation was to have its first female prime minister, and the general election of 21 August 2010 was to result in the first federal minority government in seventy years.[3]

The new Parliament House was an impressive new home within which these events played out. The nature of the building, with its wonderful facilities, and the place it appeared to assume in public consciousness, meant that there could be little doubt that the building itself had an influence and was worthy of study in its own right.[4] This brought to mind the comment attributed to Sir Winston Churchill about the rebuilding of the chamber of the House of Commons in 1945-50: 'we

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1 These reflections are those of a member of the staff of one House, and not a history of those years. Accordingly, there is no mention of many political issues, important legislation considered and decisions made. In addition, while these reflections may have some of the advantages that come from close observation of events they cannot bring the sort of perspective that Professor Reid and Dr Forrest brought to their work (see note 2). Thanks are due to several colleagues who read drafts of this paper and made helpful suggestions, and particularly to Lynnette Eager and Gillian Drew for their valuable help with the manuscript.

2 *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives* (Melbourne University Press, 1989).

3 A minority government was formed following the negotiation of agreements between the Australian Labor Party and cross-bench members.

4 See Parliament of Australia, 'Architecture and Parliament: How do buildings help shape parliamentary business?', *Roundtable – Summaries and Transcript*, 22 August 2008; R Cope, 'Housing a Legislature: When Architecture and Politics Meet', Papers on Parliament no. 37, 2001.

shape our buildings and afterwards our buildings shape us'.[5] Though the setting was significant the more important story was the story of the events that occurred in the Parliament's new home.

The constitutional relationships between the House, the Senate and the Executive continued to be as significant as ever. It is arguably more fruitful however to view this period in terms of the challenges faced by each House and by the Executive, and in the context of wider social changes, rather than in terms of the 'trinitarian struggle' between the three institutions that Professor Reid and Dr Forrest had identified.[6] It is also arguable that by 2013, as a result of developments within the Parliament, the Executive and the wider community, some of the assumptions long made about the subordinate or inferior position of the Parliament in relation to executive government were due for reassessment.

The House of Representatives

The House of Representatives was subject to significant reform between 1988 and 2013. In the context of the earlier history of the House the reforms were radical. The most significant concerned opportunities for private members, the consideration of legislation and the House's committee system. These and other lower-profile reforms were made with the assistance of, and mainly on the recommendation of, the Procedure Committee. The committee always took a balanced approach, one which recognised the interests of backbench members and those of the Executive; it hoped to 'make the conduct of business more efficient by renovating the House's practices and procedures after decades of neglect; to enable backbenchers to participate more fully in the House's proceedings'.[7] The committee presented 63 reports between 1985 and 2013. These reports, and the story of the implementation of their many recommendations, give a useful insight into the process of reform in the House of Representatives; they also show the constraints on reform.

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5 UK Parliament, '*Architecture of the Palace: Churchill and the Commons Chamber*': http://www.parliament.uk/about/living; House of Commons Hansard 28 October 1943heritage/building/palace/architecture/palacestructure/churchill/.

6 The tension identified by Professor Reid and Dr Forrest; see J Halligan, R Miller and J Power, *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles* (Melbourne University Press, 2007), 18–9.

7 Standing Committee on Procedure, *A history of the Procedure Committee on its 20th anniversary: Procedural reform in the House of Representatives: 1985–2005*, October 2005, viii. The Procedure Committee was first appointed by sessional order on 27 February 1985 and replaced the Standing Orders Committee. The Standing Orders Committee had always been supported by the Clerk of the House, but the Department took the view that members of the new Committee might appreciate having the services of a dedicated secretary who could be thought of as comparable to those provided to other committees, and not a figure that might be thought to have a greater influence.

Private members' business

The arrangements for private members' business were an early subject of the Procedure Committee's attention. In the years 1970 to 1985 this important category of business had occupied 3.7 per cent of the House's time; an average of 1 hour 15 minutes each week spent on it every second Thursday after the Address-in-Reply had been adopted, even then, government business was often given priority. In May 1986 the Committee recommended substantial increases in the times for such business.[8] The campaign bore fruit when sessional orders were adopted on 9 December 1987 to be effective from 15 March 1988. Four hours were allocated for private members' and committee and delegation business each sitting week. A backbench committee, the Selection Committee, was established with full authority to choose items for debate, and to set times for the total debate on each item and for the individual speeches that could be made, and grievance debate became a weekly rather than a fortnightly proceeding. These reforms were the most significant initiatives in this area since Federation.[9]

The Selection Committee usually met on sitting Tuesdays to choose the items of business to be brought forward on the next sitting week. This ensured that highly topical matters could be debated. To members of successive parliaments, and to constituents and others who hoped to see important matters raised in the House, the increased opportunities, and the way the opportunities were managed by the Selection Committee, ensured that this category of business became a valued feature of each sitting week. Issues raised by private members ranged from matters of social policy and human rights, such as euthanasia and domestic violence, to numerous questions of international concern and to a great range of matters of regional or local importance.

Consideration of legislation by the House

In 1986 the Procedure Committee gave voice to concerns that had been building among members for a long time when it reported:

> It is clear to the committee that sufficient time is not available for the House to give adequate consideration to legislative and other business. Members are all too familiar with stringent time restrictions being applied to a wide range of highly significant bills in order to complete a heavy legislative program, especially towards the end of a period of sittings.[10]

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8 Standing Committee on Procedure, *Days and hours of sitting and the effective use of the time of the House*, second report, May 1986; see also Standing Committee on Procedure, *Improved opportunities for private Members: proposed Sessional Orders*, November 1987, which was produced following the government response to the 1986 report.

9 In February 1994, as part of other reforms, Mondays became the day for private members' and committee business rather than Thursdays.

10 *Days and hours of sitting and the effective use of the time of the House*, 6.

In 1993 the Committee reported that 'the need to reduce the pressure of legislative business is now more urgent that it was in 1986'.[11]

The evidence supported the Committee's conclusions. As well as a long-term decline in the amount of time available to consider each bill as the numbers of bills introduced grew each year, the use of the guillotine to limit debate had grown dramatically. In 1986 forty bills had been subject to the guillotine; by 1992 the figure had grown to 132 bills, fifty per cent of the 264 bills passed by the Houses that year.[12] The chief explanation of this increase was the adoption by the Senate of the 'Macklin resolution' in 1986 which provided that the Senate would not consider bills received after a certain date during a period of sittings and that they would be deferred until the next sitting period (see below). Valid as this explanation was, it would have been of limited comfort to members of the House concerned about the time available for them to make their contributions.

The Procedure Committee was determined to assist the House to carry out more effectively its functions both in relation to the making of laws and the scrutiny of government performance. Its approach to the problem was typically wise, combining idealism and practicality: it sought to 'balance the interests and needs of backbenchers with the legitimate concerns of government and the opposition leadership', all with the 'broader objective of making the House of Representatives more relevant, effective and efficient'.[13]

The committee's solution was that more time could be made available, and increased opportunities provided for members to contribute, if bills were considered in two concurrent streams. It proposed that some bills would be considered in the House and, at the same time, others would be dealt with 'in a single Main Committee on legislation'.[14] All bills would start their journey in the House itself, and, by agreement, less controversial ones would be referred to the Main Committee, where the second reading debate and the detail stage (the traditional committee stage) could be completed, and where amendments could be made, with the bills then being returned to the plenary for final passage. Much thought was put into the procedures that would govern the new process; the Procedure Committee reported that they had been 'crafted on a foundation of indivisible cooperation and due deference to the priority of the House'.[15]

An underlying concern had been that the Executive would be tempted to use the new stream to remove from the House bills which it felt had the potential to cause embarrassment or difficulty. The recommended procedures tackled these concerns

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11 Standing Committee on Procedure, *About Time: Bills, Questions and Working Hours – Report of the inquiry into reform of the House of Representatives*, October 1993, 6.

12 *ibid*, 4.

13 *ibid*, 2.

14 *ibid*, 7.

15 Standing Committee on Procedure, *The Second Chamber: Enhancing the Main Committee*, July 2000, 6.

directly. The new standing orders incorporated three key safeguards. First, the Main Committee's quorum had to include one government and one non-government member, as well as the Chair. Thus an opposition could bring proceedings to a halt at any time simply by withdrawing its members. Secondly, decisions could only be taken 'on the voices': if the Chair's declaration of the result on a question was challenged, the question had to be referred back to the House for determination. Finally, at any stage any member could bring proceedings on an item to a halt by requiring that further proceedings on it be conducted in the House. These procedures gave great power not only to opposition members but to all members and helped to ensure the bills referred would indeed be by agreement because any attempt by the Executive to enforce referral against the wishes of any other member could be undone immediately.

The government accepted the carefully negotiated proposals. All reasonable steps were taken to give the new body appropriate status. Its proceedings were recorded in *Hansard* on a daily basis, broadcast through the House monitoring system and made available to the media. Given the experimental nature of the initiative expenditure was kept to a minimum, but a large committee room was furnished with some of the features of a small legislative chamber, albeit one in which members did not have allocated seats.

The committee met for the first time on 8 June 1994. Before calling on the first item of business Deputy Speaker Jenkins made a short statement about the procedures that would be followed. He concluded:

> The first meeting of the Main Committee heralds a new era in the deliberations of the Parliament. There has been much discussion about and interest in the proposed operation of this committee. I am sure that, with the cooperation of all members, the Main Committee will make the positive contribution to the workings of the House of Representatives envisaged by the Standing Committee on Procedure.[16]

As might be expected, such a significant change was accompanied by a degree of trepidation,[17] but, as might be hoped, success was to build on success. Even before the Main Committee first met its role was broadened: provision was made to enable it to also debate motions to take note of government papers.

In 1995 the House referred the main Appropriation Bill to the Main Committee, and in 1997 the Procedure Committee recommended that the Thursday meetings should commence with a 15 minute period of 90 second statements and conclude with a 30 minute adjournment debate. The Procedure Committee later observed wryly that, for once, it had got more than it had asked for: sessional orders

16 HR Deb, 8 June 1994, 1725.

17 The *About Time* report had also recommended the rostering of ministers for Question Time, and that became a matter of significant disagreement between the government and the opposition.

provided for the Thursday meetings to start with three minute statements by members, that they could run for 30 minutes, and that there would be an adjournment debate at the end of the sitting.[18]

Further refinements were introduced in March 1999 when the standing orders were amended to allow Parliamentary Secretaries to make three minute statements, and provision was made for statements on Wednesdays as well as Thursdays. The Main Committee had evolved to become a forum within which members could not only perform a law-making role, but also an accountability role and a role in the ventilation of grievances.

By 2007 three academics concluded that the Main Committee 'epitomised the nature of institutional change in the House of Representatives. Introduced as a modest initiative, it has real, if still modest, achievements to its credit'.[19] More was to come. In 2008 the bulk of time for private members' business was transferred to it, as well as grievance debate. Further time for these purposes was added in the 43rd Parliament (2010-13).

The statistics are of interest. As the committee gained status and experience the percentage of bills referred to it grew quickly. In 1995 more than 45 per cent of government bills were referred, since then at least 30 per cent of bills have been referred every year. While more than 100 bills had been subject to the guillotine in 1991, 1992 and 1993, after the Main Committee was established it became rare for more than twenty bills to be subject to the guillotine in any year.

There was more to the Committee's credit than is revealed by the statistics and by its success in providing additional time for members. It was soon noted that there was 'a distinctly different atmosphere developing from that in the Chamber'.[20] The 'better interplay in debate' and the more intimate environment were seen to encourage 'true debate and response to others' contributions'.[21] A number of factors were likely to have contributed to this—the fact that less controversial legislation was considered there, the smaller and more intimate meeting room and the fact that members did not have allocated seats (although it was noticeable that government and opposition members invariably chose to sit on the traditional sides). It is even possible also that the usual absence of a media presence had an influence.

In February 2012 the Main Committee was renamed the Federation Chamber. This change was a formal matter, but it was symbolic of the success that the radical experiment had met with. The new body, established after careful negotiation, had demonstrated its value. It had evolved, again through careful negotiation, to play a much broader role than had been contemplated in 1993. Its success was to the

18 *The Second Chamber: Enhancing the Main Committee*, 9. On 30 June 1998 these proposals were adopted as standing orders.

19 Halligan et al, *Parliament in the Twenty-first Century*, 40.

20 *The Second Chamber: Enhancing the Main Committee*, 16.

21 *ibid*.

benefit of members generally, to backbenchers, to shadow ministers, and to the executive.

Long before 2013 it had become difficult to imagine how the House would have coped with its workload if it did not have its second chamber. This episode in the history of the House had shown members that worthwhile change could be achieved, but that it required most careful thought and patient negotiation and compromise. The architects of the original proposal might have been pleased to see the favourable references to their concept in the 1998 report of the U K House of Commons Select Committee on Modernisation and the eventual establishment there of 'Westminster Hall' in 1999 as a means by which certain proceedings could take place in parallel to the Commons Chamber.

The House's committee system

The House committee system was the third area of significant development in the twenty-five years after 1988. Like the reforms in relation to private members' business and the consideration of legislation, the establishment of a comprehensive committee system was important to members and to the House as an institution. From a broader community perspective, however, the growth of the committee work of the House was probably the most significant development.

Although members had gained experience in committee work during the 1970s and 1980s, the scope of committee work was limited and had not developed in a coherent way, progress had been 'slow and uneven'.[22] As had been the case in respect of the establishment of legislation and Estimates committees in the House, the campaign for a new committee system was driven by government backbench members. A leading advocate was Mr John Langmore (ALP, Fraser, ACT). In his words, before the new system:

> a few areas of the Commonwealth's responsibilities were considered in detail by committees of the House but no committee was able to study such centrally important areas as economic, education, employment, immigration, industry, science, social security or trade policies. There were gaping holes in the work of the House.[23]

Backbench members wanting to make an impact had to work indirectly. As Mr Langmore put it:

> Ministers normally do listen to their backbench colleagues. Full party meetings and committee meetings discuss policy and sometimes influence its contents. Informal discussions in

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22 Halligan et al, *Parliament in the Twenty-first Century*, 48.

23 Professor J Langmore, 'Introduction to Session One: Overview', *Seminar on the 20th Anniversary of the establishment of the House of Representatives Committee System*, House of Representatives, 15 February 2008, 14.

> ministers' offices, in corridors, over meals and late at night can be important. But little of this provides much opportunity for creativity or rigour. Power remains centred in the ministry. A strong, comprehensive committee system is one means of modestly changing the balance.[24]

The campaign bore fruit in September 1987 when sessional orders were adopted to establish a system of 'general purpose standing committees'. Each committee was empowered to:

> inquire into and report on any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper referred to it by either the House or a minister.[25]

Between them these committees were to cover all areas of Commonwealth government activity other than foreign affairs, defence and trade, which would remain the responsibility of a long-established joint committee.

Reflecting the practice of the House, all chairs were to be government members, and government members would form a majority on each committee. The committees had no power of self-referral, and at times this was contentious. Although the number and size of the committees and their titles were changed several times, key features of the system established in 1987 remained in place. From the cautious beginnings of 1987 committee work grew to become a major feature of the work of the House, and one to which many members devoted a great deal of time and effort. By August 2013, when the 43rd Parliament ended, House committees had presented 452 reports.[26] These reports had dealt with matters of economic and financial policy and administration, including the banking and financial system and taxation law; a wide range of matters of legal and administrative importance, issues confronting many industries, environmental issues, many issues of social importance and significant bills.

It is interesting to speculate why the system established in 1987 was retained and grew in strength, whereas the legislation and Estimates committees established in 1978 were not sustained. Perhaps the explanation is that members of standing committees were able to become familiar with subject areas, and to build constructive relationships with their colleagues (the legislation and Estimates committees had been of limited duration and had varying membership); perhaps it was the satisfaction that many members would have felt in dealing with members of the community and organisations, and the knowledge that so many witnesses appreciated the opportunity to be involved with inquiries (legislation and Estimates committee proceedings had essentially been discussions and

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24 *ibid*, 14–5.

25 Clerk of the House, 'An extended committee system for the Australian House of Representatives', *The Table*, vol. LVI, 1988, 187.

26 Figure refers to investigatory committees and excluded the Privileges/Privileges and Members' Interests and Procedure Committees.

debates between members); perhaps it was the fact that standing committees produced detailed reports—by the end of each inquiry the committees had created 'a product' to which they had all contributed (legislation and Estimates committees had made reports of a more formal nature).

A notable feature and one which was very helpful in the adaptation of the system was the continued work of the Procedure Committee. It maintained a close interest in the working of the system. It consulted with members regularly and by 2005 had produced 10 reports which had dealt with aspects of committee operations. Its 'Ten years on' report in May 1998 concluded that 'the current system of committees has served the House well', although it recommended a reduction in the number of places to be filled and the incorporation of the work of a number of joint committees and one House committee into the standing committee system.[27] Maintaining its interest in the committee system, in 2005 the committee, having surveyed members, recommended that additional House time be made available for the consideration of reports.[28]

A development of practical as well as symbolic importance had occurred in 1996. In a formal statement on the conduct of monetary policy agreed between the Treasurer and the Governor of the Reserve Bank the Governor indicated that he would be available to report twice each year to the House Standing Committee on Financial Institutions and Public Administration (later the House Standing Committee on Economics). The regular appearances of the Governor and senior staff members to give evidence and be questioned by members about monetary policy and economic conditions became features of the parliamentary year. As well as serving a wider interest in having matters of great importance canvassed in detail and in public, and as well as having a strong element of accountability, this development reflected well on the maturity and credibility of the House committee system.

Another development in 1996 was the establishment of the Joint Standing Committee on Treaties. Through the Committee, and for the first time, the Parliament had a capacity to review and report on all treaty actions proposed by the executive before action which bound Australia to the terms of a treaty was taken. While many proposed treaties were not of widespread public interest some were the subject of extensive public inquiry such that as well as parliamentarians being able to express views about a proposed treaty so too could interested private or public organisations and individuals.

To the Procedure Committee, committee work had become one of 'the great bipartisan strengths of the House'. It reported:

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27 Standing Committee on Procedure, *Ten years on: a review of the House of Representatives Committee System*, May 1998.

28 Standing Committee on Procedure, *Procedures relating to House committees*, November 2005.

> Backbench members put an enormous amount of effort into this work and on most occasions it is undertaken in association with the community. Important topics of the day that directly impact on the lives of many Australians are considered and addressed. In their committee work we see backbench members at their parliamentary best, working together to bring about change for the betterment of Australian society.[29]

House committees were said to have developed a 'signature'—their bipartisan approach.[30] The Procedure Committee referred to their 'typically more cooperative and bipartisan' nature, reporting:

> One of the most consistent messages from the Speaker, Deputy Speaker, and committee chairs and deputy chairs, was that members greatly value the opportunity to work cooperatively across party lines. While this approach may not attract as much media attention as an adversarial, party-political one, members consider that it delivers significant benefits to the Australian community, in terms of policy formulation and implementation and community input.[31]

The committees showed a preference for subject area/issues inquiries. Although technically the references came from the House (which was rare) or from ministers, in reality, time after time committee chairs, having conferred with their committee colleagues, were successful in securing references from ministers' on the subjects that the committee members had decided they should deal with. These inquiries often involved review, scrutiny and criticism of government administration or of existing policy, but often the essential task was simply to investigate and report on a matter of importance to the community as well as to the government. Although it is unlikely that committees were ever motivated by the desire to help government, many reports would have been of considerable value to government, at times 'complementing the work of the executive by refining and adding value to existing policy'.[32] This perspective does not sit entirely happily with the belief that the main role of a house of Parliament is to hold the executive to account; from a wider community perspective however traditional institutional distinctions are not necessarily important: the wider perspective might be that important matters need investigation, that interested people should be able to participate, that 'something ought to be done'.

Time and again House committees 'did something' about important issues.

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29 *Procedures relating to House committees*, v.

30 Standing Committee on Procedure, *Building a modern committee system: An inquiry into the effectiveness of the House committee system*, June 2010, 41.

31 *ibid*, 42.

32 Mark Rodrigues, 'Parliamentary inquiries as a form of policy evaluation', *Australasian Parliamentary Review*, vol. 23, no. 1, Autumn 2008, 37.

It was notable that the costs of committees were modest. In June 2013 it was estimated that support for an average inquiry had cost some $82 000.[33] In the best traditions, and like their colleagues in the Senate, members of House committees 'took Parliament to the people'. Some inquiries, for example those dealing with family law matters and custody arrangements, bullying in the workplace and marriage equality, attracted very widespread interest and thousands of submissions and expressions of opinion. Committees developed innovative ways of taking evidence and allowing larger numbers of interested people to be involved. Another feature was the educative role committee work played for members.[34]

Parliamentary observers, as well as academic commentators, noted the small number of inquiries conducted by House committees into bills. It was acknowledged that the inquiries that had been done had been done very well and had seen improvements made to legislation.[35] Still, in the words of the Procedure Committee, although it had been expected that the process would be used selectively, it had in fact been used even less frequently than had been expected.

All that changed in the 43rd Parliament: one of the reforms enabled a single member of the Selection Committee to refer a bill for inquiry. By the end of that Parliament 224 bills had been referred to House or joint committees.[36] It was notable that the tradition of bipartisanship was not able to be sustained in relation to such inquiries. This was not surprising—many highly contentious bills were referred, and the resultant majority/minority reports reflected the experience of Senate committees (see below).

The achievement of House committees during the 43rd Parliament in maintaining their traditional issues-based inquiries while also coping with the unprecedented increase in their workloads resulting from the referral of bills was notable. It was also notable in the final sitting weeks of that parliament to hear again so many retiring members refer enthusiastically and warmly to their work on committees.[37]

The absence of a government majority during the 43rd Parliament and the intense focus on aspects of its procedures and operation was a unique opportunity for reflection by members on the role of the House. Understandably, most members were probably even more highly committed than usual during those years, and

33 This figure was for costs to the Department of the House of Representatives and did not, for example, include the value of members' time or the cost of their travel. It would be reasonable to suppose that the cost of Senate inquiries would have been similarly modest.

34 Halligan et al, *Parliament in the Twenty-first Century*, 29–30, 47 and 171.

35 The consideration of the Crimes (Child Sex Tourism) Amendment Bill was regarded as a good example.

36 This number exaggerates the position in that several of the references were for groups of related bills.

37 See HR Deb, Ms Moylan 17 June 2013, 5769; Dr Washer 19 June 2013, 6334; Ms Grierson 19 June 2013, 6262; Mr Neville 24 June 2013, 6646; and Mr Forrest 24 June 2013, 6687, 6692.

would have been hard put to find much time for reflection. Happily, members of the Procedure Committee again played a constructive role. In its well-practised way the Committee monitored and consulted about the operation of the changes made as a result of the agreements of September 2010 and made four reports on them. Like so many of the Committee's earlier reports they contained important information and useful observations which should be helpful in informing members of the 44th and later parliaments as they work to discharge their various responsibilities.

The Senate

Advances made between 1970 and 1987 proved to be solid foundations for the next twenty five years in the life of the Senate. Those advances, especially those concerning committees, were building blocks from which many further initiatives were taken to enhance and strengthen the role of the Senate.

Four initiatives

An early illustration in this period of the sense of institutional purpose in the Senate was its adoption, in February 1988, of eleven 'privilege resolutions' which included procedures to be followed by committees for the protection of witnesses, procedures for the protection of witnesses before the Privileges Committee, a statement of matters that could be found to constitute contempts, and provisions to establish a 'right of reply' procedure under which people subject to criticism in the Senate could apply to have limited responses published.[38] These resolutions complemented the enactment of the historic *Parliamentary Privileges Act 1987,* and, like it, had been recommended in the 1984 report of the Joint Select Committee on Parliamentary Privilege.[39] Although not as significant as the Act, the resolutions had their importance, and the priority given to them in the Senate was notable.[40]

A second important development was the adoption of a fully revised set of standing orders. This entailed much more than a tidying up of expression and the removal of antiquated forms. The intention was that the revised standing orders would be 'a codification and clarification of existing practice by incorporating long-standing sessional orders and by removing duplication and repetition, and provisions that had been made superfluous'.[41] Dr Rosemary Laing wrote later that 'unfortunately it is not possible to consult the debate on the adoption of the new standing orders because there was none': the motion to adopt the new provisions

38 J (1987–8), 534–6.

39 See *House of Representatives Practice*, 6th ed., Chapter 19; *Odgers' Australian Senate Practice*, 13th ed., Chapter 2.

40 Senate *Hansard*, 25 February 1988, 620-40.

41 R Laing (ed), *Annotated Standing Orders of the Australian Senate*, 2009, 26.

was dealt with as formal business on 21 November 1989, and therefore agreed to without amendment or debate.[42] This was notable in a house where considerable time was often spent debating procedural and domestic matters, and was no doubt only possible because of the detailed work that had been done by Senate officers to support the Procedure Committee and because of careful consultation with key senators.[43]

A third development had a much higher public profile. When senators and members met in the new building on 22 August 1988 the chambers were substantially ready for the introduction of television. Proceedings of each House were broadcast throughout the building on closed circuit television from 1989 but the question of whether proceedings should be televised generally proved to be a difficult one, and was subject to much discussion. On 31 May 1990 an opposition senator, Senator Amanda Vanstone (Lib, SA), took the initiative and moved that television coverage of the Senate's proceedings be commenced on a trial basis from 21 August.[44] Her action was portrayed by the Manager of Government Business, Senator Robert Ray, as chauvinistic, but the motion was carried on the voices.[45] As was expected[46] this put pressure on the House, which agreed to the commencement of television coverage, on a trial basis, from 12 February 1991 (see below).[47]

A fourth development was an illustration of the changes that took place during 'the age of minority'.[48] This term was coined by Professor John Uhr to describe changes to the legislative process that came about during the 1980s and early 1990s when minor party initiatives were supported by oppositions 'desperate enough to help unpave the path of government convenience'.[49]

The initiative of Senator Macklin (Australian Democrats, Queensland) under which the Senate imposed a deadline whereby bills received in the Senate after a specified date were automatically adjourned until the next period of sittings (see

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42 *ibid*, 27.

43 The Senate Standing Committee on Procedure had revised the standing orders in 1987.

44 In the UK the House of Lords had also taken the initiative with an experimental telecast in 1985.

45 Senate *Hansard*, 31 May 1990, 1627-8.

46 See remarks by Senators Vanstone and Ray, Senate *Hansard*, 31 May 1990, 1624, 1627; see also views of Mr Paul Bongiorno quoted in S Bach, *Platypus and parliament: the Australian Senate in theory and practice* (The Department of the Senate, 2003), 253.

47 VP (1990–91), 491–2. This was a reverse of what had happened in Washington—there the House had gone first, but the gap between its decision and the Senate's had been seven years: Bach, *Platypus and parliament*, 253-4.

48 J Uhr, *Deliberative Democracy in Australia: the changing place of Parliament* (Cambridge University Press, 1998), 146. See comments by Dr Campbell Sharman quoted in Bach, *Platypus and parliament*, 82 on the perspective of minor party or independent senators in comparison to opposition senators.

49 Uhr, *Deliberative Democracy in Australia*, 146.

page 4 above)[50] was taken further in 1993 by another minor party senator, Senator Christabel Chamarette (Greens, WA). She won support to make the deadline a double one because the original provision had seen bills forced through the House of Representatives in order to be introduced in the Senate before its deadline. Under the new formulation to be considered by the Senate during a period of sittings, not only did bills need to be received by the Senate by a certain date, they had to have been introduced into the House of Representatives by an earlier specified date.

The Senate's message transmitting its decision drew a strong reaction. The House resolved that:

- the Senate order was 'a completely unwarranted interference by the Senate in the business of this House';
- the Senate was 'a house of review and has no place dictating to this House, the house of government, on the conduct of its business';
- the order was 'a gross discourtesy by the Senate to the people of Australia in that the order demonstrates a presumptuous desire not to allow the house of the people to have its proper control over the management of its business';
- the public interest was not served by the effect of the Senate order 'which is to curtail proper debate on legislation in this House by forcing the Government to progress legislation rapidly through the House in order to meet a Senate imposed deadline'.[51]

Protest as it might, the House was powerless to change the Senate's decision, which in 1997 was entrenched in a standing order.[52] The standing order remained in place when the government had a majority in the Senate (2005-07).

Senate committees

From an institutional perspective the most significant long-term developments for the Senate and for its relationship with executive government were those concerning its committee system.

The Senate's Estimates committees and its general purpose standing committees continued to be given support and encouragement. and the Estimates committees started to find their feet. From an early stage assertions were made by the Senate in relation to the accountability of statutory authorities to 'the Parliament or its committees'.[53] and the interpretation of the scope and relevance of questions was likely to favour the potential questioner: 'Every time a senator pushed the

50 *Odgers' Australian Senate Practice*, 13th ed., 297.

51 VP (1993), 173–6.

52 Now Senate standing order 111.

53 See Resolutions of 9 December 1971, 23 October 1974, 18 September 1980 and 4 June 1984 (reaffirmed on 29 May 1997).

boundary out, it might not have gone that far out but it never came back to where it was before'.[54]

Initially, the Senate's general purpose standing committees concentrated on traditional longer-term inquiries. Despite their right to consider bills, very few were referred for inquiry: only 29 were referred to general purpose committees between 1970 and 1989; 25 were referred to select committees and one was referred to a joint standing committee.[55] In 1988 the Senate appointed a Select Committee on Legislation Procedures to consider that matter. It reported:

> The reference of more bills to committees on a regular basis has been frequently discussed … It has been seen as a valuable addition to the parliamentary work of the Senate. It has also been regarded as the next step in the development of the committee system and of the system for the scrutiny of legislation.[56]

The Select Committee's conclusion was that 'more bills than at present' should be referred to committees. It recommended that a Selection of Bills Committee be established to consider which bills should be referred for inquiry. It left open the detail of the way committees should discharge their new responsibilities,[57] but there was some expectation that committee inquiries would follow on from the decision the Senate had made on the second reading of a bill and focus on the detail of legislation.[58]

The Senate duly established a Selection of Bills Committee, effectively comprising the Whips, and it got down to work. 'Friday committee days' became a fixture in the weekly schedule of a number of senators.[59] Members of the Legal and Constitutional Affairs Committee found themselves very busy. It was estimated that the percentage of bills referred quickly rose to more than 20 per cent, and to between 30 and 40 per cent by the late 1990s.[60]

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54 Former Senator Ray, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', *Proceedings of the conference to mark the 40th anniversary of the Senate's legislative and general purpose standing committee system*, Papers on Parliament no. 54, December 2010, 28; see also remarks of former Senator Hill, 24–8.

55 R Pye, 'Consideration of Legislation by Australian Senate Committees and the Selection of Bills Committee', *The Table*, vol. 76, 2008, 36.

56 Senate Select Committee on Legislation Procedures, *Report: 1 December 1988*, PP 398/1988, 2.

57 Laing (ed), *Annotated Standing Orders of the Australian Senate*, 24.

58 Pye, 'Consideration of Legislation by Australian Senate Committees and the Selection of Bills Committee', 37; A Lynch, 'Personalities versus structure: the fragmentation of the Senate committee system', *30th Conference of Presiding Officers and Clerks*, Fiji, July 1999, 4.

59 Former Senator Knowles, 'Senate Committees and Legislation', *Proceedings of the conference to mark the 40th anniversary of the Senate's legislative and general purpose standing committee system*, Papers on Parliament no. 54, December 2010, 40.

60 Pye, 'Consideration of Legislation by Australian Senate Committees and the Selection of Bills Committee', 38.

By the 20th anniversary of the establishment of the modern system of Senate committees it was apparent that committee work had transformed the careers of some senators:

> Committee work gave senators a greater stake in the institution as well as access to previously unimaginable levels of information.[61]

The question of the chairing of committees[62] was the cause of a reference by the Senate to its Procedure Committee in February 1994.[63] Its task was to come up with arrangements that 'would be more responsive to the composition of the Senate and provide a more efficient structure'.[64] Its solution was to propose a system of paired committees, with a references committee and a legislation committee being established to cover each area of Commonwealth administration. The legislation committees would be chaired by government senators and would inquire into bills, estimates, annual reports and the performance of government departments and agencies. The references committees would have opposition or minor party chairs (six and two places respectively). In 2006, when the government had a majority in the Senate, the earlier legislative and general purpose structure was restored and the paired committees amalgamated. This was controversial,[65] and the paired structure was restored in 2009.

Students of parliamentary history know that reforms can sometimes play out in interesting and unexpected ways. One of the concerns of members of minor parties and independent senators had been that, unlike the major parties, they were unable to take advantage of the provisions allowing for substitute members to be appointed to committees. The agreed solution was to provide for 'participating' members of committees: this allowed senators who were not members of committees to attend committee hearings, question witnesses and participate in meetings. Participating members could move motions but they could not vote.[66]

Although intended to assist senators from minor parties and independents, the provision was open to any senator. Advantage was soon taken. By the 43rd Parliament committees of six senators each had between 58 and 62

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61 Laing (ed), *Annotated Standing Orders of the Australian Senate*, 20.

62 The common modern practice, reflecting the practice of the Senate itself, had been that government senators chaired committees.

63 R Laing, 'Overhaul of Australian Senate's Committee System', *The Table*, vol. 63, 1995, 12.

64 Laing (ed), *Annotated Standing Orders of the Australian Senate*, 135.

65 See comments by former Senator Minchin, 'Committees under a Government-Controlled Senate: Lessons from 2005–08', *Proceedings of the conference to mark the 40th anniversary of the Senate's legislative and general purpose standing committee system*, Papers on Parliament no. 54, December 2010, 110-11.

66 From November 2002 participating senators were able to be counted for the purposes of a quorum—Senate standing order 25.

participating senators: at least no committee should have had difficulty obtaining a quorum.[67]

Apart from the tension between these arrangements and the experience that at their best committees are small groups of parliamentarians able to work cohesively and purposefully to become familiar with subjects of inquiry, and the possibility that senators could attach dissents to committee reports without having come to terms with the body of evidence,[68] this development had implications for other participants. Witnesses could no longer have any sense of just which senators they might face when appearing to give evidence; this was similar to the traditional practice that any senator could attend any estimates hearing and question witnesses on matters of particular interest to them.[69]

The estimates hearings became particularly high-profile. Initially hearings were held after the Senate adjourned for the day, but in later years the Senate itself would not usually meet during weeks of Estimates hearings, thus allowing the committees to meet at fixed times and with the full attention of senators.[70]

Perhaps the clearest benefit of this process was the disclosure of significant amounts of information about the operation of government departments and agencies.[71] Secondly, the processes were important opportunities for senators to pursue matters of interest to them.[72] Thirdly, there was an educative role for individual senators—these processes gave them good opportunities to become well-informed about the detail of government activities.[73] A fourth point was that some activities contemplated within government would have been thought through within ministerial offices or departments and agencies in terms of the ability to explain them later at an Estimates hearing—and as a result, some may not have been proceeded with, or proceeded with in a modified form.[74] (A negative of this point was that some worthwhile matters might not have been proceeded with precisely because of the treatment that could have been expected

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67 Parliament of Australia, 'Senate Committees': http://www.aph.gov.au/Parliamentary_Business/Committees/Senate.

68 Laing, 'Overhaul of Australian Senate's Committee System', 14.

69 *Odgers' Australian Senate Practice*, 13th ed., 480; see comments by former Senator Ray, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 33.

70 *Odgers' Australian Senate Practice*, 13th ed., 469.

71 See for example A Lynch, 'The Estimates Process: Prevention is better than cure', *32nd Conference of Presiding Offices and Clerks*, Paper no. 12, Wellington, July 2001; and comments of former Senators Hill and Ray, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 26-7; Halligan et al, *Parliament in the Twenty-first Century*, 100.

72 See for example comments of former Senators Ray and Hill, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 26–7.

73 Laing, *Annotated Standing Orders of the Australian Senate*, 20.

74 See for example comments by former Senator Ray, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 28; and Lynch, 'The Estimates Process: Prevention is better than cure'.

at Estimates hearings). A final benefit was the opportunity provided for officials to learn something of the views of senators on the issues that they raised.

There were also frequent signs that Estimates hearings served as, and were highly valued as, other fronts in continuing political contests.[75] The partisan nature of many hearings was evident not only in exchanges between government and opposition senators, but also in the involvement of minor party senators. Estimates hearings were nevertheless of special value to oppositions,[76] and there was often a close relationship between matters pursued at the hearings and Question Time in the House.[77]

Senators often made statements and assertions and argued between themselves.[78] At least such exchanges were between elected parliamentarians; it is reasonable to spare a thought for the position of officials who found themselves drawn into, or in danger of being drawn into, the partisan contest through their attendance at Estimates hearings. In addition, the ability of any senator, whether or not a 'core' member of a committee, to attend any Estimates hearing and ask questions of witnesses added an extra element of unpredictability and could have been a source of concern for officials preparing to appear[79] and the televising of proceedings would have added to the stress felt by those appearing.

In September 1996 President Margaret Reid received complaints from witnesses who claimed to have been mistreated at a committee hearing. The President suggested that chairs remind their committees that witnesses should be treated with courtesy; she said that that did not preclude rigorous and probing questions, but that they should be asked with politeness and with the appropriate opportunity for witnesses to respond.[80]

In relation to legislative scrutiny, the percentage of bills referred for inquiry after introduction, instead of after the second reading, increased, and committees increasingly came to report on the merits of the bills in general or policy terms.[81] By 1999 the use of dissenting reports had become common. Deputy Clerk, Anne Lynch, lamented:

> It is difficult to find any report on any but the most anodyne of subjects which has not resulted in a splintering of views. This is

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75 See for example Halligan et al, *Parliament in the Twenty-first Century*, 258.

76 See for example comments of former Senator Hill, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 28.

77 See for example HR Deb 28 May 2013, 4009; 3 June 2013, 4794; 4 June 2013, 5076; and 18 June 2013, 6071.

78 See for example transcripts of hearings of, 27 May 2013.

79 See comments of former Senator Ray, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 33.

80 'Committee rudeness linked to the presence of TV cameras', *Committee Bulletin: inside the parliamentary committee system*, vol. 8, no. 1, January 1997, 5; 'Boiling point', *AFR*, 12 September 1996, 51.

81 See remarks of former Senator Knowles, 'Senate Committees and Legislation', 40.

> especially true in respect of legislation referred to the committees. The reports, both government and non-government, tend to restate the policy of the respective parties … [82]

She referred to the absence of the Senate tradition of 'enforced reasonableness' and to 'us-versus-them reports'. As was to be expected, the political significance of bills in question played a big factor. 'Big picture' bills were in fact likely to be referred to references committees where non-government senators had a majority, rather than to legislation committees with their government majorities. Ms Lynch saw the actions of the non-government majority in respect of the goods and services tax package of legislation in 1999 as illustrative of the change, and of its predictable results. Statistics for 2008 showed that the incidence of dissent in inquiries into bills remained at a high level, although it was lower in 2012—see table below.

Table 10.1 Dissent rates in parliamentary committee inquiries, selected years (%)[83]

	1978	1988	1998	2008	2012
All committees			48	55	49
Committee type					
Senate			79	81	75
Joint	0	13	26	11	22
House	8	0	14	33	39
Inquiry topic					
Govt Operations			9	6	17
Policy			41	41	37
Bill			89	89	67
Bill inquiries					
Senate			96	92	76
Joint	n/a	100	60	67	46
House	n/a	n/a	n/a	0	50

Note: Measured as the proportion of reports where at least one committee member submits an additional report.

The concern was that committee members could even plan dissenting reports without necessarily participating in inquiries in the traditional manner.[84] These developments had consequences in terms of the later consideration of reports and could make it easier for recommendations to be ignored or rejected.[85] Nevertheless the use of dissents became accepted, and often expected, and illustrated the intensely political nature of some inquiries. Although they represented a departure from the valued traditional approach, such inquiries could still be of value: in relation to the GST legislation, Ms Lynch noted that the process had allowed high quality evidence to be received and that 'senators with a

82 Lynch, 'Personalities versus structure: the fragmentation of the Senate committee system', 2.

83 Thanks are due to Mr David Monk for his help in preparing this table.

84 Halligan et al, *Parliament in the Twenty-first Century*, 233–4.

85 See for example Halligan et al, *Parliament in the Twenty-first Century*, 228–34.

commitment to gaining benefit from the process used the hearings intelligently to establish their views and ultimately their voting decisions'.[86] Former Senator Andrew Murray (Australian Democrats, WA) had a positive view of these inquiries.[87]

Many senators, and many Senate staff members, had worked hard to make its committee system the significant feature that it had become by 2013. It was to be expected that senators would be proud of their achievements, and this might have been a factor in sensitivity sometimes evident about joint committees and in occasional criticism of House committees.[88] While House committees are free to meet with their Senate counterparts,[89] Senate committees cannot confer with a House committee 'except by order of the Senate'.[90] Understandable as such thinking might be from the perspective of one House, from a wider perspective and from the perspective of people and organisations participating in inquiries, joint inquiries could have great appeal—when a committee of each House had a reference on a matter witnesses would surely be grateful if they could appear once (at a joint meeting), and it would not be at all difficult for arrangements to be made to facilitate this.[91] In addition, through such processes members and staff of the committees of each House could benefit from working with their 'other House' colleagues, yet still be free to deliberate independently and report in the usual manner.

More than anything else, the story of the Senate in the years 1988-2013 was the story of its committees. Dr Laing put it succinctly: 'The impact of the committee system on the Senate cannot be overestimated'.[92] It can be added that the impact of the Senate committee system on the relationship between the parliament and executive government had also been considerable.

The long term questioning of the value and role of the Senate,[93] and the occasional sharp criticism of it,[94] must have had their effects and many senators would have

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86 Lynch, 'Personalities versus structure: the fragmentation of the Senate committee system', 7.

87 'Democrat Senator Andrew Murray discusses his experiences on the select GST Committee', *Committee Bulletin*, vol. 10, no. 3, March 1999, 5.

88 See for example remarks from the *Proceedings of the conference to mark the 40th anniversary of the Senate's legislative and general purpose standing committee system*, Papers on Parliament no. 54, December 2010, 34, 51, 55 and 57. Despite the status and record of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and the fact that, as at the dissolution of the 43rd Parliament, 12 senators served on it, the decision of the Senate to establish its own Foreign Affairs, Defence and Trade Committee was notable.

89 House standing order 238.

90 Senate standing order 40.

91 After all in 1997 a federal committee had conducted successfully an inquiry in collaboration with a committee of the Queensland Parliament.

92 Laing, *Annotated Standing Orders of the Australian Senate*, 19.

93 It was not until 1979 that the abolition of the Senate was removed formally from the ALP policy.

94 Although fire was sometimes returned, see Bach, *Platypus and parliament*, 252.

been irritated by low level critical references to their House.[95] Uncomfortable as this must have been, it is likely to have motivated many senators to show what they were capable of. This was the sort of enforced introspection that members of the House had been spared for so long. It was also notable how thoroughly the development of the Senate's work was supported. Seven editions of *Odgers' Australian Senate Practice* were published in the 17 years between 1995 and 2012, and supplements were issued between editions. While the seventh edition was necessarily a substantial rewrite of Mr Odgers' work because of the changes to the standing orders and other developments, as well as explaining and advocating the work of the Senate references critical of the House were now inserted. The publication in 2009 of the *Annotated Standing Orders of the Australian Senate* was a substantial work of scholarship and one which will be a valuable guide to future senators and officers of the Senate and to others interested in parliamentary history.[96]

Relations between the Houses

While low-key rivalry between the two Houses was evident at times - the televising of proceedings was one instance (see page 12 above), consistent with the history of relations between the Houses, the most significant tensions arose in connection with legislation. Also consistent with history, there were arguments about government mandates when proposals had been a feature of policy platforms taken to general elections, on the one hand, and, on the other, about the rights of senators and the positions they had advocated.[97]

In 2003 the Howard government presented a paper, *Resolving deadlocks: A discussion paper on section 57 of the Australian Constitution*.[98] The paper outlined alternative options for the resolution of deadlocks between the Houses. One was for a joint sitting to be convened in respect of a deadlocked bill without the need for simultaneous elections; another was for a joint sitting to be able to be convened after an ordinary general election.[99] Despite a round of consultations, there was

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95 See comments of Senator Childs quoted below in Bach, *Platypus and parliament*, 252.

96 The work was of great assistance in the compilation of these reflections.

97 For a recent article which gives an historical perspective see J Nethercote, 'The legitimacy of "mandate"', *Canberra Times*, 13 September 2013; for an international perspective see Bach, *Platypus and parliament*, 274–99.

98 HR Deb, 8 October 2003, 20852–62.

99 *ibid*; and see *House of Representatives Practice*, 6th ed., 471–2; *Odgers' Australian Senate Practice*, 13th ed., 741.

little interest in the proposal and it was not proceeded with.[100] (and see pages 13-14 above regarding deadlines for the introduction of bills).

The financial initiative

From the late 1980s the incidence of questions between the Houses in respect of the third paragraph of section 53 of the Constitution—'The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people'—was notable. From a House perspective there seemed to be a fresh willingness on the part of the Senate to make alterations to bills in the form of amendments rather than as requests; from a Senate perspective it may have been a case of being more alert to what could be regarded as the most vigorous exercise of its powers.

In 1994 each House referred the matter to its Legal and Constitutional Affairs Committee for inquiry in the hope that some common understanding could be reached. The House committee published an exposure report, received comments on it and presented a comprehensive final report in November 1995.[101] The Committee recommended that a compact be agreed between the Houses on the interpretation and application of the provisions. The Senate reference was partly transferred to its Procedure Committee, which reported the terms of a possible agreement,[102] but there were substantial differences between the conclusions and recommendations of the committees of the two Houses.

Although no agreement was made, the submissions, evidence and report of the House committee were useful in increasing understanding of issues,[103] and the Department of the Senate arranged for a good deal of information and commentary to be assembled and published.[104] The Senate later resolved that any amendment circulated in the form of a request be accompanied by a statement of reasons for its being framed as a request, together with a statement by the Clerk of the Senate on whether the amendment would be regarded as a request under the precedents of the Senate.[105]

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100 HR Deb, 1 June 2004, 29656–9; see also Senator Brandis, 'The Australian Senate and responsible government', *The University of New South Wales Law School, Gilbert + Tobin Centre of Public Law, 2005 Constitutional Law Conference*, Sydney, 18 February 2005, 6.

101 House Standing Committee on Legal and Constitutional Affairs, *The third paragraph of section 53 of the Constitution*, November 1995, PP307/1995.

102 Senate Standing Committee on Procedure, *Section 53 of the Constitution: incorporation into the standing orders of continuing and sessional orders*, November 1996.

103 And see *House of Representatives Practice*, 6th ed., 452–4; *Odgers' Australian Senate Practice*, 13th ed., Chapter 13; and 'Constitution, Section 53: Financial Legislation and the Houses of the Commonwealth Parliament', Papers on Parliament no. 19, May 1993.

104 'Constitution, Section 53: Financial Legislation and the Houses of the Commonwealth Parliament', Papers on Parliament no. 19, May 1993.

105 J (1998–2001) 2899.

A new area of disagreement arose in 2008: until then there had been no history of disagreement between the Houses concerning the initiation of bills. The Urgent Relief for Single Age Pensions Bill 2008 was introduced by an opposition senator. It provided for increases in the rate of certain pensions and would have had the effect of increasing expenditure under a standing appropriation.[106] It was argued in the Senate that this was not contrary to the provisions of the first paragraph of section 53—'Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate'—because the bill did not itself contain words of appropriation, relying instead on a standing appropriation contained in an existing act. The concern that such a bill could not be initiated in the Senate was based on the reasoning that it contravened the constitutional restriction set out in section 53 (1) because it would have the certain legal effect of appropriating revenue: the draw from the Consolidated Revenue Fund would be increased because of its provisions.

As ever, the numbers mattered. There were sufficient votes to ensure that the bill was passed by the Senate. When the bill was received by the House the Speaker drew attention to the issues involved and presented advice from the Clerk. The Leader of the House argued that the initiation of the bill in the Senate had indeed been contrary to the constitutional restriction, the closure was carried and the House declined to consider the bill.[107]

The numbers were again the key when a similar situation arose in 2011. An opposition senator introduced a bill intended to enlarge the class of students entitled to an allowance funded by a standing appropriation.[108] Again, with crossbench support, the Senate passed the bill. This time, with a minority government in office, the numbers in the House were anything but clear.

As in 2008, the Speaker made a statement drawing attention to the issues and presented advice. The Leader of the House and the Attorney-General set out reasons why such a bill could not validly be initiated in the Senate, the alternative case was put by the Manager of Opposition Business. Debate ensued, an amendment to the effect that the bill could proceed when the Parliament had agreed to a method to finance it was defeated, and the motion that the House should decline to consider it was carried—by one vote.[109]

The numbers had determined the outcome in each House. The result had turned on the votes of independent members. The case was much more sobering than the 2008 instance, because, had the numbers fallen the other way, as they very nearly

106 The bill's explanatory memorandum put the estimated cost at $1.45 billion.

107 HR Deb, 23 September 2008, 8273–81.

108 Social Security Amendment (Income Support for Regional Students) Bill 2011. Between the 2008 case and 2011 the High Court had cited with approval the explanation in *House of Representatives Practice* of the connection between bills which provided for expenditure but did not themselves contain words of appropriation and standing appropriations—*Pape v Commissioner of Taxation*, [2009] HCA 23 at 135, 164–71, 206.

109 HR Deb, 21 February 2011, 598–618 and 646–63.

did, there was every prospect that the Governor-General would have been drawn into a political disagreement. Such disagreements are seen regularly in parliamentary politics— and they are resolved through political processes. Had the numbers allowed the proposal to pass the House it would have been transmitted to the Governor-General for assent. Presumably the Government would have maintained the position that the introduction of the bill had contravened the constitutional restriction and advised the Governor-General to decline to give assent to the bill.

Although scholarly papers had been written about such a situation,[110] it was, and remains, unprecedented in so far as the Commonwealth Parliament is concerned. The Governor-General would have faced the dilemma of either rejecting the advice of her ministers and giving assent to a bill that had been passed by each of the Houses, or of accepting the ministerial advice and declining to give assent. This would have imposed a highly undesirable strain on the system of federal government, yet there is no evidence from the Senate *Hansard* that the risk of the Governor-General being drawn into the dispute was considered. The case illustrated the potentially very serious consequences for the system of government when political disputes which give rise to questions of constitutional law are pushed to their limits.[111]

It is important to record that, despite what can be regarded as traditional disagreements between the Houses in respect of Senate amendments, and the fresh area of disagreement that arose in 2008 and 2011 in respect to the initiation of bills, there were many more occasions on which the usual goodwill and cooperation was evident. As ever there were numerous instances at a staff level where a joint or collaborative approach was taken without hesitation. The establishment of joint committees, while adding to the demands on the time of senators and members, provided good opportunities for them to work together and avoid the risk of duplication. In 1993 the two Procedure Committees cooperated as each considered options for the days and hours of sitting; the Privileges Committees of each House worked collaboratively in 1994 on references concerning public interest immunity; when it was established in 1994 the Committee of Senators' Interests was given advice based on the experience of its House counterpart; and in the 43rd Parliament the House Committee of Privileges and Members' Interests and the Committee of Senators' Interests met on the question of a code of conduct.

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110 A Twomey, 'The refusal or deferral of Royal Assent', *Public Law*, Autumn 2006, 580–602; G Lindell, 'Assent or refusal to assent to legislation—on whose advice?', *Constitutional Law and Policy Review*, vol. 11, no. 3, 2009, 126–38.

111 The differing views taken in the Senate and in the House are summarised in *Odgers' Australian Senate practice*, 13th ed., 381–3 and *House of Representatives Practice*, 6th ed., 421–2.

It was desirable for the work of each House to be assessed and subject to criticism. It is also probably common for inter-House competition to be seen in bicameral parliaments. In 1992 Senator Bruce Childs put it bluntly, if a little too simply:

> … chauvinism is manifest in many ways. The House considers that senators are the second XI, frustrating smooth government. The view from the Senate is that the House is full of rowdies dropping artillery shells of personal abuse on each other.[112]

Inter-House rivalry may reflect perceptions in political circles, and perhaps more widely, but it can also help shape perceptions. One of the dangers for the Parliament as a whole is that such rivalry can see shallower criticism distract from more serious reflection and reform. Senator Childs' comments in 1992 no doubt reflected something of the feelings of that time; it may be that the years that followed saw an evolution in thinking. On the second last sitting day of the 43rd Parliament, former Speaker Harry Jenkins (ALP, Victoria) spoke of 'two houses, one parliament'.[113] As a former Speaker, a member with twenty-five years' service and with experience in and commitment to inter-parliamentary collaboration, he was well-placed to make this observation. If such thinking was shared by many senators and members it would have been a sign of a broadening institutional perspective.

The age of television

The introduction of television coverage of proceedings was one of the most significant developments of these years. The new Parliament House was not only striking and spacious, it had been designed and built with the use of modern technology, including television, in mind.

Decisions to allow general television coverage were not straightforward, but the Commonwealth Parliament was not alone in its caution.[114] Although the Senate agreed to commence a trial of television coverage of its proceedings from 21 August 1990[115] (see above) it was not until the first sitting day of 1991 that the

112 Quoted in Bach, *Platypus and parliament*, 252.

113 HR Deb, 26 June 2013, 7084–7.

114 In the UK, for example, the matter was considered over more than 20 years; in 1980 in the House of Commons the votes on a private member's proposal supporting television were tied and the matter only survived for further consideration on the casting vote of Deputy Speaker Weatherill; it was to be nine more years before television coverage was permitted there, the Lords having given approval in 1985. In Washington the House of Representatives had gone first (see above); and in India it has been argued that the introduction of television had reduced Question Hour's effectiveness as an accountability mechanism; see S Datta, 'Television Coverage and a Political Voice: Evidence from Parliamentary Question Hour in India', *The Economist*, 10 July 2008, and S Franks and A Vandermark, 'Televising parliament: Five Years on', *Parliamentary Affairs*, vol. 48, no. 1, 1995, 57–71.

115 See remarks of Senators Vanstone and Ray, Senate *Hansard*, 31 May 1990, 1624–7.

House agreed to a trial.[116] The trial was assessed by members and by media representatives as successful.[117] Approval for ongoing coverage was given on 16 October 1991, the Leader of the House, Mr Kim Beazley (ALP, WA), telling the House: 'By and large we think the televising of Parliament has worked well'. Mr Wal Fife (Lib, NSW), Manager of Opposition Business was more enthusiastic: 'Carriage of this motion will be another landmark in the history of this Parliament and I believe that it will enhance the role of the House in the democratic process.'[118] Nevertheless the matter remained sensitive: a decision of the House in 1993 to overturn a committee determination on the conditions for televising was seen as a public rebuff to Speaker Stephen Martin, who had chaired the committee.[119]

Advocates of televising believed that it would extend widely information about the working of Parliament, and that it would have a positive effect on members' behaviour. Those with reservations were concerned that its effect would be negative, that members would be less inclined to spend the time to make out careful and reasoned arguments, that some would 'play to the cameras' and that it would increase the attention already given to leaders.[120] The lessons of more than twenty years show that there was validity in the points raised by advocates and by those with reservations, although it is surprising that so little appears to have been written about the impact of televising.

Ultimately, it is not possible to draw authoritative conclusions about the effect televising had on proceedings, or on public perceptions of them. Presumably members have a were aware of the possibility of their contributions being picked up and used in news and current affairs programs, and it was no bad thing if many contributions were more concise. It is also possible that either because of the good sense of the members concerned or because of the influence of colleagues some less than admirable performances may have been avoided. Still, when parliamentarians have displayed bad or silly behaviour the cameras have ensured that it can be seen forever and in this way the repeated televising of some instances may have had a cautionary influence.

Long before 2013 it had become difficult to imagine national news and current affairs programs which did not frequently include images of proceedings. It was not surprising that many of the images featured the party leaders, especially the Prime Minister and the Leader of the Opposition. It may be that a similar amount of time would have been given to them even if images of proceedings were not

116 For background to the trial see, 'Television in the House of Representatives', *The Table*, vol. 59, 1991, 175–7.

117 House Select Committee on Televising of the House of Representatives, *The Eyes Have It! Inquiry into the televising of the House of Representatives and its Committees*, August 1991, 6–12.

118 HR Deb, 16 October 1991, 2058–9.

119 HR Deb, 20 October 1993, 2189–2208.

120 It is interesting that similar points had been made in connection with the introduction of radio broadcasting in 1946.

available, but at the very least the ready availability of footage gave an additional aspect to coverage of their activities and helped give them more exposure.

It did appear that televising increased the focus on Question Time in the House. The positive aspect of this was that interested members of the community could see the leaders of executive government being questioned by other parliamentarians; the negative was that Question Time became—or remained—a cause of much complaint and criticism, particularly in terms of the partisan and disorderly exchanges often seen, and it is likely that the televising of Question Time reinforced negative perceptions of the Parliament.

The demands of the continuous news cycle grew and cost and competitive pressures within the television industry were considerable. The availability of free content on matters of interest would have had great appeal to networks. Again, the positive in this was the much wider dissemination of details of proceedings. The negatives were the risk of members' remarks being shaped with regard to their suitability for television, the inevitable selectivity, the risk of distortion and the possibility of over-exposure. The repeated use of some excerpts could have had a negative impact on perceptions of Parliament. When combined with commentary—along the lines of 'prime minister X and opposition leader Y will go head to head tomorrow when Parliament resumes'—negative perceptions could be reinforced. It was understandable that facts such as the great majority of debates being civil and constructive and that, regardless of which party or coalition was in power, most bills were supported by most members did not seem to register. It was ironic that the technology that many had hoped would raise the profile of the Parliament may have helped to fuel unhappiness about it.

Veteran journalist Michelle Grattan was well placed to comment on the impact of television, an impact felt by the Executive as well as by the Parliament:

> The overwhelming change in the last thirty years in the Press Gallery has been the ascendancy of television. A generation ago television was very much the small newcomer in political coverage from the Canberra Gallery. It operated on a shoe string; it fed a lot off the newspapers. Now its needs shape the way political events are presented, and the newspapers feed off it.
>
> …
>
> Television has not just affected how politics is communicated—it has made a profound difference to how the political battles are conducted. It has, for instance, effectively brought the political day forward, to fit in with its news bulletins.
>
> …
>
> The rigorous demands of television—for actuality and speed—can contribute to the isolation within Parliament House itself. A busy day and then a late news conference … however important the conference may be, the television correspondent may watch the

> closed-circuit transmission of it in his or her studio rather than attending it to ask questions. In that case, the process and the medium has overwhelmed the content and the journalism.[121]

Although journalists familiar with the culture of old Parliament House often lamented aspects of their work in the new building, in reality the facilities available to them in it, the concentration of media personnel, the numbers involved in the electronic media, the speed with which content could be picked up, broadcast and integrated with other material, and the increased assertiveness of some representatives all combined to ensure that as a group media representatives had, and were seen to have, greatly increased influence.

Resolutions of each House allowed committees to permit television coverage of proceedings from the early 1990s.[122] Estimates hearings quickly became subject to extensive coverage. The broadcast of these proceedings served a wider interest of exposing senior officials to public scrutiny in respect of their work, and in the case of ordinary inquiries it added to the dissemination of information about the work of committees as well as to understanding of the subjects of inquiry. Televising must also have added to the stress some witnesses experienced. Although the position of witnesses and their right to object to the televising of proceedings was recognised in each House, in reality that was something of a 'fine print' matter.

In more recent years the ability of parliamentarians to use their laptops or tablets during hearings to receive email messages about the evidence as it was being given was also a consideration. This had significant implications because committee members were able to receive messages from their offices or colleagues, or other sources, about the immediate committee proceedings as they were unfolding.[123]

During these years the use of traditional print media declined as television became a much more widely used medium.[124] Nevertheless the influence of traditional televising may itself prove to have been a passing phase as the power of digital technologies made access much more widely available again. Such developments, as well as increasing access, made it independent of the programming choices involved in traditional televising. As well as allowing much greater access to the proceedings of interest to particular people and organisations, the newer technologies opened up additional possibilities for the use of parliamentary 'content', which could be employed in wholly new ways. The difference between the nature of television and the newer technologies was illustrated by the use of the word *viewers* (television) and *users* (newer media), users being a much more

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121 M Grattan, 'Sharing the same kennel: the press in Parliament House', in J Disney and JR Nethercote (eds), *The House on Capital Hill*, (Federation Press, 1996), 224–5.

122 See Senate resolution of 23 August 1990, House resolution of 16 October 1991.

123 And see HR Deb, 13 March 2013, 1934–5.

124 See for example PJ Chen, *Australian Politics in a Digital Age*, (ANU E Press, 2013), 8.

fitting word for those engaging through the web and social media.[125] A notable feature was the greatly increased speed and power with which views could be communicated to others, including parliamentarians. Although such technologies appeared to receive greatest attention in connection with elections, they had implications for political life generally and, in the medium and longer term are likely to be significant for the Parliament (see below).

Parliamentary administration

A sense of excitement and enthusiasm was widespread amongst parliamentary staff as they settled in to their new home in July and August 1988. An understandable pride was felt by those who had represented the Parliament in the planning and construction of the building.[126] The move required fresh thought to be given to the administrative arrangements. The Houses and their members needed the support of the departments of the House and the Senate, the Parliamentary Library and the Parliamentary Reporting Staff, and the large new building with its many special features required much of the Joint House Department. The departments of the House and the Senate agreed that each should take responsibility for one joint service. Accordingly, the Senate housed the newly established Parliamentary Education Office and the House of Representatives housed a combined Parliamentary Relations Office,[127] with each Department contributing to the administrative costs of the joint offices.

In 1987 the Senate had resolved that 'no changes in the structure or responsibilities of the parliamentary departments should be made until:

> (a) particulars of proposed changes have been provided to all senators;
> (b) the Standing Committee on Appropriations and Staffing has examined the proposed changes and reported to the Senate; and
> (c) the Senate has approved of the changes'.[128]

This resolution had significant effects in relation to proposals made between 1988 and 2013 to change the administrative and departmental arrangements. Proponents of change believed that economies and efficiencies could be gained, and services improved, by combining and restructuring services. One of the options was to combine the three service departments into a single joint department. Opponents of the various proposals believed that savings would not

125 Chen, *Australian Politics in a Digital Age*, 13.

126 Mr Don Piper, Secretary of the Joint Standing Committee on the New and Permanent Parliament House, and Messrs Lyn Barlin, Bert Nicholls and Rob Alison were among those who had played leading roles.

127 Before then each House had its own small inter-parliamentary relations unit.

128 J (1986–7), 1951.

be as great as claimed, that the independence of the Parliamentary Library would be at risk, and some felt that the independence of the Parliamentary Service required that changes that might be favoured by the Executive should be treated with scepticism.[129] The Senate Appropriations and Staffing Committee played an important role and did not see merit in some of the proposals, emphasising the position of the Library and questioning the value of expected savings.[130]

Enactment of the Parliamentary Service Act in 1999 changed significantly the statutory framework within which the parliamentary service operated.. Until then parliamentary staff had been employed under special provisions in the *Public Service Act 1922.* The Government had decided to replace that Act with a simpler Act suited to the needs of the modern public service, and did not plan to include the parliamentary service in the new Act. This was consistent with the independence of the parliamentary administration, and the Presiding Officers and staff involved welcomed the opportunity to work on the development of an Act for the purposes of the parliamentary service.

The new Act mirrored the new Public Service Act wherever it could, but included provisions to reflect the independence of the parliamentary service from government, such as the need for impartiality and the independence of the Clerks. It spelt out particular values and code of conduct provisions and referred to the provision of 'non-partisan and impartial advice and services' to each House of the Parliament, to committees, and to senators and members.[131]

The Act provided for the Departments of the House of Representatives and of the Senate, and allowed that the Houses could, by resolution, make provision for other departments. Paralleling the provisions in the Public Service Act, it made the Clerks and the Secretaries responsible for the administration of their departments. Accordingly, the Presiding Officers would no longer be involved in everyday administrative matters, although the heads were required to advise the Presiding Officers in matters relating to their departments and to assist them in their accountability obligations. The Presiding Officers could give the Clerks/Secretaries directions, but not in relation to particular individuals within their departments, and the Clerks could not be subject to direction in relation to any advice sought from or given by them with respect to their House or any of its committees or members.

The Act provided for the appointment of the Clerk of each House by its Presiding Officer, but required that the Presiding Officers consult with members of their House about the proposed appointment. A person could not be appointed as

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129 For a summary of relevant matters see J Adams, 'Parliament – Master of its own Household?', Occasional Paper One, Australian Public Service Commission, October 2002.

130 The House had no equivalent committee until its Appropriations and Administration Committee was established in 2010.

131 *Parliamentary Service Act 1999*, sections 3, 10 and 38B, for example.

Clerk unless the Presiding Officer was satisfied that he or she had extensive knowledge and experience in relevant parliamentary law, practice and procedure. The Act provided for the Clerks to be appointed for non-renewable terms of ten years.[132]

The Act also provided for the appointment of a Parliamentary Service Commissioner and a Parliamentary Service Merit Protection Commissioner. The Parliamentary Service Commissioner's role included giving advice to the Presiding Officers on the management policies and practice of the parliamentary service. As was intended, at all times the persons appointed as Public Service Commissioner and Public Service Merit Protection Commissioner were appointed to the equivalent positions under the Parliamentary Service Act. As well as being efficient administratively, this arrangement helped to ensure that, while the important legal independence of the parliamentary service was maintained, it was able to have access to the same high level advice and thinking as the wider Public Service.

In April 2002 the Presiding Officers asked the Parliamentary Service Commissioner, Mr Andrew Podger, to review the administration of security in the building, the extent to which management and corporate functions could be handled in a more cost-effective and practicable manner, and whether savings could be made by the centralisation of some services. Mr Podger recommended the amalgamation of the three service departments, with special arrangements being made to protect the independence of the Parliamentary Library.

The most important structural change for many years followed in 2004 when, as allowed by the Parliamentary Service Act, each House resolved to establish a Department of Parliamentary Services.[133] The new Department encompassed the three former joint departments (the Parliamentary Library, the Parliamentary Reporting Staff, and the Joint House Department). The position of the Parliamentary Library was recognised by the negotiation of new terms for a Joint Library Committee and by the negotiation of a resource agreement between the Parliamentary Librarian and the Department of Parliamentary Services.

Consistent with the pattern set during the 1980s, some senators continued to be more involved in matters of parliamentary administration than their House counterparts. The fact that until 2010 the House did not have a committee with responsibilities in relation to parliamentary administration and finance and the absence of an equivalent of the Senate Estimates hearings may have been factors in this, but it is also likely that the clear difference in the cultures of each House had an influence.

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132 The first Clerks to be appointed under the new provisions took up their duties on 5 December 2009.

133 *Parliamentary Service Act 1999*, section 54.

Staff of the Senate Department and the Department of Parliamentary Services appeared regularly at Estimates hearings,[134] and were questioned about, and given feedback by senators on, the work of their departments. It sometimes appeared that senators were irritated about aspects of the services provided by the Department of Parliamentary Services and by the responses given during hearings. Unfortunately it also often appeared that sometimes staff members were treated with disrespect.

The establishment of an Appropriations and Administration Committee by the House in 2010 was a significant development.[135] The Committee's role was to consider estimates for the funding of the Department of the House of Representatives and to give to the Speaker, for presentation to the House and transmission to government, amounts for inclusion in appropriation bills. It could also consider proposals for change in the administration of the Department or the services it provides, and was able to confer with the Senate's Appropriations and Staffing Committee in respect of the Department of Parliamentary Services.[136] The Committee settled into its work quickly and gave wise feedback in respect of services and funding, and Speakers appreciated its support in their representations to government.

The creation of a Parliamentary Budget Office was a feature of agreements made to amend the Parliamentary Service Act at the commencement of the 43rd Parliament, and the office was duly established as a fourth parliamentary department on 23 July 2012. Its role was to inform the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals. Mr Phil Bowen PSM, FCPA was appointed as the inaugural Parliamentary Budget Officer.[137]

To the many hard working members and staff there was a concerning discrepancy between some of the public perceptions of the Parliament and the constructive and co-operative work that they knew was typically done; it was not to deny that there were shortcomings and areas for improvement to hope for a more complete and balanced understanding. Through its Liaison and Projects Office[138] and its Chamber Research Office, the House prepared and published a great deal of information about its work and the work of its committees and members. The Senate worked similarly through its Research Section and its Public Information Office[139] and the jointly funded Parliamentary Education Office ran a

134 Before 2004 staff of the Parliamentary Reporting Staff, the Joint House Department and the Parliamentary Library appeared regularly.

135 House standing order 222A. The agreements entered into before the opening of the 43rd Parliament provided for such a committee.

136 House standing order 222A; to the time of publication the committees had not worked together.

137 Parliament of Australia, 'Parliamentary Budget Office': http://www.aph.gov.au/pbo.

138 Later the Parliamentary and Business Information Services.

139 See Bach, *Platypus and parliament*, 253.

comprehensive program to spread information about parliament into schools and more widely. Together with the Department of Parliamentary Services, each Department put a great deal of effort into the development and maintenance of the Parliament's website, which was given a high priority, and various social media such as Twitter, Facebook and YouTube were employed to extend the spread of information about parliamentary proceedings and to better engage the community with that work.[140]

International activities

Sensible cooperation between Parliament and the executive government was evident in the Parliament's international activities. The Executive accepted that ultimately the Parliament's international engagement priorities were for the Parliament itself to determine and recognised that many parliamentarians could contribute to and learn from participation in international activities in a manner that was complementary to executive government policies and supportive of the national interest.

An increasing emphasis was placed on regional relationships and issues. In 1993 Australia became a founding member of the Asia-Pacific Parliamentary Forum (APPF). The forum brought together delegations from twenty-seven nations around the Pacific Rim and was something of a legislative version of APEC. Speakers McLeay, Martin, Halverson, Andrew, Hawker, Jenkins and Bishop[141] each led small delegations to APPF meetings.

Federal members also participated in meetings of the ASEAN Inter Parliamentary Association as observers, and delegations represented the Parliament at meetings of the Inter-Parliamentary Union (IPU) and the Commonwealth Parliamentary Association (CPA). Australia hosted a full IPU conference in 1993 and conferences of the CPA were hosted jointly with state and territory parliaments in 1988 and 2001. In 2012 federal members voted to withdraw from the CPA following concerns about aspects of its operation—this was significant, as Australia had been one of the founding branches.

An additional dimension of the Parliament's international work emerged in 2010-11 with the commencement of a Pacific Parliamentary Partnerships program. This program grew from the success of informal twinning arrangements under which Australian state and territory parliaments had been linked to parliaments in the Pacific. These arrangements had been coordinated by the International and Community Relations Office and their value, and their potential, was recognised when substantial AusAID funding was provided for a Pacific Parliamentary Partnerships program. Under this program the development of six Pacific

140 Parliament of Australia, http://www.aph.gov.au.

141 In January 2014.

parliaments was supported.[142] Particular attention was given to the professional development of parliamentarians, the strengthening of the capacity of parliamentary secretariats, and the development of community outreach initiatives. Federal, state and territory members and staff supported the program as did the United Nations Development Programme; although most activities occurred in the Pacific parliaments themselves, some saw Pacific members and staff travel to Australia for activities in the participating parliaments. AusAID funding was also secured by the Parliament for a five-year Pacific Women's Parliamentary Partnerships project. This project sought to foster women's participation in the parliamentary life of the participating parliaments.[143]

These programs allowed practical assistance to be provided to smaller parliaments in the region; they also showed the potential for good when idealism about parliamentary democracy was combined with relevant knowledge, experience and management capacity. Similar comments could be made about the contributions made during these years by the parliamentarians who gave their time to serve as election observers in developing countries.

Parliament and the courts

The enactment of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* was a notable if low profile development.[144] It filled a gap in respect of the responsibility falling to the Houses of Parliament under section 72 of the Constitution by creating a framework within which specified allegations of misbehaviour or incapacity of a Commonwealth judicial officer (a High Court of Australia, Federal Court of Australia, Family Court of Australia or Federal Circuit Court of Australia judge) can be considered. The Act, which followed the introduction of a bill on the subject by a private member, the Hon Duncan Kerr SC, (ALP, Tas), provided for the creation, by resolutions of both Houses, of a three member commission to investigate and report on allegations. It was advantageous that such provisions were enacted in ordinary circumstances and not in light of a particular controversy.

As had happened so often decisions of the High Court were significant for the Parliament. In addition to those about particular laws, some were very important in an institutional sense. These included cases on the electoral law—*Roach v Electoral Commissioner* (2007) and *Rowe v Electoral Commissioner* (2010); the

142 The Parliaments of Cook Islands, Kiribati, Samoa, Tonga, Tuvalu and Vanuatu were supported, with the New South Wales Parliament managing a program for the Bougainville House of Representatives and the Solomon Islands Parliament.

143 Pacific Parliamentary Partnerships: http://www.pacificparliaments.net/index.html, and Pacific Women's Parliamentary Partnerships: http://www.pacificparliaments.net/pwpp/index.html.

144 Act no. 188, 2012.

entitlements of parliamentarians—*Brown v West and anor* (1990); and the authorisation of expenditure—*Combet v Commonwealth* (2005), *Pape v Commissioner of Taxation* (2009) and *Williams v Commonwealth and ors* (2012). The meaning and application of the *Parliamentary Privileges Act 1987* was considered in a number of cases, and earlier anxieties that the existence of an act in this area would itself increase the risk of unwelcome inroads being made into the Parliament's own jurisdiction were not borne out. An appeal against a decision of the Queensland Court of Appeal would have required the High Court to rule on the validity of the restrictions set out in section 16 of the Act, but the case was settled before it came on for decision.[145] Like the other earlier decisions, those that followed *Laurance v Katter* saw the Act applied as its proponents had hoped.[146]

Australia's constitutional arrangements may be thought of as occupying a mid-point between those of the United Kingdom and those of the United States.[147] The judges of the High Court are not confined by the doctrine of parliamentary sovereignty or supremacy in the way their counterparts in the United Kingdom are.[148] Neither must they carry the burden of interpreting and applying the terms of a bill of rights that their peers in Washington carry;[149] happily they are also spared that other feature of the United States system—Senate confirmation hearings after nomination. The High Court's duty to interpret a written constitution in giving decisions on whatever matters come before it[150] should not, it is submitted, be taken to justify an assertion of judicial supremacy in the sense sometimes used in the United States.

The years from 1988 seemed to see a quickening of the pace with which cases characterised by social and political conflict were brought before the High Court and, like the legislative arm and the Executive, the judicial arm was subject to

145 *Laurance v Katter* (1996) 141 ALR 447; and see *House of Representatives Practice*, 6th ed., 741; *Odgers' Australian Senate Practice*, 13th ed., 56.

146 *House of Representatives Practice*, 6th ed., 741–2; *Odgers' Australian Senate Practice*, 13th ed., 55–6.

147 A point made by Sir Owen Dixon, in 'Two Constitutions Compared', an address at the annual dinner of the American Bar Association held at Detroit on 26 August 1942, *Jesting Pilate and other papers and addresses*, (Law Book Company, 1965), 103.

148 See for example *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 564—cited in G Lindell, 'Australian Constitution: growth, adaptation and conflict—reflections about some major cases and events', *Monash University Law Review*, vol. 25, no. 2, 1999, 280.

149 Speaking to an American audience Sir Owen Dixon said, ' … you may think it strange that in Australia, a democracy if ever there was one, the cherished American practice of placing in the fundamental law guarantees of personal liberty should prove unacceptable to our constitution makers. But so it was. The framers of the Australian Constitution were not prepared to place fetters upon legislative action, except and in so far as it might be necessary for the purpose of distributing between the States and the central government the full content of legislative power. The history of their country had not taught them the need of provisions directed to the control of the legislature itself.' Although there have been generations of High Court judges since those words were spoken they remain of interest; for a modern reference see The Hon Justice Patrick A Keane, 'In celebration of the Constitution', Constitutional Founders Lecture, National Archives of Australia, Brisbane, 12 June 2008.

150 Although its decisions on matters of standing can be of critical importance.

considerable albeit less critical media interest. As they had done so often, decisions of the court saw Acts or parts of Acts passed by the Parliament held to be invalid. It is neither quite correct nor realistic to say that if the Parliament is unhappy about a decision of the court it can change the law. Sometimes this is possible,[151] but this remedy is not available where the decisions turn on rights found by the court to be based on the Constitution—should there be a desire to change the law made by such decisions, the only effective response is constitutional amendment, and this is not a possibility for all practical purposes.

In the coming years it is possible that the High Court might, having regard to its thinking about constitutional relationships and roles, at times take either a deferential or a vigilant view of the Parliament's discharge of its responsibilities. In this situation if the court considered that a responsibility was created by or under the Constitution its position could vary according to its assessment of the adequacy of the Parliament's action or response.[152] Such possibilities would pose considerable challenges for the Parliament. Parliamentarians would need to be well informed about the court's thinking in such matters; in turn it is to be hoped that the courts would be mindful of the significant constraints on the Houses of Parliament and their members in the discharge of the responsibilities they are elected to perform. The court's decisions can have a law-making character—reflecting on an important case Professor Coper wrote: 'The choice could not be determined by law; the choice determined the law'[153]—and the court may see merit in a degree of deference to the legislative branch which, whatever its shortcomings, has clear duties and democratic authority in respect of both law-making and government.

The elections of 7 September 2013 saw the return to government with a clear majority in the House. The results of the elections for the Senate were also a continuation of the norm—the age of minority would continue, in this case a minority of a significant size.

It is well arguable that the years leading up to 2013 had seen a movement in the balance between the Parliament and the Executive. With all its imperfections, and acknowledging the wide range of criticism often levelled at it, the Parliament's influence seemed greater than had been the case in the 1970s and 1980s. In various ways each House and its committees exercised considerable influence; ministers and representatives of the Executive were called to account and tested, even if in imperfect ways; government bills were often subject to amendment or re-thinking

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151 See The Hon Ronald Sackville, 'An age of judicial hegemony', *AFR*, 13 December 2012.

152 See Mr Stephen Gageler, Solicitor-General of Australia, 'Beyond the text: a vision of the structure and future of the Constitution', Sir Maurice Byers Memorial lecture, 7 April 2009.

153 Professor Coper, 'Political institution, Court as' (the Tasmanian Dam case), in M Coper, T Blackshield and G Williams (eds), *The Oxford Companion to the High Court of Australia*, (Oxford University Press, 2001).

in light of parliamentary pressure or parliamentary numbers; members of each House used the many opportunities they had to pursue matters that were important to them; and committees of each House did substantial work and allowed widespread participation in the work of Parliament. It was also notable that the services provided to constituents by members and their offices had reached high standards, with additional resources being made vavailable to allow constituents in very large and isolated areas to be helped.A major distinction between the Canberra of 1988 and the Canberra of 2013 was the very different nature of media activities. These developments were important to both the Parliament and the Executive. The widespread and often intense media coverage of parliamentary politics and the ease with which individual parliamentarians could generate media attention must have increased awareness of the Parliament and influenced the Executive in its responses to the Parliament; in turn media coverage of the Executive often fed into parliamentary processes. None of this is to say that the Parliament exercised its scrutiny or oversight roles completely, to deny the need for the working of each House to be improved or to deny that there was evidence that the public standing of the Parliament had declined during these years; but it is to suggest that the relationships between the Parliament and the Executive were more complex and not as one sided as might have been judged to be the case in earlier years.

In the 44th Parliament, and those that follow, as always, the numbers will be critical. It is likely that the strength of the culture that has developed in the Senate will ensure that the numbers alone will not dictate its future. The size of the Senate, the many opportunities for every senator to participate in proceedings of the Senate itself and its committees, media interest, the tolerance traditionally extended by committee chairs to senators and the absence of direct electorate duties are features that are likely to appeal to many senators, and are all likely to endure.[154] An assessment by Senator George Brandis (Liberal, Qld) in 2005, when the Government enjoyed a rare majority in the Senate, remained relevant: 'nor do I think that the Senate will revert to its earlier, constitutionally marginalised role. The change to the institutional culture has gone too far.'[155]

The years since 1988 had also seen significant change in the culture of the House. As is common when a new government takes office, a number of changes were made to the standing orders of the House at the commencement of the new Parliament, but it was notable that some of the key provisions added in 2010 were maintained. It is probable that, like their predecessors, members of the House will ensure that the opportunities that are available to private members are well utilised, that House committee work continues to be a feature and that

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154 See comments by former Senator Hill on the reasons people could have for seeking election to the Senate, 'Throwing Light into Dark Corners: Senate Estimates and Executive Accountability', 25.

155 Senator Brandis, 'The Australian Senate and responsible government', 22.

government legislation will be subject to worthwhile debate. The strength of party discipline has been a feature of Australian politics and in normal circumstances ultimately governments will be supported in the House. Nevertheless, for many years the realities of parliamentary politics have meant that the label sometimes thrown out that the House was a mere rubber stamp was both lazy and misleading – those who had worked with members would say that if the House was any kind of stamp it was one that could have a rather thorny handle.

If the pace of change, including changes in communications and technology, continues great challenges will be faced by the Houses. The future will require more than an assertion by each House of its rights in relation to the other and in relation to the Executive.[156] It is to be hoped that decision-makers in each institution will exercise their power in ways that are respectful of the others and not allow the pursuit of their objectives to impose undue strain on the system. Parliamentarians, especially those who have not had executive responsibilities, might reflect on the responsibilities of government and the heavy burdens carried by prime ministers and other members of the executive branch, including its many hard working officials. Similar reflection is also warranted in respect of the burdens carried by leaders of the opposition. In turn, the system is well-served when leaders of the Executive are respectful of the duties of parliament and rights of all parliamentarians and reasonable in their treatment of them. Time spent by members of each institution reflecting on the responsibilities of their colleagues in the other elements will be time well spent.

The records of the convention debates do not show an intention on the part of the founders that the arms of the system they agreed on were designed to serve as checks on each other in the American sense; rather there was a sense of an underlying assumption of trust in parliamentary government with ministerial responsibility.[157] Attitudes influenced by such reflection should offer the possibility that parliamentarians will fulfil some of the expectations of the community.

We can be confident that as well as remaining of great importance to the nation the working of the Commonwealth Parliament will also continue to be worthy of serious study and that those who are prepared to invest time in the more detailed examination of its work will find their study well worthwhile.

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156 Comments by Professor Anne Twomey about the public interest in mutual respect between the Parliament and the Executive in New South Wales are applicable federally: 'There is a strong public interest in both the accountability of the executive to the Houses of the parliament and the ability of a government to govern without undue interference'. See A Twomey, 'Executive Accountability to the Senate and the NSW Legislative Council', *Australasian Parliamentary Review*, vol. 23, no. 1, Autumn 2008, 273; and see comments of Mr Jenkins quoted above.

157 And see *Attorney-General (Cth) (ex rel McKinlay) v Cth* (1975) 135 CLR 1 at 24, and Gageler, 'Beyond the text: a vision of the structure and future of the Constitution', 10.