

Conference Proceedings
Session One
The 'Revolutionary Proposals' of 1970

Mr EVANS - I welcome everybody to the Senate Department's conference on Senate committees. The President of the Senate, Senator the Honourable Kerry Sibraa, will open the conference this morning. I am told that Estimates Committee A is meeting during the morning and will be shown on television monitors which are in the foyer of the Main Committee Room.

I call on the President of the Senate, Senator the Honourable Kerry Sibraa, to open the conference.

The PRESIDENT - Thank you very much, Mr Evans. Honourable Senators, former Senators and seminar participants: it gives me a great deal of pleasure to welcome you all to this conference on *Senate Committees and Responsible Government*. As you would all be aware, the conference is being held to mark the twentieth anniversary of the establishment of Senate Legislative and General Purpose Standing Committees and also the Senate Estimates Committees.

I am delighted that so many former Senators, who have contributed so much to the Senate and its committee system over the years, have been able to join us today for this conference. It is also a tribute to the Senate committee system that we have so many participants at this conference, representing, as I understand it, a wide cross-section of federal and state parliamentarians, public administrators, constitutional lawyers and academics.

Twenty years ago, on the night of 11 June 1970, between 8 pm and 10.30 pm, a series of motions was put before the Senate for its decision. The result was the establishment of the Senate Legislative and General Purpose Standing Committees and the Estimates Committees as we now know them. I guess that this would come as no surprise to Senate watchers, but on that night debate in the Senate was split three ways, with three propositions put forward for consideration in the chamber. Eventually, two of the propositions won out that night - one put forward by the Labor Party Opposition for a series of Legislative and General Purpose Standing Committees, and another put forward by the Liberal Party Government for a series of Estimates Committees. The third, a compromise proposal by the Democratic Labor Party, which incorporated the principles of the standing committee proposal, was defeated.

As far back as 1956, a report had been tabled in the Senate concerning the desirability of establishing a system of standing committees. During the 1960s and early 1970s, an increasing number of well-informed and active Senators served on select committees. The hearings and reports of these committees attracted wide attention. One of the best known of the select committees of this time was the Select Committee on Securities and Exchange, whose public hearings attracted considerable public attention as indicated by the following quote from the *Courier-Mail* of 3 April 1971.

For some time the Senate has been trying to emulate its United States counterpart as a public watchdog, through the development of special committees.

Its bark has been heard as the fondly-nurtured puppy grew.

Now its mature bite has been felt.

I still quote from the *Courier-Mail*:

The scene: Crowded committee room L17 in Parliament House lined with portraits of Senate Presidents and filled with red-covered furniture, cigarette smoke, journalists - and the on-stage stars.

The occasion: The Senate Committee on securities and exchange, investigating, probing, cross-examining, even grilling some of Australia's top stockbrokers, company directors, businessmen, over the three big financial issues of the moment -the Minsec aftermath, the Antimony Nickel cornering on the Sydney stockmarket and the Leopold Nickel affair.

The article went on to say:

Whatever it finally reveals in its report, the fact remains that a Senate committee has begun to look as important as its elder United States brother.

If committees become televised, as is mooted, they will over-shadow the Senate itself.

I must say it has taken us twenty years to get the Senate on television, but at least we achieved this before the House of Representatives. The article continues:

No longer can Senators be given a scornful blanket label of 'those elderly gentlemen in another place' by members of the House of Representatives...

By 1967, public interest in Senate committees was such that, in his policy speech for the Senate election of that year, the Leader of the Opposition, Mr Whitlam, announced that the Labor Party in the Senate would establish a Senate committee system. The Standing Orders Committee of the Senate prepared a report which turned out to be the trigger for the establishment of the standing committee system. The report was tabled in March 1970 and the proposal was the subject of widespread commentary at the time. For example, the *Sydney Morning Herald* reported on 18 March under the heading 'Senate body urges new "watchdog" committee':

The report recommends a comprehensive committee system for the Senate comparable with highly successful committee systems in other Commonwealth countries.

It sees a ... committee system as standard and essential equipment of the modern legislature.

The *Australian Financial Review*¹ referred to the proposal as 'Senate's first step towards a bigger role'. A *Canberra Times*² headline ran: 'Senate seen as strong influence for public good', while the *Australian*³ chose the heading, 'The Senate bares its teeth'.

In moving for the establishment of the committee system, and as one of the principal advocates of a system of standing committees, Senator Murphy, then Leader of the Opposition in the Senate, said:

Mr Deputy President, this is the senior parliamentary institution in this country and it has arrived at the general agreement that there ought to be a system of standing committees in order that its functions may be carried out more effectively than they have been in the past. I think we are proud of the way in which this Senate has attended to its affairs over recent times. We feel that the Senate is becoming very effective, that it is carrying out its functions on behalf of those who elect us better as the days go by. I think that this step which we are proposing will be a considerable advance. It is something that will enable us all as individuals to participate more in the legislative process, more in the supervision of the administration as a whole. It will enable us to function more effectively.

During the debate Senator Wood noted the advantages which such a system would bring to all Senators and, indeed, to the Parliament. He said:

I think this is a wonderful opportunity for the senators of this country to perform a service to their people in a much better way than possibly they have in the past. They will have a closer and greater responsibility for legislation and a much better knowledge of its origin and purpose. I feel that this movement is possibly the greatest step forward that has been taken by this Parliament of Australia since its inception in the early part of this century.⁴

Former Senator Sim, who, I am happy to say, has joined us for today's conference, led the debate for the government of the day and strongly advocated the establishment of the Estimates Committees. By the middle 1970s, the Senate's Legislative and General Purpose Standing Committees had fully established themselves as powerful inquiry forces in the parliamentary arena. Over the twenty years that the committees have been operating, some 300 reports have been presented. While they have also been successful in the detailed examination of bills, in the main the committees have concentrated on non-legislative work. Even though their reports are recommendatory only, they have contributed substantially towards the attainment of the ideal of parliamentary control.

There is no doubt in my mind that the wide range of inquiries which have been undertaken, and the reports which have been presented, have increased the knowledge of participating Senators, focused interest upon the subjects that the committees have addressed, and increased the information available to the public about the aspects of government in Australia. Government responses to these reports have led to the introduction, modification, or even in some cases, withdrawal of legislation. Most reports

¹ 21 May 1970

² 29 September 1970

³ 11 April 1971

⁴ Commonwealth Parliamentary Debates (Hansard), Vol.S.44, 11 June 1970, p.2349

have been instrumental in reshaping public policy and putting various issues firmly on the government's agenda.

The effectiveness of the Senate committee system can be gauged not only by the response of its reports but also by the actual process of the inquiries which allows the widest possible parliamentary participation in this facet of parliamentary activity. All Senators and former Senators present will have their own recollections and stories to tell of their time on Senate committees. I hope that some of these will come out in the course of today's proceedings. For my own part, I particularly welcome the bipartisan personal friendships that I have been able to form when serving on Senate committees. I mention, in particular, people like former Senator John Knight and Senator Peter Sim with whom I served on the Senate Foreign Affairs and Defence Committee. These friendships would not have been possible if we had not been working together on the Senate committee system.

I found the committee work particularly stimulating at that time. I recall saying to former Senator Jim Cavanagh - the late Jim Cavanagh: 'I think it would be a good idea if committees were able to sit while the Senate is sitting. I find sitting here in the chamber particularly boring when we are in opposition and we know the way the votes are going. How do I go about this?' He said: 'Well, I will give you some advice. You give a notice of motion. It will come up for debate on a Thursday night' - I think it was then - 'and you will be able to put forward these very good arguments that you have just given me on why the Senate committees should be able to sit when the Senate is sitting'.

Thursday night duly came around and Senator Cavanagh sat in front of me and half turned around in his seat while I was speaking, nodding and encouraging me. I sat down and the first Senator to stand up and totally oppose me was Senator Jim Cavanagh. So, I learnt a little lesson in politicking that night.

But he was one of the old school of Senators who believed that we were sent here just to sit in the chamber. I must say, though, that I noticed a great deal of change in him as the years went by, and I think he became one of the staunch advocates of the Senate committee system.

The committee system, as we are all aware, is alive and well today. Even as we meet, an Estimates Committee of the Senate is deliberating upstairs and it is fitting that the Senate mark the twentieth anniversary of the committee system with a further development. On 5 December last year, the Senate resolved to adopt a number of procedures to provide for the reference of bills to standing committees for detailed consideration. A new committee, known as the Selection of Bills Committee, was established to recommend to the Senate which bills should be referred to committees. This Committee also sets the time within which reports should be presented.

This new process has only just commenced in this period of sittings, and while it is early days yet in the development of the new procedures, it is clear that if a constructive approach is adopted on all sides to the new proceedings, they will, in Senator Murphy's words, enable us all as individuals to participate more in the legislative process.

Today's proceedings have been arranged so that we may follow the establishment of the committee system, its consolidation, its effectiveness, and consider what the future may hold for the committee process. The approach of using panels of speakers has been adopted to obtain as wide a cross-section of views as possible. The program includes open forum sessions and I encourage participation from the floor. These proceedings will be chaired by the Clerk of the Senate, Harry Evans. I look forward to hearing contributions to the conference. I wish you all well in your deliberations, and I have now great pleasure in declaring the conference open.

Mr EVANS - On behalf of the conference, Mr President, I thank you very much for that very fine opening address which provides some very good background information to the conference.

I would like to introduce as our first speaker today a distinguished former Senator - now Mr Peter Rae officially, but we like to refer to him as Senator Emeritus Peter Rae. As the President has also mentioned, he was probably best known as the Chairman of the Select Committee on Securities and Exchange, which created a deal of attention during its inquiry, and he was also later the Chairman of one of the most successful of the standing committees, the Standing Committee on Finance and Government Operations, as it then was. He will be speaking on *The 'Revolutionary Proposals' of 1970*.

Mr RAE - The Clerk, Mr President - if I can, for once, address you in that order - distinguished former Senators, ladies and gentlemen: it is my very great pleasure to be back here. I want to say, first of all, that I would not expect anyone to want me to open this paper with a trite, mundane and detailed clinical analysis of what happened with the revolutionary proposals of 1970, by which the Senate introduced into Australia a system of committees to supplement the operation of the plenary House of Parliament. I hope not.

It is well-known, as a fact, that in 1970 there was added to the existing standing committees, the Joint Committees and the provision for the establishment of select committees, a new, exciting, and in Australian terms, revolutionary *system* - I emphasise - a system. That much is well-known. How it came about, and some of the political inter-play which took place, is not so well-known.

A logical, progressive and totally altruistic development sequence? Could that be said to be the basis upon which the momentous events of 1970 took the Senate from the nineteenth century to the twentieth century as a parliamentary institution? Of course not.

The Senate is, was and always has been, a political body and part of a parliamentary process. It is likely to continue to be so.

In the 1960s Australia and its numerous parliamentary institutions were running behind developments in a number of comparable countries.

We needed to catch up, and catch up we did. Not only did we catch up, but we overtook to the stage where, by the mid-1970s, an Australian parliamentary sub-committee could travel overseas and return to report that, in comparable terms, our federal Parliament was going well. It was the Senate which was leading the way.

The Senate was resolving two fundamental aspects of its very existence - the interplay of individual and party political personalities, on the one hand, and, on the other hand, the desire to make an elected Upper House more relevant and more functional within what is collectively (and somewhat inaccurately) called the Westminster system. The result of that interplay is now well-known, but part of the fascination of a trip down memory lane is to review the means by which the result was achieved, notwithstanding the inherent problems of personality conflicts, the use or misuse of opportunities for the pursuit of personal political ambition, and the natural antagonism of the executive government to any change which may make them more readily accountable.

That the changes of 1970 came about can, I believe, be attributed to a combination of factors which were drawn together and quietly engineered by one of the great parliamentary reformers of our era, the late Clerk of the Senate, James Rowland Odgers, known to us all, or most of us, very affectionately as Jim Odgers.

Party politics produces strange bed-fellows, and at times Jim was accused of being a lackey of Lionel, that is Lionel Murphy, and a conspirator with Ken, that is Ken Anderson. Jim Odgers was a man with a vision, supported and encouraged by others, who included some relatively junior Senate staff members, such as the present Clerk, Harry Evans, and the Deputy Clerk, Anne Lynch, and conference commentator and former Clerk, Alan Cumming Thom. I wish to pay tribute to the work which all have contributed.

In case there should be any doubt, let me say that five years after resigning from the Senate, I remain an unashamed and unrepentant Senate chauvinist - proud to have shared eighteen years of development of the bicameral system in the world's best parliamentary democracy.

Let me make one point of fundamental - of absolute - importance. In 1970 the Senate came of age as a house of review. It has since then developed, but what I want to talk about is what came about in 1970. There has tended to be some emphasis upon the work in 1970 of one individual. I believe that that individual, Senator Murphy, played an important part, but not in the way which is often attributed to him. The most important part which he played was in ensuring the support of his party for the retention and development of the Senate as a house of parliament with a committee system, rather than as the person who developed the committee system. For that we have to look much further afield. What we have to do is look back at some of the antagonisms - and I mention them to remind people of what in fact happened.

It was the late Senator Ivor Greenwood who described the Murphy contribution in these terms:

I desire to speak to the point of order and not to engage in the flamboyance, the rhetoric, the speciousness, and casuistry which Senator Murphy has just given to the Senate.

It was that old war-horse, Senator Sir Reginald Wright, who said:

I rise because I have an abiding interest in the purpose and the efficiency of the committee system which the Senate has embarked upon. I disregard entirely the interchange provoked by

Senator Murphy when he imputed considerations extraneous to that purpose during the speech of Senator Byrne.

It was Senator Condon Byrne, the highly respected DLP Senator from Queensland, who referred to the difference of opinion by saying:

I point out to Senator Murphy that I have done my best not to intrude party political considerations into this debate.

It was Senator Sir Magnus Cormack, who I am delighted to see is able to be present with us and who played such a tremendously important part, and who criticised the Murphy proposal in relation to one aspect of the development by saying:

I think you spun this off the top of your head without thinking the problem through.

These were typical of some of the comments which were made at the time. It was a parliamentary interchange, a political interchange, which was taking place.

During this period, Senator Murphy had caused to be prepared some papers by the Legislative Research Service of the Parliamentary Library, and these papers provided a valuable review of the existing situation, and a contribution to the consideration of the roles to be played by an Australian Senate system.

One of these papers stressed the fact that the Canadian committee system, which had received government support, had been aimed at speeding up the passage of business through the Parliament in Ottawa.

The Senate Standing Orders Committee had its attention drawn to the difference between a committee system in a House such as the Commons, in London, with 630 members, and the Senate with (at that time) 60 members - a question of resources.

I go back to point out that the one constant behind the achievement of the combined Estimates Committees and Legislative and General Purpose Standing Committees to complement the select committees and other previously existing committees was the devoted conceptual contribution of Jim Odgers, and those who saw the new system in terms of the development of a constitutional parliamentary democracy with an adequate system of checks and balances, rather than a personal glory trail.

There are many milestones along the road. On 13 May 1965, one of those milestones was erected. What became known as 'the compact of 1965' was entered into between the Senate and the House of Representatives.

The Senators and staff who were involved have already been mentioned, but the Treasurer of the day - by whom the agreement was made - was the Rt Hon. Harold Holt who, on 13 May 1965, made a statement to the House of Representatives, in which he said that until the Parliament otherwise provides, the classification of appropriations for the ordinary annual services of the government, and appropriations not deemed to be appropriations for the ordinary annual services of the government, and which the Senate may amend, shall be in accord with certain criteria which he then spelled out.

The compact of 1965' was a response to the flexing of the muscles of the Senate. It was a recognition by the executive that the Senate had an important role to play in relation to appropriations. Commonwealth Parliamentary Debates (Hansard), Vol.H.R.46, 13 May 1965, pp.1484-5. See also G.S. Reid and Martyn Forrest, Australia's Commonwealth Parliament, pp.358-60

It is interesting to recall that the very first Budget presented to the new Commonwealth Parliament in 1901 was sent back by the Senate to the House of Representatives because it failed to itemise in sufficient detail the proposed appropriations.⁵

Sixty-four years later the House of Representatives accepted a further acknowledgment of the role of the Senate in relation to the scrutiny of the executive and the requirement of accountability by the executive to the house of review.

⁵ Commonwealth Parliamentary Debates (Hansard), Vol.H.R.46, 13 May 1965, pp.1484-5. See also G.S. Reid and Martyn Forrest, Australia's Commonwealth Parliament, pp.358-60

It was Senators Cormack and Wright who had, with the support of others, pressed to achieve this acknowledgment of the Senate's role. It was Harold Holt, Bob Menzies and others, who agreed to acknowledge it.

Small wonder then, that notwithstanding the distraction of the referendum proposal in 1967, which attempted to break the numerical nexus between the Houses, and the vigorous and successful defence of the Senate's one to two numerical balance, the Standing Orders Committee of the Senate turned its concentration to the development of a committee system.

During this period the Government Leader in the Senate, Sir Denham Henty, encouraged the establishment of select committees, such as those on water pollution and air pollution. That reflected the growing feeling in the Senate that greater use should be made of committees.

It was, however, the Standing Orders Committee, of which Senator Reg Wright and Senator Magnus Cormack had been members throughout the 1960s, that decided in August 1969 that it would ask the Clerk of the Senate to submit a paper on standing committees.

On 17 March 1970, that Committee tabled in the Senate a report relating to a system of standing committees.⁶ This included both Legislative and General Purpose Standing Committees and a grouping of Estimates Committees to investigate proposed expenditure and with the power to call upon departmental officers to give evidence.

In the introduction it said: 'The essence of the Report is that a standing committee system is standard and essential equipment of the modern legislature. Work-load alone is a compelling reason. Equally important to Parliament in its consideration of public affairs is that the legislature may, through its committees, call upon scholarly research and advice equal in competence to that relied upon by the Government.'

There were obvious differences of opinion which followed the tabling of the Odgers report. Skirmishes and counter-skirmishes took place. I have referred to some.

What we had in 1970 was the work of many people, of whom one received considerable publicity, while others were more modest about their vital role in what was undoubtedly an exciting development.

In talking of this, I should not omit reference to the then Leader of the Government in the Senate, Sir Kenneth Anderson, who had a particularly difficult role as a member of Cabinet which, from all indications, did not want a bar of this Senate revolution, and as the leader of an increasingly volatile group of Liberal and National Country Party Senators, who were increasingly determined to see these changes take place.

It is also interesting to note the role of the Democratic Labor Party who, one suspects, may have been influenced, in the course of some broader discussions on other matters, to play a role in slowing down the rate of change.

It was the DLP which insisted that although, in June 1970, the Legislative and General Purpose Standing Committees' establishment was accepted by the Senate, they should apply the principle of 'gradualism'. It was as a result of consultations between the Leader of the Government in the Senate and the DLP that Senator Anderson moved, on 19 August 1970, to confirm the establishment of the seven standing committees, but to limit them to two only during the first twelve months.

Bearing in mind the amount of political skirmishing which had taken place, I believe that Senator Anderson's description of the background to his motion was one of delightful understatement. He said: 'We have spent a lot of time on reconnaissance in this matter.'⁷

Concerns were expressed by the DLP Senators and by Senator Anderson as to the implications for resources of staff as well as Senators, should all of the standing committees be established at the one time. It was agreed to establish two on a trial basis. 'Gradualism' became the in-word.

The next skirmish was a rush to see who could achieve acceptance of the first reference to one of the two standing committees which were to commence immediately. These were the Committee on Health and Welfare and the Committee on Primary and Secondary Industry and Trade.

⁶ Commonwealth Parliament, Report for the Standing Order Committee on Standing Committees, Parliamentary Paper 2/1970

⁷ Commonwealth Parliamentary Debates (Hansard) Vol.S.45, 19 August 1970, pp.105-106

On 25 August, Senator Murphy moved that there be referred to the Standing Committee on Primary and Secondary Industry and Trade the matter of the desirability and practicability of establishing a national organisation to deal with the effects of natural disasters. He also listed a number of other references which were to go to the same Committee. But as Senator Cormack and others pointed out, this particular Senate committee had 'nothing to do with the concept of establishing a national organisation to deal with the effects of natural disasters.' Senator Murphy's proposal was rejected when the DLP voted with the Liberal and Country Party Senators.

On 2 September 1970, Senator Murphy moved that there be referred to the Standing Committee on Health and Welfare the following matter: 'The problems of, and the provisions for assistance to, the mentally and physically handicapped persons in Australia'. The debate which followed related to whether this was an appropriate matter to be considered by a standing committee or a select committee, and Senator Byrne, on behalf of the DLP, made it clear that his party was prepared to support the establishment of a select committee for the purpose of such an inquiry. Such was the strain between the various parties that the ultimate decision was made by Senator Turnbull, who was at that time a Senator elected from Tasmania as an Independent. He voted with the ALP, and the DLP Senators absented themselves from the vote.

The net result was that Senator Murphy's reference was carried 25 to 23. Had Senator Turnbull (whose attendance record was not absolutely perfect) not been present, the vote would have been 24 to 23 and still carried by the Labor Party. Had Senator Turnbull, being present, chosen to vote with the Liberal and Country Party Senators, then the vote would have been 24 all, and would have been carried in the negative.

So started the Senate Legislative and General Purpose Standing Committees.

The next day, and fortuitously with some appropriate homework having been done, a motion was carried unanimously for the reference of a matter to the Standing Committee on Primary and Secondary Industry and Trade. I had the honour to move that reference, supported by my two Tasmanian Liberal backbench colleagues, Senators Lillico and Marriot.

Curiously, the first matter referred unanimously by the Senate to a Legislative and General Purpose Standing Committee related to the problems of shipping across Bass Strait, which was also the subject matter of the first-ever reference to a select committee after the Senate was established in 1901.

Thus, by 3 September 1970, we had established two standing committees of the Senate, and each with a reference. We had also agreed by a motion moved by Senator Sir Kenneth Anderson on 19 August 1970 to the establishment of five Estimates Committees, which, as Senator Anderson said, meant that:

The Senate is breaking into a new field ... The idea is to do the work in the committee room in a more relaxed way. The Minister and officers concerned will be able to give information. The proceedings will be recorded in the daily Hansard and will be open just as they are here in the Senate ... The workings of the estimates committee will make for an easier obtaining of information... This is a challenge to us all.⁸

The Leader of the Opposition, Senator Murphy, stated:

The machinery provisions proposed by the Leader of the Government ... seem to me to be sensible. I cannot find any objection to them.

Senator Byrne, on behalf of the DLP, said:

We hope that, with the co-operation of all concerned, this committee system, which is a tremendous pioneering project in the operation of the Senate and parliamentary government in this country, will operate successfully... I believe that a good deal of understanding, goodwill and reciprocal sacrifices will be necessary if this system is to be operated successfully.

However, there was still some concern that we were overburdening the Senate with committees.

⁸ Commonwealth Parliamentary Debates (Hansard) Vol.S.45, 19 August 1970, pp.103-4

History shows that in the twenty years Senator Byrne's plea has been heeded - there has been a good deal of understanding, goodwill and reciprocal sacrifices, even though there have been very rough patches.

The system has meant that we now obtain automatically a vast amount of information in relation to the operation of government which, prior to 19 August 1970, was not within the wildest dreams of those who believed in the principle that governments dealing with taxpayers' funds should open the books to public scrutiny.

When the Senate agreed to establish the Estimates Committees it did so bearing in mind that the Principal Parliamentary Reporter and the Government Printer had said that it would not be possible for more than three Estimates Committees to sit at any one time.

It was therefore necessary to develop a timetable to enable the committees to meet. This timetabling of committee hearings was to become an important part of their operation, as it was necessary to bring witnesses from departments, and sometimes from interstate. The attempt to avoid a host of witnesses waiting for their particular department or authority to come before an Estimates Committee was later to be the basis for considerable criticism of the Estimates Committees as they were seen to be wasting valuable time.

Later, various experiments were tried by way of giving notice of areas as to which questions would be asked, but none seemed to resolve the problem. Suffice it to say that on Thursday, 24 September 1970, under the chairmanship of Senator (later Sir Condor) Laucke, Estimates Committee C, of which I was a member, set to work.

The Chairman announced:

I declare open this inaugural public sitting of the Senate Estimates Committee C. In so doing, I wish to say that this marks an important development in the committee system in the Senate's consideration of the annual estimates. This new procedure of having the annual estimates referred to 5 Estimates Committees for examination represents the third stage in the Senate's development of an effective method of budgetary examination. In each stage advancement has been made to greater effectiveness. It is very interesting to note in looking back that before the 1960s the Senate practice was to await the receipt of the Appropriation Bill from the House of Representatives before examining the details of departmental votes ...

Consideration by the Committee of the Whole usually began there late in the Budget session and this, combined with the seemingly inevitable rush of end of session work, meant that the Senate was always under extreme pressure to conclude its business ... In 1961 the Senate overcame the delay in considering the details of the proposed expenditure by the procedure of considering them in the Committee of the Whole on a motion to take note of the proposed expenditure which was moved after the general debate on the Budget papers had been concluded and before the Appropriation Bills had been received from the other place.⁹

Senator Laucke went on to explain the matters which were referred to Estimates Committee C. The general division tended to relate to the ministerial responsibility or representative responsibility of particular Ministers in the Senate.

Although the Senate had authorised departmental officers to be called before the Committee and questioned, the early practice was to direct questions to the Minister, and for the Minister to be allowed to answer any question if he or she so desired. Alternatively, the Minister could refer a question directly to an officer. However, from the start, it was recognised that departmental officers 'should be excused from answering questions if the answer involves giving opinions on matters of policy which are the concern of the Minister.' On this occasion, Senator Wright was the particular Minister concerned and he had brought with him the Director-General of Works, as well as several officers from the department. The Minister commenced with a fairly lengthy statement about the activities of his department, including details of expenditure on furniture and fittings - a matter to which I shall return shortly.

At first questions tended to be answered in somewhat the same way as they had been in the Committee of the Whole with Ministers using their extensive briefing notes for the purpose of answering questions.

Later it became possible - as a result of negotiation - for the explanatory notes to be made available on a basis of strict confidentiality to each Senator involved. Senators were thereby able to prepare questions with a greater degree of knowledge.

Later still, in the evolution of the Estimates Committees, the explanatory notes were automatically published as public documents, and a great deal of information was thereby made available, not only to Senators, but also to members of the House of Representatives, and to the public at large.

To return to the matter of furniture and fittings, I recall asking the Director-General of Works questions which related to the manner in which the department kept an assets register, and generally controlled the supply of furniture and fittings. The answers seemed to me to be unsatisfactory. Some months later, the Director-General said to me that as a result of my questions, they had reviewed their system and it was his anticipation that the result of introducing a new system would save very substantial amounts of money, and that alone justified the establishment of the Estimates Committees. Regrettably, not all departmental officers had the same warm view in relation to Estimates Committees.

One of the early questions which arose in 1971 related to the extent to which statutory authorities were required to answer questions, even if those questions involved commercial confidentiality. The Senate clarified the matter by resolving that there are no areas of expenditure of public funds where statutory authorities have a discretion to withhold details or explanations from Parliament, or its committees unless the Parliament has expressly provided otherwise. This resolution was carried on 9 December 1971 and re-affirmed and strengthened on a number of occasions, including 1974, 1980, 1984 and 1986.

However, the question of commercial confidentiality remained a problem. Standing committees were able to overcome the problem by taking such evidence *in camera*, but the Estimates Committees had no power to take evidence *in camera*.

I recall that the occasion which led to the first resolution involved Senator McAuliffe, who was President of the Queensland Rugby League, and wanted to know details of the amounts spent by the ABC in purchasing rights to televise other sporting events. To overcome that particular impasse, I adjourned the Committee, and Senator McAuliffe and the officer from the ABC were able to have a quiet word in the corridor.

There are many other stories arising from developments involving the inter-locking committee system. Other speakers will no doubt relate some of those stories, and some of the important aspects of inter-relationship, including aspects of privilege, as well as the protection of witnesses.

I conclude by drawing attention to what I regard as the greatest test which the 1970 system had to withstand. In 1974 a Joint Committee (that is, a committee of both houses) on the parliamentary committee system was established with a majority of members from the House of Representatives. When that Committee finally reported in 1976 it recommended a strengthening of the Senate system, and it recommended against Joint Committees, other than in special circumstances.¹⁰

The 1970 system had survived its major test - not only had it been effective, but the Committee described as the committee to end all committees had given it the nod.

Whether its development has continued and grown with the same rate of success is far more controversial. Has the system lived up to its early expectation? Does the current Senate take full advantage of that which it inherited? These are questions for others to answer.

I want to congratulate those who were involved in the early days of the committees, and particularly my old mentor Magnus Cormack, in relation to whom I want to tell a story that he may have forgotten. It concerns how the Senate Select Committee on Securities and Exchange report was published, because there was an election in 1974 after the report was actually with the printer, but before it had been tabled in the Senate. When the Parliament resumed after 1974, Senator Murphy was not enthusiastic about reconstituting the Securities and Exchange Committee so that it could table its report. After numerous discussions with Senator Murphy, I said: 'Well, it looks as if I am left with the only alternative. I will still table the report'. He said: 'You can't'. I said: 'I can. I'll read it for one hour every night on the adjournment'. Senator Murphy thought that might be more interesting to the media than all the other things that had happened during the day. So the Committee was reconstituted, the report was presented, and one of the more outstanding committees, I believe, of the Senate - from a point of view of public recognition - was able to give an impetus to the whole of the movement towards the

¹⁰ Commonwealth Parliament, Joint Committee on the Parliamentary Committee System, A New Parliamentary Committee System, Parliamentary Paper 128/1976

development of the Senate committee system, which started from those revolutionary proposals of 1970 in which Jim Odgers played such an important part. Many other people also played an important part over a very considerable period of time, dating through the latter part of the 1950s and certainly throughout the 1960s.

Thank you very much for the opportunity to be back here. I conclude by saying that I wish the conference well; I wish the future of the Senate well. It is a great institution; it has its future in front of it, and I look forward to seeing that future.

Mr EVANS - Thank you, Senator Emeritus Peter Rae. I will now introduce the members of our panel who will speak briefly on Senator Rae's paper, and on their own contributions to the discussion. The first is another 'Senator Emeritus', Gordon Davidson from South Australia, who was a distinguished chairman of select committees prior to the establishment of the standing committees and, subsequent to that, of a standing committee. There is also Professor Geoffrey Sawyer, who is well known to us as an eminent constitutionalist; Mr Alan Cumming Thom, a former Clerk of the Senate; and Mr Chris Puplick, another 'Senator Emeritus', until recently a Senator, though lamentably not one at the moment. They will speak briefly in that order.

Mr DAVIDSON - Mr Clerk, ladies and gentlemen: it is of course a very great privilege this morning to share in this twentieth anniversary occasion of the Senate committees. It was my good fortune to serve within the Senate committee system from its inception in 1970 until my retirement from the Senate in 1981. Of the eleven years I was involved in membership of the Standing Committee on Education and the Arts, I enjoyed the privilege of seven years' chairmanship. After nearly a decade of retirement from the Senate and that activity, I am very grateful, in the first instance, to be present this morning for this observance and very appreciative of the compliment paid to me in giving me this involvement. Peter Rae, in his paper outlining the 'revolutionary' proposals of 1970, has painted a splendid backdrop to the period, which I believe returned to the Senate some of its significance, some of its effectiveness, for which it was designed and established. Those of us who worked with Peter Rae recall very appreciatively his leadership and his encouragement, not the least of which was his instituting the calling of working lunches. These were delightful occasions on which some marvellous plans were laid by the Chairmen of the standing committees for the establishment of their work.

Of course, not everyone was, or is, an enthusiast for Senate committees, especially Prime Ministers and Ministers generally. I recall when Senator Denham Henty called me into his office to invite me to be the chairman of the water pollution committee which he was establishing then. He told me that he had been trying for a long time to get it established. Then he added, and he was going back a bit: 'The old man' - that was Sir Robert Menzies - 'doesn't regard these proposals with any favour.' 'Backbench Senators', Menzies was reported to have said, 'will have access to matters not meant for them and to material which is inappropriate for their role in Parliament'. I suppose that Sir Robert Menzies was making a comment as a man of his style and a man of his time, and I believe that there is a much more enlightened approach today. But governments and their leaders have always been cautious in their attitudes to parliamentary committees.

The debate that gets the most reference is that of 11 June 1970, but that debate actually had commenced on the evening of 4 June 1970, when Ministers and others took part. The cautious attitude then expressed, with respect to having two groups of Standing Committees (Legislative and General Purpose Committees, and Estimates Committees) is understood and appreciated, but relationships have changed and developed as the style of Parliament and the Senate has evolved. These various styles and changes reached an interesting point as the Senate came up, as Senator Peter Rae has said, in the 1960s and 1970s. There were now more Senators in the Senate. The effects of the proportional representation system had long become a fact of life with an even division within the Senate, and other facts of life within the national constituency at large had also appeared. All these things together meant - and I say this with all respect to our predecessors - that, as I said in my speech of 4 June, we were welcoming a different kind of Senator. Furthermore, some of us had experience of either chairmanship or membership of select committees, and some had served on the Regulations and Ordinances Committee. All of these facts found expression in those debates in June 1970. For all that, the debates were a mixture of caution and enthusiasm on both sides, but without doubt the Senate wanted its committee system. After all, the Senate was a very suitable legislative chamber to undertake that kind of work. It was a house of review, it was a house with equal representation from all the states.

My involvement in the committee system was almost entirely in the field of education, to which was sometimes added the matters of science or the matters of arts, and sometimes both. Our references handed to us by the Senate covered a wide field: teacher training, children's television, education in the work force, literacy and numeracy, symphony orchestras, education of isolated children and a number of others; plus two or three bills, one of which was returned with a recommendation that the bill not be proceeded with. The feature of the Senate committee system in action was that it was a Senate on the

move. It carried the powers and prestige of the Senate. It was on the move, going out to the people and, of course, by its nature, the people were able to come to it. They would come as individuals or in groups with submissions and oral evidence prepared. We were welcomed by communities, received by local authorities, and our exchanges were useful. As in all public exercises, of course, there were doubtful cases, some of them very doubtful, but these received appropriate attention.

A feature which I think was of some value to Senators was that in their work they had access to and received matters of substance and interest which they collected during that time. They were able to make use of that material in the course of their public duties at home or in the constituency. For the chairman it was an additional opportunity. Speaking only for myself, I lost count of the number of school libraries, science laboratories and other building extensions I had the privilege of opening. The number of representations, conferences and speech days and seminars was legion. It is true my political temperament is such that I enjoyed all of these occasions very much indeed.

Whilst in this vein, I take a moment to recognise the contribution made by those who supported the Senate committee system, the members of the committee secretariat who work so hard and diligently in assisting the members to do the work. In my own case, men like John Lipscombe, Bob Thompson, Bert Nicholls and others of their colleagues were invaluable. I also include the officers of the various departments who prepared the material and the Legislative Research Section of the Parliamentary Library.

Mr President, I have spoken from experience and the time distance from that experience may have lent some enchantment to the view. But on this twentieth anniversary occasion we recognise that the 'revolutionary proposals' of 1970, which was the heading of Peter Rae's address, are still operating today. New styles, new thoughts and new technology are already new influences in the processes of the committee system. Parliament House exerts an extraordinary presence on committees and their contribution. Australian life and times have undergone further evolvments and the Senate, once more, is welcoming a new kind of Senator.

The standing committees have moved to reflect all of this. The President referred this morning to the Scrutiny of Bills Committee and the procedures that were arranged only this year for enabling more bills to be referred for detailed consideration. These and others are new forward-looking processes and others will follow. They will give an element of fulfilment to what Jim Odgers wrote all those years ago and which has been quoted this morning: '... a standing committee system is standard and essential equipment of the modern legislature'. Today I think Jim Odgers would be pleased.

Mr EVANS - Thank you, Gordon Davidson. I will now call on Professor Geoffrey Sawer.

Prof. SAWER - Thank you, sir. I think perhaps I should inject a slightly sour note into these proceedings. The Senate has, from its inception, been regarded with, at best, tolerance and, very frequently, with venomous hatred by the Australian Labor Party. I am not altogether sure that when Senator Murphy gave his enthusiastic assistance to the development of Senate procedures in this matter he was very much interested in the long haul. I think that he was trying to obtain particular advantages at the particular time against a particular political background.

My belief that the Australian Labor Party still, to this day, has a slightly jaundiced view of the Senate is supported by the constitution and platform of the Party. The 1988 edition, which I understand is the edition currently in force, has, under the head of Constitutional Amendment, quite a number of paragraphs dealing with the position of the Senate. It includes, for example, the proposition that the House of Representatives has a primacy in the government of Australia. There is no faint suggestion that the Senate has anything like an equal position. The Australian Labor Party says that the Constitution should be amended to prevent the Senate from deferring or blocking money bills. It says that the government should be responsible, in a direct sense, only to the House of Representatives and that the Westminster rule, such as it used to be - of course it is no longer in England itself - governing the relationship of governments to upper houses, does not apply in relation to the Senate.

On the other hand, there is a much later provision which does offer a little bit more encouragement to the enthusiastic backers of the Senate; that is, the statement that the Parliament should continuously review government activity through a viable committee system of both Houses of Parliament. That seems to me to relax the sourness in relation to the Senate and its committees, to the extent of tolerating the possibility of a joint committee of the two Houses to continuously survey activities of government, and so forth.

The question that arises in my mind, and, I hope, in the minds of some of you who are in immediate and direct contact with the present politics and constitutional activities of this country, is whether there could exist a joint committee system such as I have just mentioned as being supported by the Australian

Labor Party's constitution. As far as I can see at the present time, there is not any very enthusiastic movement to set up committees in the House of Representatives. This is one of the great differences between this country and the Mother of Parliaments at Westminster. At Westminster there is an extremely elaborate system of House of Commons committees and 90 per cent -or more than that, I think - of the bills that come before the House of Commons never reach the Committee of the Whole House. They are shunted off upstairs to these various bills committees, and it does seem to be the experience of that Parliament that this is a much more efficient method of handling legislation than that which used to depend inter alia on a Committee of the Whole House. Is anything like this going on in the House of Representatives? How will this affect, if it affects at all, the position of the Senate in these matters? These are matters for the future that I think our learned friends may wish to consider. As things stand at present, I return to my initial question. Is the general attitude of the Labor Party, as it is at present, represented adequately by those provisions in its constitution? Or, has the Labor Party finally and definitely settled to accept the Senate as, so to speak, a legitimate - not just a tolerated, but a legitimate part of the government of the country? And not only a legitimate part of it, but along one possible line of development for the future, an equally important House as the House of Representatives - equally important precisely because it is now operating with great success and against a background of long experience and developed skills as the sort of committee system which the House of Commons has in England.

This may well turn out to be, therefore, a basis for legitimacy of the Senate, which was certainly not contemplated by our founders, who did not contemplate in the slightest degree that the Senate should ever be anything more than a house of review. It seems to me that its present committee system makes it much more than a house of review. It puts the Senate as a whole, via its committees, in the position which at Westminster is possessed by the committees of the House of Commons.

Mr EVANS - Now that I come to think about it, when we were arranging the conference somebody did say: 'Let's get Geoffrey Sawer. He will introduce a sour note'. I call Mr Alan Cumming Thom, a former Clerk of the Senate.

Mr CUMMING THOM - Thank you, Harry. As a Clerk Emeritus, which might be the appropriate description, I feel very much like a grade cricketer who has been selected for his first Sheffield Shield game and he goes into bat for the first time when the score is about three for 350, because just about everything that should be said on this particular issue has already been said. Most of what I had on my copious notes here has already been said, so I have just said to Harry that I will throw these away and try again.

In doing so, of course, I also have to follow Peter Rae and say that I am an unrepentant Senate chauvinist. We were all brought up on the Senate staff to be complete and utter Senate chauvinists. We make no apologies for it.

I want to extend the historical background a little because it is very usual for people, and I have done this myself, to say that the committee system which the Senate has - incidentally, I think it is indubitably the best constructed committee system in any legislative chamber in the world, and I have some experience of some of them - grew from the select committee system of the early 1960s, the late 1960s and then the later developments. But I just want to put a slightly longer historical perspective on it and I am encouraged to do so because in this brochure which I think you all have in your folders, I note that reference is made to the adoption of the proportional representation system for the Senate in 1948 and the expanded numbers in the Senate from 1936 to 1960. It looks back in historical perspective, and I confess I only joined the Senate in 1955, so I was not in on those events. In 1955 it was very obvious that the Senate had received not just a blood transfusion but a heart transplant.

There was an atmosphere of enthusiasm from the new Senators. They had no intention of sitting there and just being backbench warmers; they wanted to do something. Some of you may recall Senators Don Willesee, Ian Wood, Hannaford, Kendall, McCallum and Reg Wright. Senator McCallum's name goes down in Canberra history and in Senate history as very significant because in 1954-55, I think it was, the Senate appointed a committee on the development of Canberra. The secretary of that committee is my good friend and former Clerk of the Senate, Roy Bullock, who is over on the side there. John McCallum chaired a committee in 1954-55 which did more to develop Canberra than any other single event and gave a taste to those Senators in the 1950s of what could be done by Senators doing a job of work instead of just being a voting number.¹¹

There was reaction from the new Senate - the expanded Senate - which had been split on the lines of 33 from one party and 3 others, which is not really a very good House. In the early 1950s it suddenly

¹¹ Commonwealth Parliament, Senate Select Committee on the Development of Canberra, Report, Parliamentary Paper 51/1954-55

became a House evenly divided. It was later somewhat complicated by the split when Senator George Cole walked across the chamber. I remember it well. He announced that he was no longer staying with his party; he was now Democratic Labor. I think it had another name first up - but any way he left.

Thus in the 1950s, there was a Senate which was evenly divided and enthusiastic to do a job, and this continued right through. As ex-Senator Peter Rae says, at this time also Jim Odgers had received a Smith Mundt grant to go to the United States and study the congressional system and he came back and produced a report which promoted the concept of a committee system. A great deal of credit has to go to him for that. Incidentally, he also recommended the establishment of a research service within the Library, having seen the Library of Congress as a research area. So, those matters were all coming together in the 1950s. In the late 1950s there was a Select Committee on Payments to Maritime Unions,¹² which was an incredible experience. Jim Odgers asked me to be his assistant on that. It was quite an education because, in one meeting down in the Legislative Council chamber in Sydney, we had 300 members of the Seamen's Union who came to the public gallery and booed and hissed when their Secretary, Elliot, was giving evidence. Senator Wright was at his judicial best as Chairman. All that was part of a learning experience for people like myself, and also for the Senators on the Committee.

The events from 1962 onwards are fairly clearly set out and I will not refer to them any further, except perhaps to give credit to one whose name never gets a mention and that is Senator Seddon Vincent from Western Australia, who was a keen amateur repertory man - Senator Davidson would remember him well - who chaired a Committee on the Encouragement of Australian Productions on Television.¹³ It produced a very influential report and I remember that our previous President, Senator Douglas McClelland, who was on that Committee and afterwards became Minister for the Media, said quite openly and quite publicly that the experience and knowledge he gained from that Committee stood him in great stead as the Minister and he understood all about the television industry, which in those days was still in its embryonic stages. Those are the benefits that came from those early select committees, but I wanted to bring that story back to the 1950s and the new Senate, because I do believe it is not only relevant, but also quite critical in the development of the system.

The other thing which I wanted to touch on was the administration and support to which Gordon Davidson has referred briefly. The planning for a staff to support the growing system was actually started in the late 1960s. Up to that time the people who staffed committees were the procedural officers like myself, Keith Bradshaw, Bert Nicholls and others. We took the committees - in fact the Usher of the Black Rod's official title was Usher of the Black Rod and Clerk of Committees. It was an old traditional title which went right back to the early days. This was becoming impossible because in the late 1960s, for example, I had two committees as well as my full time job as a procedural officer, so it was clear that we had to get staff.

I am delighted to see in the audience today the very first of our specialist committee staff, Arthur Higgins. A great deal of credit for the substantial and successful support of the committee system lies at the feet of Arthur Higgins. He was brought on - I think from memory he assisted me on the Select Committee on Medical and Hospital Costs¹⁴ - to break him into the strange world of committees.

So a conscious effort was made to provide a qualified, enthusiastic support staff. When the expanded system came some years later, I remember Arthur and I experienced a lot of trepidation in the selection of appropriate staff. Staffing was a very difficult problem because you had to decide whether you were going to have a lot of specialists or whether you were going to have generalists. Experience overseas, which fortunately I managed to get in 1972, led me to certain conclusions about what sort of staff we should have. Great selection processes went on to make sure that we got the sort of staff who could work with Senators because there is no use in having a string of degrees if you cannot work with a team of six or eight Senators, all of different political persuasions. Naturally the work, being in a political environment, can attract people who want to make a political input and there is one thing you cannot have on parliamentary staff and that is people who wish to make a strong political input. It just does not work.

Because of my own position, I thought I should say just a few words about the staffing arrangements. It was not easy. We had to work out what were the best procedures. A great deal of work went into how meetings should be conducted from what we had learned in select committee work and from what I had picked up overseas. A tribute must be given to the President of the day, Sir Magnus Cormack. I will just give one example of the sort of great operator he was, because when the standing committees finally got under way in about 1971, we had one on Foreign Affairs and Defence.

¹² Commonwealth Parliament, Senate Select Committee on Payments to Maritime Unions, Report, Parliamentary Paper 51/1958

¹³ Commonwealth Parliament, Senate Select Committee on Encouragement of Australian Productions for Television, Report, Parliamentary Papers 304,304A/1962-63

¹⁴ Commonwealth Parliament, Senate Select Committee on Medical and Hospital Costs, Reports, Parliamentary Papers 196/1969, 82, 82A/1970

There may be officers here from Foreign Affairs and Defence, but I mean no offence when I say that in those days the Foreign Affairs Department had a feeling that it was beyond scrutiny and public involvement and that it should not be asked to explain itself. They let this be known and Sir Magnus, who was, as I say, one of the great operators, directed me to take Arthur Higgins to see the Department officially and tell them the parliamentary side of things - that they had to turn up. This was rather a task for myself. We went and talked to, from memory, a deputy secretary and first assistant secretary - or people of that level - and Arthur and I had to come to an agreement virtually forcing them to do something they did not want to do.

The upshot was that the very first meeting of the Foreign Affairs and Defence Committee was held in public, which they swore they would never do, but we had reached a little compromise behind the scenes. They produced a public submission and when that was over they went *in camera* and produced the private submission. But we had broken the ice and once that was broken and the Department - as with so many other departments - saw how well it could be handled, there was never any further problem.

I would love to expand on Estimates Committees at great length because they have been responsible for a complete revolution in public administration in Canberra. It is an example which could well be followed in other Parliaments. We did a great deal of soul searching about how departments could be dealt with. We had to work out procedures and eventually we got through all that. A lot of education went on. Some of us were asked to go and address groups on what this meant for the Public Service, what it meant for the Parliament and so on.

Having had that experience, when I told my good friend and colleague, John Uhr, I would give him something, he once said - I do not know whether wittingly or unwittingly: 'You have not produced your sermon yet'. All sermons have to have a text or a theme. Perhaps with my own background it is not surprising that I think of text, and for the Latin scholars amongst you - and I do not suppose there are too many - or the students of Robert Browning's Rabbi Ben Ezra, or perhaps a wider group of you who saw the film *Dead Poets' Society*, I think the theme for the establishment of these committees and the continuing theme -and I hope the theme for the future will be *carpe diem*, because that is exactly what the Senate did as a reformed group from 1950 onwards. It seized the day; it still seizes the day.

Peter Rae has mentioned briefly Senator Murphy's contribution, which was very significant. It gave a great deal of encouragement to the system. That event of putting his motion on the *Notice Paper* was a classic example of *carpe diem*. The report was sitting there, and he hopped in first, seized the opportunity, got his motion on the *Notice Paper* and then got all the credit for it. That is the way life goes. But that is my text, if I may say so. The Senate, as much through evolution as revolution, developed this by seizing the opportunity to create this great system. It really is a great system. I trust that it will continue to seize whatever opportunities come its way to keep itself in the forefront.

Mr EVANS - Last, in what might be called the historical section of the conference, former Senator Chris Puplick will speak from a position of youthful vigour.

Mr PUPPLICK - Thank you. As some of you may know, I am actually a trained historian by profession. Although I do not go back quite as far as some of my distinguished colleagues on this panel, I do go back in this business sufficiently far as having been on the staff of the Minister for Social Services, as it then was, who was actually responsible for writing the submission which went to Dame Ivy Wedgwood's first committee on mental health and hospital services in Australia.¹⁵ So, I do go back at least that far in terms of some association with Senate committees. There are a couple of points that I think again need to be put in their perspective. The first is that the Senate is, always has been, and, unless the Hamer proposals are adopted, is always likely to be, a partisan political house where at the end of the day what actually counts is whether the Government or the Opposition has the numbers. Therefore, most of the Senate committees which have been able to have a significant influence upon outcomes have been those which have been dealing with matters which were not highly political or highly contentious, such as the development of Canberra, or, indeed, of a technical nature, such as the development of the national compensation scheme. Senate committees by and large are very good at producing a great deal of information on the public record. They are great at producing a great deal of interest for those who are intimately concerned with the problem and, indeed, for some, although not all, of the Senators who are serving on the committee. The question is, of course, whether they actually produce any results when it comes to matters of significant public policy. The answer to that depends on the extent to which government members on parliamentary committees have the guts to take on

¹⁵ Commonwealth Parliament, Senate Standing Committee on Social Welfare, Mentally and Physically Handicapped Persons in Australia, Parliamentary Paper 45/1971

their own political party and their own executive or the extent to which they are simply wimps and creatures of Caucus and of party discipline.

The Senate committees have, however, been sufficiently successful as to now be substantially under threat. Anybody who has looked at the development of the Estimates Committees, for example, will know that the Government (and this would apply to any government) is now in the monumental phase of ensuring that it takes as many matters as possible off the Budget and thus away from Estimates Committees as much as it can in terms of scrutiny.

I give you one very simple, very small example. When I first sat on the committee which handled the arts department estimates we used to look at the substantial amounts of money which went to the Australian Opera. From time to time I would call the general manager of the Australian Opera to answer for the millions of dollars which they were getting. So what happened? The Australian Opera got turned into a company limited by guarantee in New South Wales and we were promptly told that, as a result, of course, we could not call their officers before Estimates Committees. The department would answer. The department, of course, never knowing anything sufficiently, always promised to get the results, always got the results and always got the information four or five weeks later.

What is now happening, of course, is that increasingly things are being transferred into budgetary arrangements which take them away from the purview of the Estimates Committees. The attitudes of Ministers for Finance, one suspects, vary largely with the personality and nature of the Minister for Finance. However, at the end of the day, it is the job of the Minister for Finance to be the Government's hatchet man and to ensure that minimum expenditure takes place in areas where the Parliament has the capacity to scrutinise what is going on with the executive.

As I say, very often Senate committees produce very interesting and informative reports which actually then do not get their recommendations even considered by the Parliament. I will give you two examples. One committee on which I sat, the Legal and Constitutional Affairs Committee, recommended just under ten years ago that Australia should abolish compulsory military service. We actually recommended in the report on conscientious objection to military service that it was about time that we took off the statute books the law which allows any government at present to call up people for military service.¹⁶ That of course has never been debated and it is unlikely to be debated.

We wasted a great deal of our time in being gainfully occupied, without scrutinising what was actually happening politically. We produced a very interesting report which I doubt anybody has actually paid any attention to, and which is certainly not going to be acted upon by any government as far as one can see.

My friend John Black may raise later the contemporary issue which I raise. It will be interesting to see whether the recommendations of the drugs in sport inquiry are ever acted upon, or whether the executive government has decided that rather than do something about the chronic problem of drugs in sport, it would rather allow its friends in the sporting mafia around Australia to continue to run their affairs entirely without any responsibility to the public.

As I said, the success of Senate committees will depend upon the extent to which government members are prepared to buck the system. Again, I give two examples. Our friend Peter Durack is here; he has suffered through this interminably. If the Government members on the Constitutional and Legal Affairs Committee had not on the first day of debate on the Freedom of Information Bill been prepared to cross the floor on seven separate occasions - so that the bill was then temporarily pulled from the Notice Paper while real discussions took place between recalcitrant members of the Government, including the members of the Committee which had made these recommendations about freedom of information - that bill would never have seen the light of day in precisely the powerful form that it has at the moment.

We have all heard about the great work of the Scrutiny of Bills Committee. Again, the recommendation for its establishment came from the Constitutional and Legal Affairs Committee, and it was put into place only because the members of that Committee crossed the floor to vote against the Government, which said at the time: 'What we don't need is another silly committee called Scrutiny of Bills'. I think, therefore, it makes the point that it is the extent to which the individual Senators on the committees are prepared to follow through what they recommend as to whether, in fact, great progress is going to be made.

¹⁶ Commonwealth Parliament, Standing Committee on Constitutional and Legal Affairs, Conscientious Objection to *Conscripted Military Service*, Parliamentary Paper 233/1985

I make a concluding point, Mr Chairman. It seems to me that there are now three types of Senate committees. First, there are those which genuinely seek information on a matter which, by and large, governments are not absolutely wedded to. I do take the Freedom of Information report as one of those. The Government was wedded to the concept, but at the end of the day was quite flexible about the precise nature, the scope, the trade-offs, that it was prepared to have with the committee and the chamber to get the bill in its final form.

Secondly, there are those which are very contentious and where the outcome is largely unpredictable, and I quote here, not a Senate committee, but a joint select committee; namely, that on the Australia Card.¹⁷ Until the end of the day we never knew what the recommendation was going to be about the bill, but I also use the Australia Card committee to make a very interesting point. We spent months on the Australia Card. We analysed it, we prodded it, we examined it, we had it debated, we brought it backwards and forwards in the Senate. Every Senator was concerned about it and every last one of us missed the fatal flaw. The bill was analysed to death and we all missed the fatal flaw which eventually brought about the collapse of the Australia Card legislation. There is a salutary lesson there.

The third type is increasingly, I regret to say, the Senate committee set up to legitimise government policy. When we had the Select Committee on Television Equalisation,¹⁸ we had agreed there were would be four from each side. The Opposition appointed its four members to that Committee first. I was one of them. When the Government decided to appoint its members to the Committee, it said: 'We've appointed our members'. I said: 'Who is going to be chairman?'. It said: 'Graham Richardson'. I said: 'Who is going to be his No. 2?', and it said: 'Robert Ray'. I then said: 'Well, in that case, can I just have my TA money now because I really don't know that it is going to get very far, as far as I am concerned, in terms of doing anything other than saying that the Government's plan for television equalisation is terrific?'.
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Frankly, it would have been beneficial for me, and probably a great deal more useful in terms of my time, simply to take the travel allowance money and not bother to turn up, because I could have written the report on day one. I do believe that there is, therefore, a clear necessity for us to understand, in discussing Senate committees, the purposes for which an executive will allow or encourage a committee, or not poison a committee when it is set up.

If we understand that at the end of the day, no matter what we might say about the powers and responsibilities of committees, the powers and responsibilities of the Senate, the bottom line is that we are all politicians and we are all there to serve the interests of our political parties just as much as we are serving the interests of the institution. I think we will then discover the best method of using the Senate Committee system to improve the public administration and, hopefully, the public welfare of the people of Australia.

Mr EVANS - Thank you, Chris Puplick. We might take a short time for any questions, observations, attacks or support from the floor. Are there any brief, pithy and succinct ones?

Mr GUEST - Being the only member of the Victorian Legislative Council here says something about the prospect for reform that I have been pushing for fourteen years in the Victorian Legislative Council. I wanted to ask - I am going to try to make this very brief - about some of the constraints on reform. It seems to me that a lot of details which appear to be only remotely connected to effective upper houses are nonetheless very important. One of them would be the electoral system. The fact that I seem to be at the moment the only person seriously interested in reforming a politically important but, in a parliamentary term, fatuous and ineffectual body, I think has got a lot to do with the fact that we have individual electorates and a lot of members have to come from 200 or 300 miles away and they have to serve their electorates from 200 or 300 miles away. I would be interested in comment on the electoral system as an important aspect of effective upper houses.

I hope that these panellists and later panellists might comment too on matters concerning the size of committees. Our committees under the joint parliamentary investigatory committee system in Victoria are far too large; it is very difficult to get quorums. The joint system, I have to say, and as Professor Sawyer has mentioned, is a failure and largely serves government purposes. Any other constraints of a practical nature I would be very interested to hear about.

Mr EVANS - I will call on Peter Rae to respond to those points.

17 Commonwealth Parliament, Joint Select Committee on the Australia Card, *Report*, Parliamentary Paper 175/1986

18 Commonwealth Parliament, Senate Select Committee on Television Equalisation, *Report* Parliamentary Paper 106/1987

Mr RAE - I believe that there was an attempt in the mid-1970s to answer the joint committee question. The question was asked of the Joint Committee on the Parliamentary Committee System.¹⁹ As one person described it, it was the committee to end all committees. One might have thought, because of a preponderance of members from the House of Representatives, that there would be a domination of the results by the House of Representatives. In fact, the Senate received the nod from that Committee to retain its separate Senate committee system. It received the nod from that Committee to be able to develop. One of the major reasons given in that report was that the Senate committee system was able to get a quorum together, was able to work efficiently and tended to operate as a unit, whereas if you tried to draw from the two different Houses of Parliament, you tended to get conflicting interests even if they were only in the physical opportunities for the meetings of the committee, let alone the interests of the members. So one of the great subsequent victories from 1970 was the fact that a joint committee of the Australian Parliament, when it finally reported in 1976, supported the Senate committee system.

But that was substantially the thrust of the reform. The work that was done by that Committee was quite substantially done by Senate members of the Committee and the results of the Committee's report were to encourage the Senate committee system to talk about what might happen in the House of Representatives, but which has never, as someone has already commented, led to the development of a committee system comparable with the Senate committee system.

There have been various attempts, expenditure committees and the like, but all have tried for a while and never seem to have succeeded to the extent to which the Senate committee system has. One of the things that I did not say when I was speaking earlier, if I may just make the comment, is that part of the success, I believe, of the Senate committee system is its interlocking nature so that you can get a complete coverage of government activity. That is one of the important things which a Senate as a house of review can do which I do not believe that the house of government can do so readily. I believe the answer to your question is long live the separate committees and the development of a committee system in each of the houses, if they both wish it, but certainly in the house of review.

Mr EVANS - I might just briefly respond to the question about the importance of the electoral system. I think, as Alan Cumming Thom made clear, the election of Senators on a state-wide basis and the proportional electoral system has been quite crucial in the development of the committee system in the Senate, and the development of the Senate into the place it is today.

Short adjournment

Speech by the Hon. John Wheeldon when Opening the Exhibition The World of Senate Committees during the Conference mid-morning Adjournment

This is the first time I have been into this building. I remember that when I saw it being constructed, I could not help thinking about Oswald Spengler, the author of *The Decline of the West* who was described by H.R. Trevor Roper as a disreputable sage, but attracted the enthusiastic support of Hitler and various others. He is not someone whom I would frequently quote, but he did, I think, make some fairly perceptive observations. One of them was to the effect that when a culture is in decline it erects more and more grandiose buildings and engages in much more spectacular fanfare than when it is flourishing. I would not want to be too categorical in saying that what I see around me now is a further instance of this phenomenon, but I do think it is quite remarkable that, at a time when the reputation of Australian Parliaments has never been at a lower ebb, the accommodation in which these discredited legislators sit is much more splendid than that of any of their predecessors.

¹⁹ Commonwealth Parliament, Joint Committee on the Parliamentary Committee System, A New Parliamentary Committee System, Parliamentary Paper 128/1976

I think that the virtue in having these discussions about the Senate Committees here today is that, once again, despite the criticisms from some of my old comrades in the Labor Party, including myself in my earlier years, the Senate done something to restore the public faith in the institution of Parliament.

I also believe that the Senate has never been given the credit that it should have been given for acting as something of a saviour of the federal system. It is often said, rather glibly, that because people vote according to party lines and because you do not find all the Senators from one state voting against all the Senators of another state that therefore the Senate is not a states' house. But I do not think there is any doubt that having equal representation from the states does balance the representation of the states within the political parties, which, together with the recognition given in the upper house of the Australian Parliament of the equality of the states, does have some effect in preserving a federal system.

I think that experience shows the federal system is an invaluable system for a democracy. I do not think that it was any accident that when Hitler took power in 1933, one of the first things that he did was to destroy the federal system; that democracy in West Germany flourished with a federal system and that in East Germany, the so-called German Democratic Republic, the federal system had been destroyed, and that one of the first things that was decided upon their reunification with West Germany was the re-establishment of the federal system and the re-establishment of the old federal states that had been abolished in 1949. I think the federal system is perhaps more important in a country the size of Australia than even in smaller countries. A federal system and a division of powers is important for the maintenance of free institutions. I do not think it is any accident that Switzerland and post-war Austria, both very small countries geographically without great populations, have very rigid federal systems.

The other way in which the Senate has been of value to democracy through the fact that the survival of the government does not normally depend on what happens in the Senate (although when there is a denial of supply, then the majority in the Senate obviously can bring down a government). A defeat of government legislation in the Senate is not of the same significance a defeat in the House of Representatives. A vote of no confidence in the Senate does not have the same force of a vote of no confidence in the House of Representatives.

For these reasons, it has been possible for members of the Senate to engage in co-operative enterprises which cross party lines in a way in which it is virtually impossible in a lower house which is a house of government. It is easy in the House of Representatives of the United States which, under a different system from ours, is not a house of government. And although I am sure that Professor Sawyer is right in saying that the House of Commons committees have also been able to achieve something, I would suggest that what has been done in the House of Commons committees has been very much of a technical nature, and not in relation to matters where there can be fundamental disagreement between the parties.

Senator Puplick has referred, not without some justice, to the fact that on the whole the success of the Senate committees in discussing and dealing with the matters that have been brought before them, has been largely in areas of a technical nature also, and non-controversial. I think that one of the instances which he quoted does not fall into that category, at least it did not seem to me at the time, when I was the Minister of a rather strange department called Repatriation and Compensation which was responsible for one of the last (though it failed) social measures of a Labor Party anywhere in Australia - the National Compensation Scheme. Certainly the doing-over that my bill got in the Standing Committee that discussed it seemed to me to be on questions of basic political principle, rather than detail.²⁰ And I think also the Select Committee on Securities and Exchange²¹ could hardly be described as being purely technical. A proposal that there should be Commonwealth government legislative regulation of the trading in shares and securities is not a matter of detail. It is a matter of fundamental principle which I think is only now, some twenty years later, being recognised as perhaps being as essential as the committee said it was at the time.

Now, one may imagine perhaps that with the growing together of the political parties in Australia, so that, as my American wife says, you cannot tell the players without a score-card, the vehement differences between the people on opposite sides of the respective houses would decrease. We are in a situation now, when one takes the two major parties, where the differences are no longer of the seemingly fundamental kind that they were twenty years ago. Both parties, for example, enthusiastically accept the capitalist ethos and the competition is largely as to who can make capitalism work more successfully. I do not think there is any argument about that; I think that would be what members of the federal government would boast of and I think that when you have a situation where a State Premier

²⁰ Commonwealth Parliament, Senator Standing Committee on Constitutional and Legal Affairs, Clauses of the National Compensation Bill 1974, Parliamentary Paper 142/1975

²¹ Commonwealth Parliament, Senate Select Committee on Securities and Exchange, Australian Securities Markets and their Regulation, Parliamentary Paper 98/1974

who is being referred to as 'Mother Russia', votes in favour of the privatisation of the Commonwealth Bank, one can see how meaningless the previous exchanges of unpleasanties between the parties on purportedly ideological grounds have become.

One might think that this would mean that there would be more tolerance and greater courtesy between members of the opposing parties. I do not believe that this is so. When it was taken for granted that there were rather profound differences between the parties but that they had to work together so that Parliament would function, even though their ultimate goals were quite different, it was easier to get some sort of understanding and some sort of *modus vivendi* than it is when there is no real difference on policy, but the parties feel that they have to establish a spurious distinction from each other by personal insults. So that, as the differences between the political parties decrease, the allegations of bribery, corruption and immorality increase.

However, through the existence of the Senate committees, these deteriorating standards of political behaviour, can to some extent be overcome. This does not mean that the fate of the major issues of life and death confronting the country can be dealt with by Senate committees, but these committees can enhance respect for the parliamentary institution. People from many parts of the world must have found it puzzling, at the time when Eastern Europeans were struggling to have free elections, that the most common complaint about elections here in Australia is that we have too many of them, that somehow this is an insult to the Australian people - that they have elections once every couple of years and sometimes even once a year! People have to go to the trouble of walking to a polling booth and re-electing or defeating their government. I think this is to a large extent a result of the poor regard in which Australian politics and Australian politicians are held by the Australian people.

I believe that Senate committees have done valuable work, and even if they have been hindered by governments, they certainly still have more resources available to find out what is going on, than does anybody else. Because of their ability to call witnesses they certainly can do a lot better than any journalist or any private citizen in finding out what is going on. There are facilities open to Senators (and other Members of Parliament) to complain, on the record, about any attempt by government to withhold information or to mislead the public.

The Senate's committees have not only been useful in what they have been able to achieve, but, I think, much more importantly than that, that at a time when the parliamentary system in Australia is held in poor regard and where major statements are not made within the Parliament, but are made on television or at football matches, they have helped to save Parliament from becoming completely redundant.

This exhibition, *The World of Senate Committees* commemorates the establishment of the Senate's Legislative and General Purpose Standing Committees and Estimates Committees twenty years ago. I have much pleasure in declaring the exhibition open.