The Senate, Accountability and Government Control

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The purpose of this paper is to examine the measures by which the Australian Senate seeks to ensure the accountability of the executive government to Parliament and the effect on those measures of the government party majority which took effect on 1 July 2005, and to draw some implications on the nature and limitations of the accountability of the executive under the Australian system of government.

Accountability

One of the principal functions of a legislative assembly is to ensure that the holders of the executive power are accountable, that is, that they are required to explain to the legislature and the public what they are doing with the power entrusted to them. This requirement is an essential safeguard against mistake and malfeasance in government. The executive branch of government is a complex machine consisting of many parts and many office holders. Mistakes are not only possible but likely, and not all of those office holders, sometimes not even the whole of the government, will resist the temptation to use the power of the state for improper purposes. So the holders of the executive power must be subjected to scrutiny and exposure to ensure that the power is properly employed.

This legislative function is the subject of some famous formulations. "We are called the Grand Inquest of the Nation," observed William Pitt the Elder in 1741, "and as such it is our Duty to inquire into every Step of publick Management, either Abroad or at Home, in order to see that nothing has been done amiss …", and no participant in the parliamentary debate in which he spoke disagreed with that proposition.[1] Said Professor, later President, Wilson: "Unless [the legislature] have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless [the legislature] both scrutinise these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct." [2]

While it is usually seen as an adjunct to democracy, that is, the right of the whole population to judge its government, the accountability of the executive predates democracy and is an essential element of a far older phenomenon, constitutional government: government subject to limitations and safeguards. Pre-democratic constitutional states

vigorously practised executive accountability. Office holders were subjected to "confirmation hearings" and end-of-term accountability examinations in ancient Athens.[3] In the Roman Republic there was an insistence that the greatest statesmen and military heroes, even the conqueror of Carthage, should be held accountable.[4] The Grand Council of the Republic of Venice had a sort of question time for examining officials.[5] Constitutional government, government with safeguards, entails such institutional measures.

The accountability function of the legislature clearly depends on obtaining information. Much of that information is in the hands of the executive government. In the temptation to conceal its mistakes and misdeeds, the executive government may refuse to give up the information. Thus many of the contests between legislatures and executives are, or become, battles over the disclosure of information. Thus also the "Watergate principle", that the cover-up often subsumes the original offence.

Legislative methods

Legislatures have two traditional measures for ensuring accountability: requiring the production of documents which record executive activities and the dealings of government with others, and questioning witnesses, not only ministers and public officials but also others, about government activities.

Legislatures traditionally have processes to compel the production of documents and the testimony of witnesses. Those processes ultimately depend on the ability to pursue unreasonable refusals as contempts of a house. The powers to deal with contempts are characteristic of Anglo-American houses, and have come down to each House of the Australian Parliament. With their control of the law-making power and the appropriation of public funds, legislatures also have the political means of coercing executives, including a range of political remedies short of legislating or denying funds.

Accountability measures may be applied either in the whole house of a legislature, or, more commonly in recent times, through committees, which are best able to examine witnesses, sift evidence and advise their houses.

The questioning of ministers in the chamber through the relatively modern procedure of question time is notoriously an occasion of political theatre virtually useless for obtaining information or making ministers explain themselves. It will not be considered here. Other procedures in the whole House, such as the committee of the whole stage on bills in the Senate, are more useful accountability tools.

The Senate's measures

The Australian Senate has always used both of the traditional methods of legislative inquiry. The Senate itself has ordered the production of documents, and occasionally examined witnesses. The power to require the production of documents and summon witnesses has routinely been delegated to Senate committees, which have been empowered to hold hearings and report their findings.

While still making inquiries ad hoc when particular circumstances arise, the Senate has built up over many years a range of standing accountability measures, including permanent orders for the production of information, and committees to scrutinise legislation and government regulations, to examine public expenditure and to oversee government operations.

The basic aim of all of these measures is to disclose information about the activities of the executive government to enable a judgment to be made about its performance. The Senate, like other legislatures, has frequently encountered executive refusals to produce information. Like the strongest of those legislatures, it has used a range of remedies to coerce recalcitrant executives, although it has not resorted to its ultimate power, the power to impose penalties for contempts, in the course of disputes with the executive government.

Public interest immunity

The assertion of the value of the accountability of the executive to the legislature does not involve any claim that all information should always be disclosed. Legislatures have recognised that there are legitimate grounds on which the executive may not disclose some information to the legislature and to the public. In past times executives asserted "Crown privilege", the alleged ability of the advisers of the Crown to withhold information to protect the operations of the executive. The claim was renamed "executive privilege" to adjust to republican systems. More recently, following the terminology used by the courts of law in determining whether information should be admitted in legal proceedings, the subject has been renamed again as "public interest immunity". This terminology has the benefit of establishing the proper basis of every claim for non-disclosure: that the disclosure would be harmful to the public interest in some specific way. Several grounds for claims of public interest immunity have come to be recognised, such as prejudice to national security, prejudice to the rights of parties to due process of law in legal proceedings, invasion of the privacy of individuals, damage to the commercial interests of traders in the marketplace, and so on. The Senate and comparable legislatures have accepted claims on some of these grounds in the past, depending on particular cases.[6]

The position of the Senate and every comparable legislature, however, has always been that it is for the legislature to determine whether a claim of public interest immunity is sustained. The Senate asserted this right in a resolution in 1975, which employed the language of claims of privilege, but which declared that "the Senate shall consider and determine each such claim".[7] More recently, in relation to claims of commercial confidentiality, a resolution of the Senate made it clear that such claims must be made by a minister and be based upon a statement of the apprehended harm to commercial interests, so that the Senate may be assured that the claim is not lightly raised and may give appropriate consideration to the reasons.[8]

Executive governments, on the contrary, have claimed a right to determine whether the public interest requires non-disclosure of information. It is obvious why no legislature worthy of the name could accept such a claim. It makes executive office holders judges in their own cause, and hands back to them the power to determine whether their own mistakes and misdeeds will be discovered. It allows them to determine the conditions on which their activities will be scrutinised. Clearly submission to such a claim would seriously erode the safeguard of constitutional government.

The fact that the Parliament by legislation has given ministers power to determine conclusively whether some information should be disclosed, under the Freedom of Information Act, does not affect the right of the Senate to determine whether to accept stated grounds for non-disclosure. An order by a House and an application under that statute are very different processes. This was made clear by the Senate and its Procedure Committee in 1992.[9]

The legislature may be persuaded that information should not be disclosed without actually seeing the information in question, but such persuasion requires the disclosure of some other information to support apprehended harm to the public interest, and is far removed from a simple assertion of executive secrecy.

In 1994 the then government, in evidence by the Leader of the Government in the Senate to the Senate Privileges Committee, stated that the government would not seek to refuse information to the Senate except on the basis of carefully considered public interest grounds.[10]

The Howard government did not adopt that approach; an attempt by a senator, by way of a letter and then a question on notice, to get it to do so, was not responded to for three years, and then met with a non-committal response.[11] Instead, the government declined to produce information, often without raising any recognisable public interest immunity grounds, or without giving any reasons at all.

Government party majority

In Australia there is a strong perception that accountability is something that oppositions and non-government parties, particularly when those parties have a majority in a house of the legislature, seek to impose upon executive governments, that governments will always seek to avoid that imposition, and that they will be successful in doing so where they have a majority of their own party in a house. This is not in accordance with the theory of parliamentary government, nor its practice until relatively recent times. That theory is still based upon an assumption that government party backbenchers will question executive office holders of their own party in the public forums of the legislature and seek to uncover any errors. Party discipline is now so tight in Australia, however, that government backbenchers invariably support executives of their own party in declining to disclose information to the legislature. They conceive their public role to be not that of scrutineers of government but supporters, in all things, of their government. This has virtually crippled the ability of lower houses, where governments by definition have a party majority, and left accountability measures to be pursued by non-government majorities in upper houses.[12]

Because of this, governments feel that they are able to dismiss and reject accountability measures simply as manifestations of party politics, attempts by the losers of the last election to dictate to the winners. This attitude has also spread into the public perception of the political process, making it more difficult for non-government parties to enlist public support in their attempts to expose the activities of government. Such a mindset is often combined with the "mandate theory", that a government which possesses the endorsement of the people as expressed in the last election should not be hindered in carrying out its intentions. If that theory were consistently followed, there would be no way of the public making an informed judgment at the next election of the government's performance.[13] The whole point of constitutional rule is that governments must be called to account between elections. If government backbenchers are to abandon their public accountability role, and the partisan political interests of the non-government parties are to be the only source of accountability measures, it is better to have that kind of accountability than none at all.

As will be seen, the Senate has provided a demonstration of this situation, first because of the long periods in which it has not been under the control of a government party majority, and second in the period after 1 July 2005 when the Howard government achieved a majority of one in the chamber. Unsurprisingly, the data confirms the thesis that accountability is greatly weakened in a house with a government majority, but an analysis of the extent to which this occurred in the Senate and the way in which it occurred provides a useful basis for assessing the state of accountability in Australia and measures to enhance it.

Orders for production of documents

The Senate historically has made extensive use of orders for production of documents, resolutions requiring ministers and government agencies to present documents to the Senate, as a means of exposing government activities. Such orders may be standing, requiring regular presentations of information on particular subjects, or may require once-only presentations of specified information.

In the last Parliament before the Howard government took office, that of 1993-96, 53 orders for documents were made and all but four were complied with.[14] In accordance with the undertaking given in 1994, when the then government sought to avoid compliance with an order for documents a ministerial statement was made indicating the reasons for the documents not being produced. Sometimes the reasons were accepted, if only tacitly, by the majority of the Senate, and sometimes non-acceptance was signified by various means. This pattern continued into the early terms of the Howard government, but that government exhibited an increasing resistance to orders for documents. In the Parliament of 1996-98, 48 orders were made and five were not complied with. In the Parliament of 1998-2001, there were 56 orders and 15 were not complied with. In the Parliament of 2001-04, there were 89 orders and more than half of them, 46, were not complied with. The reasons given by the government for not producing documents came to be increasingly remote from any recognisable claim of public interest immunity, and often consisted of simple assertions that documents were confidential, and off-hand dismissals of the non-government parties' interests in the information.

The Senate struggled to take effective remedies against the increasing number of government refusals to respond to orders for documents. The non-government parties had to choose the issues on which they were willing to fight. In some cases effective remedies were adopted.

In 1999 the Minister for Family and Community Services, Senator Newman, refused to produce in response to a Senate order a draft document on changes to the welfare system which she had earlier said she would release at a Press Club address. Instead she produced substitute documents, including, eventually, the stated final version of the required document. Among the grounds for refusal to produce the required document were that its disclosure would "confuse the public debate" and "prejudice policy consideration". Advice from the Clerk of the Senate suggested that these were novel grounds of unclear meaning. The minister was censured by the Senate The Senate also adopted measures to penalise the government and to gain access to the content of the required document. Question time was extended, the Community Affairs References Committee was ordered to hold a hearing on the matter, and officers of the relevant department were ordered to give evidence before the committee. Officers duly appeared and gave evidence, although

under an instruction from the minister not to answer some kinds of questions. When the committee reported the Senate carried a resolution rejecting the minister's claim of public interest immunity and the grounds on which it was based.[15]

The government refused in 1999 to produce documents relating to purchases of magnetic resonance imaging machines. The principal grounds were risk of prejudice to administrative inquiries and the confidentiality of the government's relationship with the medical profession. Advices from the Clerk of the Senate suggested that these grounds were novel and lacking in cogency. The matter was extensively explored at an estimates hearing, and the advices were released. Subsequently, a report by the Health Insurance Commission was produced, with an indication that cases had been referred to the Director of Public Prosecutions. The Senate directed a further committee hearing on the matter, at which officers were closely questioned. An Auditor-General's report was obtained. Both the Senate committee and the Auditor-General found evidence of serious administrative deficiencies. Finally, a large volume of documents was tabled.[16]

The collapse of the airline company Ansett Australia led to two orders for documents in September 2001 relating to the government's approval of the takeover of Ansett by Air New Zealand. The government refused to produce the documents on various grounds, including confidentiality of advice and a claim that producing the documents would distract departmental officers from the task of attempting to save Ansett, but it was indicated that the orders would be attended to later. The Rural and Regional Affairs and Transport References Committee was given a reference on the Ansett collapse. The committee held hearings accordingly. Departmental officers were then questioned, without the government attempting to prevent the hearing.[17]

One of the most drastic remedies the Senate could adopt would be refusal to pass government legislation until related information is produced. On 12 August 2003 the Senate deferred consideration of two customs and excise tariff bills to give effect to an ethanol subsidy scheme until the government produced documents required by various Senate orders relating to the scheme. The documents were not produced and the bills were not passed. The bills were subsequently brought on and passed as a result of an agreement between the government and some senators as to amendments of other legislation and the tabling of some documents.[18] This and other cases indicated a willingness to compromise on the part of senators who were pursuing the required information.

The most significant permanent order of the Senate requiring the production of information is that first passed in 2001 for the publication on the Internet of details of all government contracts costing more than $100,000. This was an attempt to introduce transparency and accountability into government contracting, which had been a notoriously murky area and the subject of frequent claims of confidentiality. At first the government resisted the order

on a claim that it was beyond the power of the Senate, but this stance was tacitly abandoned and the order has subsequently met with substantial compliance.[19] It had become well established by the time the government gained its majority in the chamber. The government refused to comply, however, with a similar order in 2003 requiring the listing of government advertising campaigns, a highly politically-charged subject, on the ground that the information could be obtained by other means, particularly through estimates hearings. There was no attempt in the Senate to enforce the order, and senators appeared to be willing to pursue the information through the estimates hearings.[20] As will be seen, once the government obtained its majority there was a partial closure of that avenue.

After gaining its majority in the Senate on 1 July 2005, the government had the easier option of simply using that majority to reject motions for the production of documents. In the Parliament of 2004-07, after the government majority took effect, only one motion for production of documents was agreed to, and this related to documents in the possession of an independent statutory body, which presumably was willing to disclose the documents, rather than the government itself. All other motions for documents were rejected. Predictably, there was a fall-off in the number of such motions moved. Senators simply stopped moving them, knowing they would be ineffective. Only 25 motions for documents were moved during that period.

At first some reasons were given for not agreeing to these motions, mainly reasons which did not constitute recognised public interest immunity grounds. One of the reasons repeatedly given, for example, was that the information had not been published; obviously motions for documents are by definition directed to unpublished material.[21] Subsequently, most motions for the production of documents were rejected without any reasons given.

Attachment 1 shows the documents which were refused to the Senate during that Parliament by the rejection of motions for the documents.

Probably only really significant cases of concealment were the subject of these motions, but it is not possible to confirm this. Probably also many of the documents concerned had already been refused to committees, but again this cannot be determined because committees do not necessarily report on cases where they have asked for documents and have been refused.

It is possible that there were sustainable grounds for claims of public interest immunity in relation to some of the documents, but this cannot be known in the absence of any such reasoned claims made by the government. It is difficult to believe that there were sustainable public interest grounds in relation to all of the documents. The titles and

subject matters of many of them leave the reader puzzled as to possible grounds, other than political embarrassment, for their non-disclosure.

The failure of the government to give reasons for not producing such documents in itself constitutes a breakdown of accountability. If executives are able to refuse information without giving any reasons, accountability is effectively halted.

Committee inquiries

The principal means whereby the Senate obtains information bearing on the accountability of the executive are committee inquiries. With the exceptions which are considered below, Senate committees may inquire only into matters referred to them by the Senate. The majority in the chamber therefore determines the subjects and scope of committee inquiries. After gaining its party majority on 1 July 2005, the Howard government was able to control inquiries by Senate committees. In addition, in 2006 the government changed the structure of the Senate committee system to give itself the majority and the chairs of all of the legislative and general purpose standing committees, which are the main inquiry vehicles for the chamber. Until that time, those committees consisted of references committees, with non-government party majorities and chairs, which inquired into matters of public interest referred to them by the Senate, and legislation committees, which inquired into legislation referred to them and conducted estimates hearings.[22] By effectively removing the references committees, the government gained total control over the committee system through its party numbers.

References to committees

Before 1 July 2005, the Senate had two options for inquiring into matters of public interest: referring such matters to one of the references committees, or establishing select committees for the particular purpose of conducting the specified inquiries. In recent years, particularly since the establishment of the references committees in 1994, the Senate has preferred the method of making references to the references committees, but has continued to use select committees for special inquiries.

During the Parliament of 2001-04, seven select committees were employed. After the government gained its majority, no select committees were appointed. In effect, the government did not permit any special inquiries by the Senate into matters of public interest. It is difficult to believe that there were no matters worthy of such inquiries.

In relation to references to references committees, attachments 2 and 3 show the motions for references which were moved in the Senate in the Parliament of 2001-04 and in the

Parliament of 2004-07 after the government gained its majority, respectively. The tables show the sources of the motions by party and whether they were agreed to.

Several significant conclusions emerge from these tables. Motions for references moved by the non-government parties were the major source of committee inquiries before the government gained its majority, but after that time non-government motions were mostly rejected. The low success rate of such motions is actually less than it appears, because in most instances non-government senators moving for references were compelled to alter their terms of reference in order to gain acceptance by the government. Looking at the subject matters of the references and the actual terms of references, it may be concluded that the references that were passed were overwhelmingly government-friendly references, or at least politically neutral. No references were accepted which might cause political difficulty or embarrassment for the government. Sometimes seemingly innocuous references led to not entirely government-friendly results; for example, the reference to the Finance and Public Administration Committee relating to transparency and accountability of public funding and expenditure revealed the serious decline in parliamentary control of the public finance system in the past decade.[23] Other references allowed evidence critical of government policies and activities to be heard, and provided a vehicle for non-government senators to make their own reports, but the scope of inquiries was severely limited compared with previous parliaments.

By having a party majority on all of the committees, the government was also able to determine the course of each committee's inquiry, including the deadline for reporting, which is normally set in the chamber, the witnesses who were heard, the information which was requested from government and other sources, and the compilation of the majority report.

In this situation, there is a danger of a parliamentary committee system becoming a mere stage set, with committees inquiring only into matters determined by the government on terms of reference approved by ministers, the conduct of inquiries determined in accordance with the government's wishes, evidence selected according to the government's view of the subject and reports written to reflect that view. In short, a committee system can become a mere echo chamber in which the government simply listens to its own voice. This situation was not reached during the 2004-07 Parliament; on the contrary, committees were still able to conduct useful inquiries into difficult subjects, gather informative evidence and make valuable observations in reports. The culture of a genuine committee system survived to a certain extent. The long continuance of a government majority, however, could lead to a completely tame committee system.

Certainly accountability suffered, to the extent that the Senate was not able to conduct inquiries through the medium of references to committees into any matters not approved

by the government. As a former Deputy President of the Senate, of the Liberal Party, suggested, the inquiries most worth conducting may well be the very ones that a government does not want.[24]

A striking demonstration of this principle is provided by the matter of the Regional Partnerships program, one of several schemes under which ministers handed out parcels of money, amounting to millions of dollars, for "development" projects. In December 2004, after questioning in estimates hearings and before the government majority took effect, the Senate resolved on an inquiry by the Finance and Public Administration References Committee into concerns about this program. The government voted against the committee reference. The non-government majority of the committee reported that its inquiry had been obstructed by the government refusing to provide information. Their report found a lack of accountability in the program, the dispensing of money without regard to the governing criteria, political bias across electorates and massive use of the fund just before elections. The government members of the committee defended the program. The committee recommended an inquiry by the Audit Office, which initiated a performance audit. The audit report, released on the eve of the next general election to the great discomfiture of the government, more than vindicated the committee's findings. If the committee inquiry had been proposed after the government majority took effect, it would undoubtedly have been rejected. Perhaps then the misuse of the program would not have been exposed, or perhaps the exposure might have been delayed. Neither result would have been to the benefit of the taxpayer, whose interests would have been best served by the Senate inquiry being fully effective in the first place.[25]

Standing references

Under the Senate standing orders applying to the legislative and general purpose standing committees, those committees are able to initiate their own inquiries in two areas: they are able to review the annual reports of government departments and agencies, and to examine the performance of those departments and agencies. These standing references are potentially very powerful accountability tools, as they allow committees, on their own motion, to call departments and agencies to account for their administration of particular programs and projects.

The standing references, however, have been little used, even before the government gained its majority in the chamber. The major reason for this is that the references were given to the legislation committees, which had government party majorities and government chairs, and, with a few exceptions, those majorities and chairs were unwilling to initiate robust accountability scrutiny. In some cases the Senate referred matters to the legislation committees which were then obliged to conduct inquiries into those matters. This avenue was closed off by the government majority after 1 July 2005.

In the Parliament immediately before the government majority, committees conducted nine inquiries under these standing references. In the Parliament of 2004-07, after the government gained its majority, there were only four such inquiries, two of which related to an agency whose activities caused particular concern to some government senators, and two of which were ad hoc hearings about particular programs which did not lead to any report.

Inquiries into bills

Inquiries into bills are not usually regarded as part of the accountability activities of a legislature, but rather as a facet of its legislative work in shaping the laws which are passed. The scrutiny of bills, however, is accountability related, in that it potentially involves requiring government to explain and justify its legislative proposals.

The Senate has always used references of bills to committees as an adjunct to its legislative work. Since 1988 it has operated a system for the regular referral of bills to committees through another committee, the Selection of Bills Committee, which reports to the chamber on the bills which should be referred for committee inquiries.

The government retained this system after it gained its chamber majority, and frequently boasted of doing so. In fact, more bills were referred to committees than when the government lacked a majority, and more bills were referred on the initiative of the government, sometimes before the bills were introduced. The government used its numbers, however, to restrict the time allowed for committees to report on bills and to withhold some bills from committees. In the Parliament of 2001-04, the average time for the committees to report on bills referred to them varied from 31 days in 2002 to 45 days in the first half of 2003. After the government gained its majority, the average declined from 30 days in financial year 2006-07 to 15 days in the latter part of 2007. There were many disputes in the chamber, usually on motions to adopt reports of the Selection of Bills Committee, about the government restricting the time allowed for committees to report on some bills and not allowing the referral of others. Persons and organisations making submissions to committees on bills also frequently complained about the lack of adequate time to provide their evidence. The government was accused of deliberately overloading and seeking to destroy the system for the scrutiny of bills by imposing these restrictions.[26] The fact that these complaints were made by non-government senators does not negate their validity.

What the statistics do not reveal, and what the complaints were mainly about, was the very short times allowed for examination of major bills. The WorkChoices legislation of 2005 represented the largest and most contentious changes to the workplace relations laws initiated by the Howard government. A committee was given less than three weeks to

examine it, and lists of the most significant provisions were excluded from the terms of reference.[27] By contrast, the government's second largest and most important package of changes to workplace relations, in 2002, when there was not a government majority, was referred to a committee with eight weeks for the inquiry. As will be seen, the restriction of the scrutiny of the 2005 legislation was to rebound on the government.

A committee was given only one day to examine the package of legislation for the government's takeover of indigenous affairs in the Northern Territory.[28] Although some administrative measures recommended by the committee were accepted, all proposed amendments were summarily rejected.

This was the normal pattern when bills were considered in the chamber: the government was able to reject all amendments of which it did not approve. Thus, in the Parliament of 2001-04 well over half of the 892 amendments moved by the Opposition and more than one quarter of the 965 amendments moved by the Australian Democrats were agreed to. In the Parliament of 2004-07 after the government obtained its majority only six out of over 600 Opposition amendments were agreed to and only two out of over 700 amendments moved by the Australian Democrats were accepted. Successful amendments moved by other parties declined from 168 to 14. The figures for the Australian Democrat amendments are particularly significant, in that, when it lacked a majority, the government was particularly prone to compromise with the Australian Democrats and to accept their amendments, notably on workplace relations legislation.

One effect of the ability of the government to push bills through committees and the chamber was to frustrate the work of the Scrutiny of Bills Committee. Since its establishment in 1981 this committee has drawn the Senate's attention to provisions in bills affecting civil liberties or the powers of the Parliament. Under the government majority, in some cases bills were passed before the committee was able to comment on them, and in other instances bills were too far advanced to allow the committee's concerns to be adequately considered.[29]

The ability of the government to pass its legislation with only the amendments it accepted meant that there was little or no pressure to persuade the majority of the chamber by properly explaining provisions in legislation and why particular amendments would not be acceptable. This in itself amounted to a lessening of accountability.

There were several instances of the government moving amendments, not only in the Senate but in the House of Representatives before bills were received in the Senate, to take account of matters raised in Senate committee hearings on bills and included in the committee reports. In one instance the government accepted an amendment suggested by Opposition senators in a minority report.[30] In 2007 the government put aside its proposed

access card legislation after a committee recommended that it not proceed until promised provisions relating to safeguards were drafted.[31] These events indicate that committee inquiries into bills were not rendered entirely useless by the government majority, and that committees could still make a contribution to the legislative process.

The severe restrictions on the time allowed for the committees to scrutinise bills, however, represented a significant decline in accountability. More extensive examination of the bills may well have revealed further changes which should have been made, even if the government was not compelled to compromise with other parties on their legislative preferences.

The starkest demonstration of this was provided by the WorkChoices legislation. Having insisted on minimal committee examination, and pushed the bill through the Senate, the government had to return to it in 2007 with amendments designed to overcome serious public hostility to some of its effects. Had a longer committee inquiry been allowed, the evidence may have made the government realise that it should make further amendments before it was forced to do so. If the government had not had a Senate majority it certainly would have been obliged to accept further amendments to secure passage of the legislation, and then probably would not have had the subsequent difficulties.

Estimates hearings

According to a former Manager of Government Business in the Senate and Leader of the Opposition in the Senate of the Labor Party, estimates hearings are "the most effective mechanism for parliamentary accountability that we have in our system of government",[32] and according to a Leader of the Government in the Senate in the Howard government, estimates hearings are "in some ways ….. the most effective level of financial accountability that exists within our system".[33]

The thrice-yearly round of estimates hearings provide senators with the opportunity to question ministers in the Senate and officers of departments and agencies about any of their activities and operations.

After the government gained its Senate majority, these were the only inquiries not under complete government control.

Even before that time, the government had exhibited a desire to restrict the scope of the hearings. In 1999 there appeared to be a concerted effort by ministers to restrict the hearings to their claimed original purpose by declining to answer questions which were not about how much money was to be spent on particular functions. This led to a dispute which found its way into the Senate, to the Procedure Committee and back to the Senate

again. The Senate adopted the report of the Procedure Committee, to the effect that all questions going to the operations and financial positions of government departments and agencies are relevant questions for estimates hearings. As the Procedure Committee made clear, this only reasserted what had always been the practice.[34]

The government allowed the estimates hearings to continue, but placed restrictions on them which reduced their effectiveness.

A change was made to the timetable of the hearings, which had the effect of reducing by two the total number of days available for them.[35] Theoretically, the committees themselves can decide to extend their hearings beyond the days specified by the Senate, and this has occurred in a few cases in the past, but with the government majorities on the committees this is highly unlikely.

A more severe restriction on the effectiveness of the hearings was the large increase in refusals of ministers and officers to answer questions, often without raising anything resembling a public interest immunity claim, and in some instances without giving any reasons at all. Even if committees agree to press questions when answers are refused, which was an unlikely occurrence with the government majorities on the committees, when met with repeated refusals the committees can only report the matter to the Senate. Both ministers and officers were clearly well aware that the possibility of the Senate taking any remedial action was removed by the government majority in the chamber.

It is not possible to compile statistics on refusals to answer questions, particularly as refusals take many forms, such as taking questions on notice and then either not answering them or indicating that an answer will not be provided. It is therefore not possible to compare numbers of refusals before the government majority with the numbers afterwards. There is no doubt, however, that refusals to answer questions, with or without reasons, greatly increased after 1 July 2005. Some notable examples give a picture of the recurring pattern.

Governments have always expressed reluctance to disclose anything in the nature of advice to government, although advice is frequently disclosed where it supports the government's political purposes. Claims that information constituted advice and therefore would not be disclosed greatly increased. The most extreme example of a refusal related not to an estimates hearing but to an inquiry under a pre-1 July 2005 reference to a committee relating to works on the Gallipoli Peninsula. The Department of Foreign Affairs asserted that advice to government is never disclosed but in the most exceptional circumstances.[36] This claim was undermined by the voluntary disclosure by the government of advice relating to the sale of Medibank Private, which was apparently prompted by the attention given to a Parliamentary Library paper questioning the legality of the proposed sale.[37]

Subsequently, answers to questions on notice simply stated that advice was not disclosed unless the government chose to do so.[38]

The government issued an instruction to all officers that they should not answer any questions about the AWB Iraq wheat bribery affair, on the ground that a government commission of inquiry into the matter had been appointed.[39] This was the first occasion on which a government imposed an unlimited ban on answering questions on the basis that a government-appointed commission of inquiry was looking into the matter. Previously governments had only expressed some reluctance about answering questions on such matters, or had invoked additional grounds. It was explicitly stated by the government that this was not a claim of public interest immunity, simply a refusal to answer, and it was not disputed that there is no procedural or legal barrier to the Senate inquiring into a matter which is also before a government-appointed inquiry. The refusal to answer some questions was repeated even after the commission of inquiry had reported.

There was a refusal to produce legal advice provided to the government on the legality of the United States Military Commissions, although the government had endorsed the processes to be followed by the commissions.[40] Similarly, there was a refusal to disclose the agreement between Australia and the United States for the transfer of prisoners from Guantanamo Bay simply on the basis that the agreement was confidential.[41]

Having made much of the innovation whereby government legislation would be accompanied by family impact statements, the government declined to produce these statements on the basis that they are prepared only for Cabinet.[42]

The government declined to disclose the amounts of money paid to JobNetwork providers, in spite of the concerns about the financial probity of some aspects of the JobNetwork scheme.[43] Similarly, there was a refusal to disclose how much of the $2.8 billion of subsidies to the motor industry was going to individual companies.[44] The principle that expenditure of public funds is a public concern did not seem to weigh heavily on the Prime Minister, who took two years to respond to questions about the cost of functions at Kirribilli House and the Lodge, and then refused to answer in relation to costs of particular functions.[45]

The issue of financial probity and accountability was most hotly raised in relation to the government's multi-million dollar advertising campaigns, which were widely perceived as a transfer of public funds to the government party's re-election coffers. The government refused, however, to answer any questions about planned or pending advertising campaigns.[46] It was not explained why the legislature should not know of expenditure on advertising simply because the campaigns had not yet begun.

As has been noted in relation to Senate orders for documents, there were persistent refusals to provide information on the ground that the information was not published by the government. The economics departments constantly employed this pretext.[47] A similar method of refusing to provide information was simply to say that data was not collected.[48] (Historically, parliamentary demands for information often required government departments to prepare statistics and to compile other information; only rarely have the Senate and its committees attempted to obtain this kind of information.[49])

There were constant complaints about departments not answering on time questions taken on notice, and providing answers just before committees began their next round of estimates hearings, so that committee members would not have adequate time to consider the answers, or the refusals to answer the questions.[50] In some cases departments refused to answer questions on the basis that they were similar to questions taken on notice which had not been answered. Answers were delayed in ministers' offices, where they had to be "cleared" before they could be provided.[51] The fact that a "draft" answer had been lodged with a minister was regarded by departments as ending their responsibility. On at least two occasions it was revealed, apparently by accident, that ministers' offices alter the answers provided by departments to make the answers less informative and to withhold some information.[52]

Several departments began to attach estimates of the cost of answering questions to all their answers, and then there were refusals to answer questions on the basis that preparing answers would be too costly. A senator asked the Department of Employment and Workplace Relations how many persons were receiving a particular entitlement, a piece of information which might be thought to be readily available to the department. The answer was eventually provided, with a statement that it took some hundreds of dollars to prepare.[53] It appears that, because accountability involves a cost, it must be rationed.

It may be that in some of these cases the government would have resisted answering questions even if it still lacked a majority in the Senate and was therefore exposed to the kinds of remedial action taken by the Senate in the past. Without its majority, however, the government would have had to tread more warily, and would have risked greater difficulties in consequence of refusals to answer. It was fairly clear that departmental officers had received a strong message that they could readily decline to answer questions without even bothering to refer the alleged difficulty in answering them to a minister, which is the process contemplated by the Senate's procedures.

A feat of imagination would be required to devise persuasive grounds for a sustainable claim of public interest immunity in these and many similar cases.

Of course, many questions *were* answered and much information not otherwise available was disclosed during the estimates hearings. The government, however, possessed an unlimited discretion to withhold any information on any or no grounds, and appeared to delegate this power to officers. In that situation, with the government disclosing only the information it chooses, accountability is at least on sufferance if not terminated.

In only two known cases did the government chairs of the committees or the government majorities question the refusal of ministers or officers to answer, or give a considered view of the grounds for the refusal, or press the questions.[54] On the contrary, the government chairs had to be disabused of the notion that they could rule questions out of order simply on the basis that a minister or an officer did not want to answer them.[55] The past determinations of the Senate about claims of public interest immunity being properly raised by ministers and determined by the Senate were entirely forgotten. There seemed also to be no appreciation of the principle that refusing information to a House of the Parliament is an extremely serious step not to be undertaken lightly.

There was one potentially significant addition to the Senate's armoury of accountability measures soon after the government gained its majority. In November 2005, on the recommendation of the Procedure Committee, the standing orders were amended to allow a senator to raise in the chamber a failure by the government to respond to an order for documents or to answer estimates questions on notice on time. This right was already available for ordinary questions on notice. The new procedure will become useful only when there is a majority in the chamber willing to agree to motions for documents and to apply some remedy to unreasonable refusals to answer questions.

Accountability and government control

There would seem to be no rational basis for denying the principle contained in past Senate resolutions: that information about the activities and operations of the executive government should not be withheld from the elected legislature unless that disclosure of the information would be harmful to the public interest on one of the recognised grounds, and that the validity of a claim of public interest immunity should not be determined by the government itself, which should not be the judge in its own cause. Enough history has passed to establish that mistakes and misdeeds multiply when they can be covered up, and that the ability of the public to determine how it is being served will be crippled in the absence of an inquisitive legislature.

Proceedings in the Senate and its committees in the Parliament of 2004-07 sufficiently established that the accountability of the executive government is likely to go into a steep decline when a government possesses a party majority in the upper house. The recipe for sustaining accountability therefore appears clear: avoid such government majorities. This

underlines the significance of the system of proportional representation for Senate elections, which has been the mainstay of lack of government control of the Senate in recent decades. With or without government majorities, ways must be found of separating accountability from party discipline. That is a difficult task, given the control which executives exercise over the selection of candidates and over their elected members.

Perhaps the best argument for accountability is that its absence is ultimately bad for governments as well as the country. The example of the WorkChoices legislation indicates that the possession by governments of absolute power to work their will may eventually undermine them. The AWB Iraq wheat bribery affair demonstrates that the longer misdeeds go uncorrected the greater the damage in the end. The lesson of the Regional Partnerships program is that unaccountable dealing with money leads to maladministration, political manipulation and, if exposed, electoral damage. If governments had regard to their own long term best interests, they would embrace parliamentary accountability with enthusiasm.

Harry Evans

NOTES

1 An account of this debate is in Raoul Berger, *Executive Privilege: a Constitutional Myth*, Harvard, 1974, pp 29-31.

2 Woodrow Wilson, *Congressional Government*, 1885, Meridian, 1956, p. 193.

3 Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today*, Harvard, 1999, pp 74-5.

4 Livy, XXXVIII, 50, trns. Henry Bettenson as *Rome and the Mediterranean*, Penguin, 1976, p. 385.

5 Gordon, *op. cit*., p. 139.

6 A paper entitled *Grounds for Public Interest Immunity Claims*, listing potentially unacceptable and acceptable grounds for public interest immunity claims, based on cases in the Senate, was prepared for senators and published by the Senate Employment, Workplace Relations and Education Legislation Committee in May 2005.

7 *Journals of the Senate*, 16 July 1975, p. 831.

8 *Ibid*., 30 October 2003, p. 2654.

[9] Senate Procedure Committee, Third Report of 1992, Parlt. Paper 510/1992; *Journals of the Senate*, 3 June 1992, pp 2404-5.

[10] Senate Privileges Committee, 49th report, Parlt. Paper 171/1994; government submission, hearing, 18 August 1994, transcript, pp 14, 16.

[11] Senator Allison, Australian Democrats, Victoria, wrote to the Leader of the Government in the Senate in April 2003. Having received no reply in 2004 she put a question on notice asking when a reply would be forthcoming. The letter and the question remained unanswered at the general election of 2004, so in the next Parliament she placed the question on notice again. On two occasions she raised the matter in the chamber but did not receive any substantive response. *Journals of the Senate*, 14 May 2003, p. 1803; 22 June 2005, p. 787. The new Leader of the Government finally responded in May 2006 to the effect that "requests" for information would be considered on their merits.

[12] Although party discipline is much less tight in the United Kingdom, the same complaint is made there about the House of Commons; eg., Diana Woodhouse, *Ministers and Parliament: Accountability in Theory and Practice*, Oxford, 1994, p. 298: "The corruption of ministerial accountability to Parliament, mainly through the operation of party solidarity, challenges Parliament to continue to play its constitutional role in accountable government, or to accept a diminished constitutional position and concede the accountability function to others. Its failure to recognize that accountability needs to be addressed as a major constitutional issue in which it should lead the debate acts to emasculate the central doctrine of the British Constitution, confirming that individual ministerial responsibility frequently provides a façade behind which the government can hide, safe in the knowledge that Parliament lacks the constitutional integrity to offer a sustained and effective challenge."

[13] A comprehensive refutation of the mandate theory is in Stanley Bach, *Platypus and Parliament: The Australian Senate in Theory and Practice*, Senate Department, 2003, pp 276-299.

[14] All statistics in this paper have been compiled by the Senate Table Office from the *Journals of the Senate*.

[15] *Journals of the Senate*, 13 October 1999, pp 1845-6; 19 October 1999, pp 1931-2; 21 October 1999, pp 1966; 22 November 1999, p. 2007; 25 November 1999, p. 2077; report of the Community Affairs References Committee, Parlt. Paper 364/1999.

[16] *Journals of the Senate*, 21 October 1999, p. 1967; 29 November 1999, p. 2123; 15 February 2000, p. 2280; 10 April 2000, pp 2582-3, 2585; 10 May 2000, pp 2682, 2689; Community Affairs Legislation Committee, estimates hearing, 1 December 1999, transcript, pp 51-3.

[17] *Journals of the Senate*, 19 September 2001, pp 4875, 4879; 20 September 2001, p. 4896; 24 September 2001, p. 4922; 25 September 2001, p. 4943; 27 September 2001, p. 4996.

[18] *Ibid*., 12 August 2003, pp 2089-90; 1 April 2004, p. 3324.

[19] *Ibid*., 20 June 2001, pp 4358-9; 26 September 2001, p. 4976; 27 September 2001, pp 4994-5; Senate Finance and Public Administration References Committee, reports on accountability to the Senate in relation to government contracts, Parlt. Papers 212/2001, 610/2002.

[20] *Journals of the Senate*, 29 October 2003, p. 2641; *Senate Debates*, 12 February 2004, pp 20168-9; Senate Finance and Public Administration Legislation Committee, estimates hearing, transcript, 16 February 2004, pp 154 ff.

[21] *Senate Debates*, 17 August 2005, pp 88-92. This debate made it clear that all motions for documents would be rejected. No reasons were given for most subsequent motions.

[22] Senate Procedure Committee, First Report of 2006, Parlt. Paper 149/2006; *Journals of the Senate*, 14 August 2006, pp 2474-82.

[23] Senate Finance and Public Administration Committee, report on transparency and accountability of Commonwealth public funding and expenditure, Parlt. Paper 47/2007.

[24] David Hamer, *Can Responsible Government Survive in Australia?*, revised ed., Senate Department, 2004, p. 288.

[25] *Journals of the Senate*, 2 December 2004, pp 186-7; Senate Finance and Public Administration References Committee, report on Regional Partnerships and Sustainable Regions programs, Parlt. Paper 226/2005; Australian National Audit Office, Report No. 14, 2007-08.

[26] *Senate Debates*, 12 October 2005, pp 112-29; 19 October 2006, pp 3-11; 8 November 2006, pp 82-5; 8 February 2007, pp 3-13; 10 May 2007, pp 1-8.

[27] *Ibid*., 12 October 2005, pp 112-29.

[28] *Ibid*., 8 August 2007, pp 144-50.

[29] *Ibid*., 19 September 2007, p. 101. This was the case with the committee's reports on the Australian Crime Commission Amendment Bill 2007, the Northern Territory indigenous affairs package in August 2007, and the government's water plan package in the same month. Among the committee's comments on the Northern Territory package were references to "Henry VIII clauses", that is, provisions allowing the amendment of the legislation by executive act.

[30] *Senate Debates*, 28 March 2007, pp 52-3.

[31] Senate Finance and Public Administration Committee, report on proposed access card, Parlt. Paper 106/2007.

[32] Ian Henderson, 'The Quiet Executioner [Senator John Faulkner]', *The Australian*, 3 June 2000, p. 30.

[33] *Senate Debates*, 19 August 2002, p. 3055.

[34] Senate Procedure Committee, Second Report of 1999, Parlt. Paper 360/1999, p. 3; *Journals of the Senate*, 22 November 1999, pp 2008-9.

[35] Senate Finance and Public Administration Legislation Committee, estimates hearing, 22 May 2006, transcript, pp 12-13.

[36] Senate Finance and Public Administration References Committee, report on matters relating to the Gallipoli Peninsula, Parlt. Paper 228/2005, pp xxii-xxiv.

[37] *Journals of the Senate*, 4 September 2006, p. 2553.

[38] Senate Foreign Affairs, Defence and Trade Committee, estimates hearings, November 2006, answers to questions on notice nos. 21, 22, 25 by the Department of Foreign Affairs and Trade.

[39] Senate Finance and Public Administration Legislation Committee, estimates hearing, 13 February 2006, transcript, pp 35, 139.

[40] *Journals of the Senate*, 7 February 2007, p. 3385. Senate Legal and Constitutional Affairs Committee, estimates hearing, 13 February 2007, transcript, pp 101-4.

[41] Senate Legal and Constitutional Affairs Committee, estimates hearing, 21 May 2007, transcript, p. 101.

[42] Senate Community Affairs Legislation Committee, estimates hearing, 15 February 2006, transcript, p. 133.

[43] Senate Employment, Workplace Relations and Education Legislation Committee, estimates hearing, 16 February 2006, transcript, pp 50-1.

[44] Senate Economics Committee, estimates hearing, 1 November 2006, transcript, pp 27-9. It is notable that the chair of the committee baulked at this refusal.

[45] Senate Finance and Public Administration Legislation Committee, estimates hearings, October 2005, answers to questions on notice nos. PM75, PM41, by the Department of Prime Minister and Cabinet.

[46] Senate Finance and Public Administration Committee, estimates hearing, 22 May 2007, transcript, pp 93, 96.

[47] Senate Economics Committee, estimates hearings, transcripts, 3 November 2005, p. 34; 30 May 2006, pp 33-4, 44, 52-3, 80; 14 February 2007, pp 98, 126, 133-4; 31 May 2007, pp 48-50.

[48] Senate Employment, Workplace Relations and Education Committee, estimates hearing, 2 November 2006, transcript, pp 6-7.

[49] *Senate Debates*, 27 September 1993, pp 1165-6; *Journals of the Senate*, 9 May 1996, p. 139; 5 March 1997, pp 1560-1.

[50] Eg., Senate Employment, Workplace Relations and Education Committee, estimates hearing, 28 November 2007, pp 85-7.

[51] Senate Employment, Workplace Relations and Education Committee, estimates hearings, transcripts, 2 November 2006, p. 96; 15 February 2007, pp 88, 93-5.

[52] Senate Finance and Public Administration Committee, estimates hearing, 12 February 2007, transcript, pp 126-7. In September 2006 two versions of the answer to Senate question on notice no. 1715, the departmental version and the minister's version, were accidentally sent to a senator, allowing comparison of the helpfulness of the answers.

[53] Senate Finance and Public Administration Legislation Committee, estimates hearing, 25 May 2006, transcript, pp 58-63; Senate Employment, Workplace Relations and Education Committee, estimates hearings, February 2007, answer to question on notice no. W1119-07 by the Department of Employment and Workplace Relations.

[54] The first known exception is referred to in note 44. Another partial but honourable exception is recorded in the report of the Senate Employment, Workplace Relations and Education Committee on additional estimates 2006-7, March 2007, Parlt. Paper 64/2007, pp. 14-15. The committee could not swallow a claim by an officer that the general provision in the Public Service Act requiring officers to maintain appropriate confidentiality allowed him to decline to answer any questions.

[55] Senate Finance and Public Administration Legislation Committee, estimates hearing, 22 May 2006, transcript, p. 9.

ATTACHMENT 1

DOCUMENTS REFUSED TO THE SENATE

1 JULY 2005 TO 20 SEPTEMBER 2007

COMMUNICATIONS—TELSTRA—Documents held by Telstra Corporation relating to shareholder attitude surveys conducted by Crosby/Textor.

DEFENCE—IRAQ—DEPLETED URANIUM—Report of the Australian Defence Force on the presence of depleted uranium in the Australian area of operations in Al Muthanna province in southern Iraq.

EDUCATION—VOLUNTARY STUDENT UNIONISM—Documents relating to options for voluntary student unionism.

EMPLOYMENT—COMMUNITY PARTNERS PROGRAM—The review of the Community Partners program, as commissioned by the Office of the Employment Advocate and conducted by Deloitte Touche Tomatsu.

ENVIRONMENT—HOPE DOWNS IRON ORE PROJECT—Briefing packages produced by the former Department of the Environment and Heritage for the Minister's consideration of the Hope Downs Iron Ore Project proposed by Hope Downs Management Services Pty Ltd.

ENVIRONMENT—NORTHERN TERRITORY—URANIUM MINES—Documents relating to the Commonwealth Government's authority to unilaterally approve uranium mines in the Northern Territory.

ENVIRONMENT—REVIEW OF MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE—Report on the review of matters national environmental significance made under section 28A of the *Environment Protection and Biodiversity Conservation Act 1999.*

ENVIRONMENT—TASMANIA—STYX AND FLORENTINE VALLEYS—Documents relating to the implementation of the 2004 election commitment to protect 18 700 hectares of old-growth forest in the Styx and Florentine valleys.

FAMILY AND COMMUNITY SERVICES—NATIONAL DISABILITIES ADVOCACY PROGRAM REVIEW—The National Disabilities Advocacy Program Review 2006, carried out by Social Options Australia.

FAMILY AND COMMUNITY SERVICES—SMARTCARD PROPOSAL—Documents relating to the smartcard proposal.

FINANCE—BOARD OF THE RESERVE BANK OF AUSTRALIA—APPOINTMENT—Documents relating to the nomination and appointment of Mr Robert Gerard to the Board of the Reserve Bank of Australia.

FOREIGN AFFAIRS—UNITED STATES OF AMERICA—MILITARY COMMISSIONS ACT—Legal advice received by the Government relating to the legality of the United States of America's Military Commissions Act (2006).

HEALTH—BETTER OUTCOMES IN MENTAL HEALTH INITIATIVE—Report from the review of the Better Outcomes in Mental Health Initiative.

HEALTH—REGULATION OF NON-PRESCRIPTION MEDICINAL PRODUCTS—Report provided by Deloitte Touche Tohmatsu relating to the regulation of non-prescription medicinal products.

IMMIGRATION—457 VISA PROGRAM—Report prepared by the Department of Immigration and Multicultural Affairs relating to T&R Pastoral and its employment of workers on subclass 457 visas.

IMMIGRATION—SIEV X—Documents detailing passengers purported to have boarded the vessel known as SIEV X.

LAW AND JUSTICE—AUSTRALIAN WHEAT BOARD—The Organisation for Economic Co-operation and Development foreign bribery survey response by AWB Limited.

LAW AND JUSTICE—BORDER RATIONALISATION TASKFORCE—Report of the Border Rationalisation Taskforce prepared in 1998.

SCIENCE AND TECHNOLOGY—COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION—Documents relating to the research and development work to be undertaken by the CSIRO.

SCIENCE AND TECHNOLOGY—COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION—SHEEP STUDY—Documents relating to a sheep study conducted by the CSIRO on the effect of transgenic peas on the immune response of sheep.

TAXATION—INFRASTRUCTURE BORROWINGS TAX OFFSET SCHEME—Documents held by the Department of Transport and Regional Services relating to taxation deductions under the Infrastructure Borrowings Tax Offset Scheme.

TRANSPORT—CIVIL AVIATION SAFETY AUTHORITY—TRANSAIR—Documents relating to Lessbrook Pty Ltd trading as Transair.

DEFENCE—NAVAL SHIPS—SAFETY—Documents including briefs to ministers concerning complaints and allegations relating to substandard maintenance on Navy ships, particularly with respect to HMAS Westralia.

ENVIRONMENT—PROPOSED ANVIL HILL COAL MINE—Documents relating to the Anvil Hill coal mine.

ATTACHMENT 2

PROPOSED REFERENCES TO SENATE COMMITTEES

2001 - 2004

Date	Committee	Subject	Agreed to	Negatived	Source
13 March 2002	Employment, Workplace Relations and Education	Education of students with disabilities	1		Opp
20 March 2002	Employment, Workplace Relations and Education	Small business employment	1		Opp
20 March 2002	Economics	Public liability and professional indemnity insurance	1		Opp
21 March 2002	Finance and Public Administration	Recruitment and training in the Australian public service	1		Opp
16 May 2002	Rural and Regional Affairs and Transport **Legislation** Committee	Quota management controls on Australian beef exports to the United States	1		Opp
19 June 2002	Community Affairs	Proposed legislative participation requirements for parents and mature-age unemployed Australians	1		Opp/AD
20 June 2002	Environment, Communications, Information Technology and the Arts	Regulatory, monitoring and reporting regimes that government environmental performance at the Ranger and Jabiluka uranium operations and the Beverley and Honeymoon *in situ* leach operations	1		Opp

Date	Committee	Subject	Agreed to	Negatived	Source
25 June 2002	Environment, Communications, Information Technology and the Arts	Capacity of the Australian telecommunications network to deliver adequate services	1		Opp/AD
25 June 2002	Environment, Communications, Information Technology and the Arts	Role of libraries as providers of public information in the online environment	1		AD
25 June 2002	Legal and Constitutional	Implications of excision for border security	1		Opp
27 June 2002	Rural and Regional Affairs and Transport **Legislation** Committee	Australian meat industry	1		Govt
27 June 2002	Rural and Regional Affairs and Transport	'Plantations for Australia: The 2020 Vision' strategy	1		Govt
27 August 2002	Legal and Constitutional	Progress towards national reconciliation	1		AD
29 August 2002	Rural and Regional Affairs and Transport **Legislation** Committee	Great Barrier Reef Marine Park Amendment Regulations		1	ON
18 September 2002	Employment, Workplace Relations and Education	Government's refusal to respond to an order of the Senate for documents relating to financial information concerning higher education	1		Opp
19 September 2002	Foreign Affairs, Defence and Trade	Possible military attack against Iraq by the United States of America		1	AD
21 October 2002	Community Affairs	Poverty and inequality in Australia	1		Opp
21 October 2002	Rural and Regional Affairs and Transport	Rural industry-based water resource usage	1		AD
23 October 2002	Employment, Workplace Relations and Education	Skills shortage and labour demand	1		Opp

Date	Committee	Subject	Agreed to	Negatived	Source
2 December 2002	Treaties Joint Standing Committee	Proposed agreement with the United States of America pursuant to which Australia would agree not to surrender US nationals to the International Criminal Court without the consent of the US	1		AD
10 December 2002	Foreign Affairs, Defence and Trade	Adequacy and effectiveness of the Government's foreign and trade policy strategy	1		Opp
12 December 2002	Foreign Affairs, Defence and Trade	General Agreement on Trade in Services	1		Opp
12 December 2002	Superannuation Select Committee	Planning for retirement	1		Govt
12 December 2002	Economics	Structure and distributive effects of the Australian taxation system	1		Opp
4 March 2003	Community Affairs	Government or non-government institutions and fostering practices established to provide care and/or education for children	1		AD
6 March 2003	Community Affairs	Pharmaceutical Benefits Scheme		1	AG
19 March 2003	Finance and Public Administration	Framework for employment and management of staff under the *Members of Parliament (Staff) Act 1984*	1		Opp
24 March 2003	Foreign Affairs, Defence and Trade	Assessment and dissemination of threats to the security of Australians in South East Asia	1		AG (as amended by Opp)
27 March 2003	Legal and Constitutional	Deployment of troops to Iraq		1	AG

Date	Committee	Subject	Agreed to	Negatived	Source
27 March 2003	Finance and Public Administration	Funding for new building and machinery at the Moruya Steel Profiling Plant in New South Wales	1		Opp
14 May 2003	Foreign Affairs, Defence and Trade	Report by the Director of Trials of the Review of Test and Evaluation in Defence	1		Opp
17 June 2003	Superannuation Select Committee	Superannuation Industry (Supervision) Amendment Regulations 2003	1		Opp
17 June 2003	Legal and Constitutional	Capacity of legal aid and access to justice arrangements to meet community need	1		Opp/AD
18 June 2003	Environment, Communications, Information Technology and the Arts	Burning of Australia's biggest tree, in Tasmania	1		AG (as amended by Opp)
18 June 2003	ASIO, ASIS and DSD Joint Statutory Committee	Nature and accuracy of intelligence information received by Australia's intelligence services	1		Opp
18 June 2003	Foreign Affairs, Defence and Trade	Role, operation and effectiveness of Australia's security and intelligence agencies in the lead-up to the Iraq war		1	AG
19 June 2003	Finance and Public Administration	Revised system of administrative review within the area of veteran and military compensation and income support	1		Opp

Date	Committee	Subject	Agreed to	Negatived	Source
19 June 2003	Foreign Affairs, Defence and Trade	Adequacy of arrangements within the Department of Defence for the health preparation for the deployment of the Australian Defence Forces overseas	1		Opp
24 June 2003	Environment, Communications, Information Technology and the Arts	Broadband services		1	AD
25 June 2003	Economics	Whether the *Trade Practices Act 1974* adequately protects small business from anti-competitive or unfair conduct	1		Opp
26 June 2003	Environment, Communications, Information Technology and the Arts	Regulation, control and management of invasive species	1		AD
26 June 2003	Legal and Constitutional	Process for moving towards the establishment of an Australian republic	1		AD/Opp
26 June 2003	Environment, Communications, Information Technology and the Arts	Levels of competition in broadband services	1		Opp
26 June 2003	Employment, Workplace Relations and Education	Government's proposed budget changes to higher education	1		Opp/AD
19 August 2003	Community Affairs	History of post-transfusion Hepatitis in Australia	1		Opp
13 October 2003	Rural and Regional Affairs and Transport	Draft Aviation Transport Security Regulations 2003	1		Opp

Date	Committee	Subject	Agreed to	Negatived	Source
16 October 2003	Employment, Workplace Relations and Education	Building and construction industry	1		AD
16 October 2003	Rural and Regional Affairs and Transport	Quarantine risks associated with return of sheep stranded aboard the MV *Cormo Express*	1		Opp
16 October 2003	Legal and Constitutional Affairs	Australian expatriates	1		Opp
30 October 2003	Foreign Affairs, Defence and Trade	Australia's military justice system	1		Opp
26 November 2003	Treaties Joint Committee	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1		Opp
10 February 2004	Foreign Affairs, Defence and Trade	Australia's involvement in preparations for the deployment of the United States of America's proposed missile defence program		1	AG
4 March 2004	Finance and Public Administration	Funding and disclosure of political parties, candidates and elections		1	AG
4 March 2004	Electoral Matters Joint Committee	Electoral funding and disclosure	1		AD
23 March 2004	Legal and Constitutional Affairs	Australian Federal Police Commissioner's views on the connection between Australia's involvement in the war on Iraq and the threat to Australia's security		1	AG

Date	Committee	Subject	Agreed to	Negatived	Source
11 May 2004	Employment, Workplace Relations and Education	Functioning of the Office of the Chief Scientist	1		AG (as amended by AD)
13 May 2004	Employment, Workplace Relations and Education	Government's schools funding package	1		AD (as amended by AG)
16 June 2004	Economics **Legislation** Committee	Superannuation Industry (Supervision) Amendment Regulations 2004	1		Opp
23 June 2004	Finance and Public Administration	Level of expenditure on, nature and extent of, government advertising since 1996	1		Opp
23 June 2004	Community Affairs	Aged care workforce	1		Opp
24 June 2004	Environment, Communications, Information Technology and the Arts	Budgetary and environmental impacts of the Government's Energy White Paper	1		AD
24 June 2004	Community Affairs **Legislation** Committee	Pharmaceutical Benefits Scheme		1	AG
9 August 2004	Rural and Regional Affairs and Transport **Legislation** Committee	Animal welfare	1		AD
Total			**53**	**10**	

ATTACHMENT 3

PROPOSED REFERENCES TO SENATE COMMITTEES

1 JULY 2005 – 20 SEPTEMBER 2007

Date	References Committee	Subject	Agreed to	Negatived	Source
14 September 2005	Rural and Regional Affairs and Transport	Rural water usage	1		AD
15 September 2005	Community Affairs	Roll out of Opal fuel throughout the central desert region of Australia		1	AG
5 October 2005	Community Affairs	Petrol sniffing in Aboriginal communities	1		Govt
6 October 2005	Legal and Constitutional	Arrest and deportation of Mr Scott Parkin		1	AG
6 October 2005	Employment, Workplace Relations and Education	Overtime and shift allowances		1	FF
10 October 2005	Employment, Workplace Relations and Education	Government's proposed changes to welfare		1	Opp
11 October 2005	Rural and Regional Affairs and Transport	Prime Minister's 2004 pre-election announcement on logging of old-growth forests in Tasmania		1	AG
12 October 2005	Employment, Workplace Relations and Education	Impact of proposed industrial relations changes		1	Opp/AD
13 October 2005	Employment, Workplace Relations and Education	Industrial agreement-making		1	Opp

Date	References Committee	Subject	Agreed to	Negatived	Source
7 November 2005	Foreign Affairs, Defence and Trade	Australia's response to the earthquake catastrophe		1	AG
10 November 2005	Foreign Affairs, Defence and Trade	Naval shipbuilding	1		Opp
29 November 2005	Rural and Regional Affairs and Transport	Australia's future oil supply	1		AG
7 December 2005	Foreign Affairs, Defence and Trade	Involvement of the Australian Wheat Board in the Oil-for-Food Programme		1	AG
7 December 2005	Community Affairs	Petitions tabled in the Senate relating to gynaecological cancers and sexually transmitted infections	1		AD/Opp/ Govt
7 December 2005	Environment, Communications, Information Technology and the Arts	Funding and resources available to national parks, other conservation reserves and marine protected areas	1		AD
7 December 2005	Employment, Workplace Relations and Education	Viability of a contract labour scheme between Australia and countries in the Pacific region	1		Opp
8 December 2005	Community Affairs	Funding and operation of the Commonwealth-State/Territory Disability Agreement		1	Opp
7 February 2006 (moved on 7 December 2005)	Employment, Workplace Relations and Education	Role and performance of the CSIRO		1	Opp
2 March 2006	Community Affairs	Funding and operation of the Commonwealth-State/Territory Disability Agreement		1	Opp
2 March 2006	Legal and Constitutional	Processes for assisting refugees and humanitarian entrants		1	Opp

Date	References Committee	Subject	Agreed to	Negatived	Source
2 March 2006	Rural and Regional Affairs and Transport	Adequacy of Australia's aviation safety regime		1	Opp
29 March 2006	Environment, Communications, Information Technology and the Arts	Women in sport and recreation in Australia	1		Opp
29 March 2006	Environment, Communications, Information Technology and the Arts	Proposed changes to cross media laws		1	Opp
29 March 2006	Rural and Regional Affairs and Transport	Shareholding in Snowy Hydro Ltd		1	AG
11 May 2006	Community Affairs	Gynaecological cancer in Australia	1		Opp/AD/ Govt
11 May 2006	Community Affairs	Funding and operation of the Commonwealth-State/Territory Disability Agreement	1		Opp
13 June 2006	Legal and Constitutional	Indigenous workers	1		AD
20 June 2006	Finance and Public Administration	Transparency and accountability to Parliament of Commonwealth public funding and expenditure	1		Opp
20 June 2006	Environment, Communications, Information Technology and the Arts	Australia's future sustainable and secure energy supply		1	AG

Date	References Committee	Subject	Agreed to	Negatived	Source
22 June 2006	Community Affairs **Legislation** Committee	Extent and effectiveness of certain regulations made under the *Social Security Act 1991*		1	AG
22 June 2006	Economics **Legislation** Committee	Price of petrol in Australia	1		Opp
15 August 2006	Environment, Communications, Information Technology and the Arts **Legislation** Committee	Australia's Indigenous visual arts and craft sector	1		Govt
15 August 2006	Community Affairs	Exclusive Brethren		1	AG
4 September 2006	Rural and Regional Affairs and Transport **Legislation**	Administration of quarantine		1	Opp
4 September 2006	Legal and Constitutional	Temporary Business Long Stay visas		1	Opp
6 September 2006	Employment, Workplace Relations and Education	Workforce challenges in the Australian transport sector	1		Opp
New committee structure came into effect on 11 September 2006					

Date	Committee	Subject	Agreed to	Negatived	Source
12 September 2006	Legal and Constitutional Affairs	National and international policing requirements		1	Opp
14 September 2006	Community Affairs	Legislation Review Committee on the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*	1		Govt
7 November 2006	Foreign Affairs, Defence and Trade	Nature and conduct of Australia's public diplomacy	1		Govt
8 November 2006	Rural and Regional Affairs and Transport	Australia's aviation safety regime		1	Opp
8 November 2006	Foreign Affairs, Defence and Trade	Changing nature of Australia's involvement in peacekeeping operations	1		Govt
9 November 2006	Rural and Regional Affairs and Transport	Long-term impacts on Australian primary producers or variable rainfall etc as a result of climate change		1	AG
27 November 2006	Treaties Joint Standing Committee	New security treaty with Indonesia		1	AG
7 February 2007	Economics	Proposed takeover of Qantas		1	AG
8 February 2007	Employment, Workplace Relations and Education	Current level of academic standards of school education	1		Govt
8 February 2007	Rural and Regional Affairs and Transport	Impacts of the proposed dam on the Mary River at Traveston Crossing in Queensland		1	AG

Date	Committee	Subject	Agreed to	Negatived	Source
26 February 2007	Rural and Regional Affairs and Transport	Additional water supplies for South East Queensland	1		Govt
27 February 2007	Rural and Regional Affairs and Transport	Effect of the Government's decision to phase out Non-Forestry Managed Investment Schemes		1	Opp
1 March 2007	Rural and Regional Affairs and Transport	Need for a national strategy to help Australian agricultural industries adapt to climate change		1	AG
1 March 2007	Legal and Constitutional Affairs	Commonwealth exemptions provided to religious or other organisations		1	AD
21 March 2007	Community Affairs	Exclusive Brethren		1	AG
26 March 2007	Rural and Regional Affairs and Transport	National plan for water security		1	AD
28 March 2007	Community Affairs	Patient Assisted Travel Schemes	1		Govt
28 March 2007	Community Affairs	Mental health services	1		AD
29 March 2007	Economics	Private equity market activity	1		AD
29 March 2007	Environment, Communications, Information Technology and the Arts	Risks associated with projected rises in sea levels around Australia		1	AG
14 June 2007	Community Affairs	Cost of living pressures on older Australians	1		Opp

Date	Committee	Subject	Agreed to	Negatived	Source
21 June 2007	Economics	An assessment of the benefits and costs of introducing renewable energy feed-in-tariffs in Australia		1	AG
9 August 2007	Legal and Constitutional Affairs	The detention and release of Dr Mohamed Haneef		1	AG
11 September 2007	Treaties Joint Standing Committees	Australia-Russia Nuclear Cooperation Agreement		1	AG
13 September 2007	Environment, Communications, Information Technology and the Arts	Risks associated with the rise in sea level in Australia		1	AG
17 September 2007	Foreign Affairs, Defence and Trade	Australia-Russia Nuclear Cooperation Agreement		1	AG
19 September 2007	Rural and Regional Affairs and Transport	Effect of climate change on Australia's agricultural industries	1		AG
Total			**25**	**38**	

Abbreviations

AD Australian Democrats
AG Australian Greens
FF Family First
Govt Liberal/National Parties
ON One Nation
Opp Labor Party