



COMMONWEALTH OF AUSTRALIA

**SENATE COMMITTEES AND GOVERNMENT  
ACCOUNTABILITY**

**40th anniversary conference**

**FRIDAY, 12 NOVEMBER 2010**

**[UNEDITED TRANSCRIPT]**

**Conference met at 9.03 am**

## **LIFE BEGINS AT 40: THE FUTURE OF SENATE COMMITTEES**

**Ms ANDERSON**—Good morning and welcome to you all. My name is Jenny Anderson and I am Director of the Museum of Australian Democracy at Old Parliament House. I begin this morning by acknowledging the traditional owners of this land we are meeting on and pay my respects to their elders past and present.

What we celebrate here at the Museum of Australian Democracy is Australia's greatest achievement—its democracy. The experience is unique and cannot be found anywhere else in Australia. The reason for this is the rare combination of place and content. We show what happened in the very place most democratic decisions that shaped our nation were made. Many of you will know that this building was opened as the Provisional Parliament House in 1927, and from that time it played host to crucial democratic decisions and events. Today you are gathered to discuss the establishment of the Senate committee system, which happened here in 1970, and you will be discussing the legacy and the future of that system. It is a pleasure to welcome you here today, both current and former senators and others who worked in this building during its years as the home of the federal parliament.

The Provisional Parliament House closed its doors in 1988, when the parliament moved to its current home. It was reopened to the public in 1992, but it was not until 1998 that visitors to the building were provided with an interpretation of political and parliamentary history. There was a big leap to 2006, when the building was added to the National Heritage List, and also in that year the current government announced significant funding to expand the functions of Old Parliament House, with it changing from a site museum to the current Museum of Australian Democracy and incorporating a new research centre devoted to the study of Australia's prime ministers.

Three years of intense planning and development followed, culminating in the launch of the museum on 9 May 2009, the 82<sup>nd</sup> anniversary of the building. Visitors can now experience a range of exhibitions and programs to not only discover the history of our democracy but also engage with our present and future while still continuing to enjoy the history and heritage of this wonderful building. I hope you also have the opportunity to explore our exhibitions during your time here, or maybe return in the near future. I wish you well in your deliberations here today, and I will now hand over to John Carter.

[9.06 am]

## **Committees under a government controlled Senate: lessons from 2005-08**

**Mr CARTER**—My name is John Carter, and I will be chairing this session. You will recall that in the 2004 election the coalition won a near majority in the Senate, and from the following year it was able to pass its legislation with the help of sympathetic Independents. As the time of the new Senate approached, I am sure you will also recall the letters to the editors of newspapers and all the commentary that was going on, much of it full of gloomy prognostication about what was going to happen to the Senate and to its committees. It was claimed that the Senate would cease to function effectively as a house of review, and as an enforcer of government accountability because the investigatory and scrutiny functions of the committees would be blunted.

The question arises as to whether the performance of the Senate committees during 2005-2008 was demonstrably below par, or was it the case that, as Robert Ray observed yesterday, Senate committee conventions and practices which had developed and consolidated over decades were sufficiently robust to ensure their continued effectiveness even at a time when one party had control of the Senate. We are all looking forward to some interesting perspectives on this question from our two speakers today who were, in different ways, involved in the committee processes during those years.

Our first speaker, Claire Moore, has been a Queensland Labor senator since 2002. She is someone who has a strong interest in social policy, and she has been notably active on the Community Affairs Committee and other committees as well. Senator Nick Minchin has been a Liberal senator for South Australia since 1993 and was a minister for the duration of the Howard government. But of particular relevance to this topic is that he was the Deputy Leader of the Government in the Senate from 2003 to 2006, and Leader from 2006 to 2007. In these capacities he was strongly influential in the way that the coalition went about modifying the committee structure to achieve its ends. I hope we will enjoy hearing some insights into these matters. Would you please welcome our first speaker, Senator Moore.

**Senator MOORE**—Thank you, Mr Carter—I like brief introductions. I want to acknowledge the place in which we are standing and naturally I share in the acknowledgement of the traditional owners and pay my respects to all elders and all cultures. Jenny told us a lot about the history of where we are standing and one cannot help but be moved when feeling the history of this place and knowing that it is the place where the issues about which we are talking were born. I think that makes it a particularly apt place for us to have our discussions today.

One of the things that permeates all the debates in *Hansard* about any change to the Senate structure is how often the word ‘accountability’ is used. I did not read all the *Hansards*, but I did read your speeches, Nick, to see how often the word was used when such changes occurred. I did look at the *Hansards* from 1994, I had a look at the *Hansards* from the period in 2006 when the changes came and I even looked at the *Hansard* of 2009 when the changes were made again. There was variation in the amount of commentary that was made and in the passion in the speeches. I was not there in 1994—I know Nick was—but I was there in 2006 and 2009. So I am not sure, for the 1994 debate and perhaps even for the debates at which I was present how much of what we read was genuine and how much licence was being taken to indulge in some of the wonderful dramatic performance that happens in the Senate—and should happen in the Senate because it makes it interesting. But ‘accountability’ was mentioned over 40 times in the 2006 *Hansard* during the debates about the changes to Senate processes that were going to take place.

Everybody was in agreement about the fact that there needed to be accountability. There was strong agreement that it was needed. However, there was just as strong disagreement about how it was going to occur. In some ways, this is reflected for me in what has happened with the recent election result. I am not convinced that a whole lot of people outside those of us who are here today are deeply concerned about the operations of the Senate. I think they should be, but I do not think they are. I am not convinced that, until the recent events, a whole lot of our community knew you needed 76 seats in the House to hold government. They knew someone had to have the majority, but no-one could work out why it was 76. I received calls on this subject in my office. It was just interesting to see that the recent election result, which everybody in parliament saw as quite tumultuous, forced people in the community to have a look at the way the system operated. My premise is that the changes to the operation of the Senate committee

system in 2006, of deep interest to those of us who were in the Senate and to those of us who study the Senate, possibly led to more interest in open debate about how the Senate operated. I think that is something that should be tested. In fact, I am going to talk more today about further questions that can be asked rather than answers that I have.

When Senator Ellison came in and announced the changes that he was going to take to the Procedure Committee, which was government dominated of course, and then came back a few months later and reported what had happened in the Procedure Committee, he talked about the need for change and the need to be accountable. He also noted that there had been a great deal of discussion with government backbenchers in the Senate and that the need for those 2006 changes came from those backbenchers. This was agreed by all government speakers—it was specifically mentioned by Senator Ellison and Senator Minchin that that was what had been the driver for change. They said that there needed to be more flexibility, more accountability and an absolute commitment from all those involved that there would be accountability and effective operation of the Senate.

There were some colourful responses from people who did not accept the government's commitment or believe that the changes were the way to go. I encourage people to have a look at some of the speeches. One speech of note was that of Senator Evans, who was outraged by what has happening and described it as:

... the government taking control of the Senate and entrenching its power to control what the Senate does.

That was what it was all about: removing effective accountability and changing the way we were going to operate. Senator Evans ended his comments with:

Labor are strongly opposed to the changes to the standing orders that flow from this Procedure Committee report. We think they are a backward step.

In fact his whole speech said it was a backward step. He went on to say:

We pledge to reverse them.

The Labor opposition then pledged to reverse the changes.

I have to admit that Senator Brown went even further in his statements about what was going to happen to the operations of the Senate, and I have to admit to a certain fondness for the statements of Senator Ray—which you will not be surprised about if you heard his contributions yesterday. The focus of his speech was basically that what goes around comes around: 'What are you going to do? If you get us, we're going to get you back.' In fact, that is basically what his speech said. He said:

There is an underlying compact in this place that you behave with a degree of decency et cetera. I am not saying you have totally exceeded that, but you should understand it. If you misuse and abuse your majority, retribution will come. And it will come, naturally.

I happened to be in the Senate at that stage for that speech, and there was real passion behind those words. I cannot reflect that passion effectively, but you all know Senator Ray's position and the way he presents:

I have to return to the question: why the changes? We heard the little bleat, 'We want to go back to the way it was under Paul Keating.' Really? Why? Why did you put all—

and this was done with great emotion and the finger. You always know that the point is going to be important when you bring in the finger. I remember it very well, because Senator Ray had one foot on the chair, which is something I cannot do because I cannot reach it. He was leaning across the chamber saying: 'If it was so good in '94, why did you work so hard to change it? You, you and you—why did you work so hard to change it?'

The important thing in this process is that there were many people in the Senate in 2006, on both sides of the chamber, who had been there in 1994, and I think that that brings to the debate around what happened in 2006 a particular focus, because what is happening in the Senate now—and former Senator Knowles was referring to it yesterday—is that there is so much change happening that we do not have too many senators who have that long, extended knowledge of exactly what occurred in the place. People know about it through history, but they were not there. The passion in the debate in 2006—because there was a significant difference of opinion about what was the motivation for the change, the impact of the change and who was going to be affected—was because a lot of the people, mostly men, who were sitting in that chamber in 2006 had been there in 1994, so it was a very personal debate. You can see by the interchanges—even the few that Hansard pick up—who were the key players across the room while these debates were going on. They were all senior senators who had personal experience of the ways of changing, and I think that is really important.

As Senator Evans said in his speech, of course the changes in 2006 were going to happen; the government had the numbers in the procedures committee and on the floor of the Senate. So all this passionate debate about accountability, what was going to happen and why people were making the changes was in fact theatre, because, as Evans said, it was going to happen. There would be outrage expressed, but it was going to happen. Of course, the day after the changes happened, the Senate continued operating the way it always does. If you do a purely mathematical calculation of how many issues were referred to various committees and how many activities occurred, you will see that there was not a plummeting in referrals to committees post 2006. In fact, some committees had more references. Something else needs to be done to scrutinise the real impact of the change—because we all know what the change was in terms of government numbers: every committee that was set up would have a government majority and a government chair. The focus around what was going to occur was that in one case the government was saying this would cause more accountability, because the government would have to work harder to ensure that people saw it was doing the right thing. People opposed to the change were saying it was all about power and stopping any scrutiny of government action.

If you were going to do a mathematical study, you would have to say that activity in all Senate committees happened apace. There was no reduction. In fact, bills continued to be referred to every Senate committee—every government-dominated Senate committee—and references were referred as well. In the committee that I work in—I am shamelessly biased about this; I think Community Affairs is a splendid committee, and I am sure everyone agrees—in terms of focus

we continued to have a very large workload, as we have always had. The number of bills that we looked at actually increased in this period; it increased further under the next government.

What did change were the references. The four references that were given to the community affairs committee under this period of government dominance were all government references. They were really important references, and I do not think we should not have done any of them, but none of them came from opposition, Greens or Democrat senators at the time. They were all government negotiated references. They were important, but the issue remains whether in fact they were the most important issues to be addressed at that time. I cannot speak for other committees. I think all the work that was done was valuable, but they were all government approved processes—which they would have to be anyway, because the Senate committees operate from the Senate by the Senate to the Senate. When the government had the numbers on the floor of the Senate, they already had the ability to determine which references would be taken up, because you have to go to the Senate and say, ‘We support referring this issue.’ When we have a look at the red every day we are always seeing what could be referred to the community affairs committee, which shows our concern about our workload. We see what is coming. A vote of the Senate to determine whether something was agreed would automatically be determined by the Senate.

What has not been scrutinised and what I think would be a fascinating topic for anyone wanting to do a masters or PhD in this area would be to look across the Senate committees at what the references were, who brought them up and what the outcome of them was. I also think it would be extremely interesting to have a look—and this came up briefly in conversation yesterday—at the time frames for consideration. One of the things with which we are constantly struggling with the Senate process is allowing effective time for any consideration of Senate activity. I do know, with a little bit of scrutiny, that there were very short time frames, particularly for legislation inquiries, during that parliament. I state immediately that there are very short times for legislation inquiries under this parliament, so I cannot make an argument saying that it was shorter in the 41st Parliament than it was in any other, but I think it could be considered if people think that this is something that should be studied.

I want to talk about one particular issue—that is, the issue of the Northern Territory intervention legislation. That was one that I felt very strongly about and that was rushed through parliament with only one day’s hearing on one of the most significant pieces of legislation that I think have come before the parliament. We heard yesterday as well that there was no acceptance to bring people to that hearing that we thought should have had their voices heard before the debate. I think that is also something that should be subject to scrutiny to check out the accountability issue. But I also think that, if you are going to be fair in scrutinising what happened under that three-year period of government dominance in the Senate, you should be scrutinising periods on either side. It is a large body of work, but I think it would be really exciting for someone to do it, and that is one of the things I am asking about now.

Another issue of accountability where I cannot draw an immediate comparison between what happened under government dominance and what happened when there was not government dominance of the Senate process is the government response times. There is a convention that government responses to Senate inquiries should be within three months. That is just a joke. If you look at what happened—and it is one of the true worries I have currently in the Senate system—it was bad in the 41st Parliament, but it was not great in the 42nd or the 39th or in any other parliament. If you have a look at it—and I have done some work here looking at Senate

responses and how long it took the government responses to come through—the shortest one in that period was two months; the longest one was four years and three months. That is around a three-month convention of responding to Senate reports. I think that that is something we should look at together as a parliament, as a Senate, to see what we should do about it.

There was great passion around the changes that happened to the committee system in 2006, and I think that is worthy of scrutiny. Senator Evans made a strong commitment that he would revoke those should government change. When we came to government in 2007, immediately, in 2009, we made those changes. When we came to power in 2007 the Senate changed in 2008, so it was actually within a year that the changes were made to revert to the system that had been happening since 1994. There was a change back. It went through the Senate Standing Committee on Procedure again. There was great discussion within the procedure committee and a report happened. In 2009 Senator Jan McLucas actually moved the change to revert to the previous system in the Senate without debate. She moved it, and I do not think most people knew it had happened. Then we reverted to the system that was operating before 1994.

We need, I think, to be fair in our scrutiny. I enjoy working under the current system, and that has been for the majority of my very short experience. Yesterday Senator Knowles talked about her feeling that she had become a fossil with the amount of time she had had in the Senate. Unfortunately, those fossilising tendencies seem to happen fairly quickly. When I am sitting in the Senate now, with very short experience—eight or nine years—when newer senators from the opposition are getting really upset in estimates or in Senate inquiries about information they cannot get, responses with which they are not happy and regulations that are not there at the same time as the core legislation, I at times think: ‘We never got those! Why should they get stuff that we didn’t get?’ That is not the way of accountability.

Senator Ray’s comments on the idea that ‘what goes around comes around’ are probably true. But what we should be doing in the current Senate is committing to ensuring that what comes around is effective scrutiny, effective accountability and goodwill.

**Senator MINCHIN**—I acknowledge my current and former Senate colleagues who are here today and thank you for the opportunity to speak at this conference to mark the 40th anniversary of Senate committees—something worth celebrating. I am pleased to speak, particularly in this session, based on my role as Deputy Leader of the Government in the Senate for the first six months of our majority and then as Leader of the Government in the Senate for the final two years of that majority. Note my deliberate reference to the coalition government having a majority for 2½ years, in contrast to the description used in the title of this session, which refers to a government controlled Senate. The reality is that the Liberal and National parties had a bare one-seat majority for 2½ of the 11½ years that the coalition held office. Given the fundamental right of Liberal and National senators to cross the floor free of the risk of expulsion, quite unlike our opponents, the Australian Labor Party, then by no means is the term ‘control’ at all appropriate—with great deference to the organisers of this conference.

Indeed, being leader of the government for two of the 2½ years of that bare majority was probably the most stressful period of my parliamentary life because I knew, and every single one of my 38 colleagues knew, that they individually could hold the government to ransom by holding a gun to the government’s head on every single vote. It required constant and determined effort on my part to make sure that I had 39 votes lined up on every single issue that came before the Senate. Having, like Claire, gone back through the records, I observed that there were 23

separate occasions during that period when one or more coalition senators crossed the floor. So you could reasonably say that I did a pretty lousy job as leader! I suspect that a Labor leader, with a government majority, would have a much easier life and could fairly be described as having control. So, at the outset I do want to dispute the presumption of government control of the Senate in those 2½ years.

I want to turn to exactly what occurred in that period with respect to the Senate committee system. I am sure everybody here would agree that *Odgers* is the most authoritative source on Senate matters. *Odgers*' description of the changes to the legislation and general purpose committees—because that is what we are talking about, not all the rest of the committees—that were made in 2006 is as follows:

In 2006 the pairs of committees in each subject area were amalgamated, returning to the pre-1994 arrangement for the legislative and general purpose standing committees.

That is it, and that is an entirely accurate description of what occurred. That is the one change that the Senate, with a Liberal-National majority, made to the Senate committee system: to return to the pre-1994 arrangements with respect to the legislation and general purpose standing committees. There were no other changes proposed or implemented to any other Senate committees or any other arrangements to do with the Senate committee system.

For those of you who were around at the time, you could be forgiven for thinking that something much more radical and much more dramatic had actually occurred, as I think Claire was hinting. The Labor Party took a massive egg beater to this one change. Kim Beazley, the then opposition leader, actually had the gall to come out and describe it as 'evil'. The coalition government was accused by Labor of completely trashing the Senate committee system and destroying the accountability of government to the Senate. Frankly, it was the most extraordinarily over-the-top, ridiculous and ill-founded attack imaginable—and I have to say, with great regret, entirely hypocritical. As *Odgers* actually confirms, what the Senate did in 2006 simply was to revert to the arrangements in place from 1970 to 1994 and thus for most of the period of the Hawke-Keating Labor government.

I was in the Senate in 1994 when that longstanding arrangement, which everybody seemed happy with at the time, was changed. The then Labor government was very cynical about the change to a split committee system. Claire has quoted Robert Ray in the 2006 debate. I was there in the 1994 debate when Senator Robert Ray, on behalf of the Labor government, said:

There is no government ownership in any of this—

in his contribution to the debate and clearly questioned the motives behind that change. I know the motive very well because I sat as a humble new backbench senator in the coalition party room from mid-1993 onwards where that split was given birth. The then Liberal-National Party opposition did not like the fact that the Labor government, then with only 30 out of 76 senators—I think the lowest number of senators that any government has probably ever had—chaired all the legislation and general purpose committees. The opposition, then with 36 senators, chaired none. That meant Labor senators got the extra salaries and the status of chairmanship and opposition senators missed out entirely.



Former senator Noel Crichton-Browne, whom some of you may have heard of, was then Deputy President of the Senate. He led a very spirited campaign against this ‘absolute outrage’ and wanted it fixed. Of course the way to fix it was to split those committees in two and create extra chairmanships for non-government senators. Robert Ray knew as well as I did what the motive was, hence his cynicism in the debate in 1994—and hence my cynicism about Labor’s weeping and gnashing of teeth when the pre-1994 arrangements were reintroduced in 2006. This was exactly the system that Labor had had in government from 1983 to 1994 without any complaint, and yet in 2006 suddenly it was ‘evil’.

I must confess that, with hindsight, I wish we had never voted for the re-amalgamation of the split committees in 2006. We completely underestimated Labor’s cynicism; we underestimated the media’s compliant support of Labor’s confected outrage; and we gave the opposition far too easy a stick to beat us over the head with. The change, which, as I say, was not all that dramatic, really was not worth the completely manufactured and confected political trouble that then ensued. The momentum to revert to the pre-1994 arrangement began in the coalition party room straight after that 2004 election when the people had, by virtue of our results in two elections, given the coalition a majority, and frankly was unstoppable by the time I became leader at the beginning of 2006. I may engender some dispute with this statement but I was quite sensitive as Leader of the Government in the Senate to any suggestion of coalition abuse of our one-seat majority and did go out of my way to ensure that we were not and were not seen to be guilty of such abuse. Indeed, I incurred the wrath of my National Party friends by resolutely opposing their plan to have a National Party senator elected Deputy President of the Senate at that time, instead of the tradition of an opposition senator filling that office, and had a robust argument with then Prime Minister Howard about that matter. I am proud of the fact that I was able to ensure that, by and large, we did refrain from abuse of our majority.

There was only one full calendar year when our government had a Senate majority; that was 2006. In that year, 98 bills were referred to Senate committees for inquiry and report, the highest number of bills ever referred in a calendar year up to that time and double the annual average number of bills referred when Labor was last in government. In 2006 we dedicated what is now the tradition of four sitting weeks to estimates, and government ministers answered 1,100 questions without notice, 800 of them from non-government senators. Of course we did not hold a candle to Labor on limiting debate on bills. Labor still holds the record, with the guillotine used for 57 bills on 16 June 1992 and 52 bills on 13 December 1990. From July 2005 to the end of 2006, the 18 months of our 2½ years, the coalition used a time limitation for 32 bills in the face of obvious filibustering and we did not limit debate on any bills in 2007.

It is a pertinent and interesting fact that in the history of the Senate over its 110 years only 30 bills have had debates longer than 20 hours, and 15 of those 30 occurred under the Howard government. So I have no shame in saying that the coalition respected the practice and procedure of the Senate during that relatively brief period of our government majority. The one change to the committee system that did occur was simply to revert to the arrangements for the legislation and general-purpose committees that operated from 1970 to 1994. Indeed, we ensured that opposition senators would be the deputy chairs of those committees and we ensured that for the first time they would be remunerated for being deputy chairs.

The motivation for the 2006 change was largely a function of what we saw as an abuse of the split system by the other parties. As is well known, the intention of splitting the committees in 1994 was to have legislation go to a legislation committee chaired by a government senator and

references go to a reference committee chaired by a non-government senator. What we experienced after we came into government in 1996 was the cynical practice of referring bills to the references committees, a complete corruption of the intent behind the split system. From 1996 to 2005 legislation was referred to references committees instead of to the legislation committees on 146 separate occasions to ensure that committees run by non-government parties would deal with the bills in question. That flagrant abuse of the 1994 changes was the primary motivation for the coalition to support a reversion to the pre-1994 arrangement.

Following the defeat of our government in 2007 and the loss of our majority on 1 July 2008, the Procedure Committee again examined the structure of the legislation and general-purpose committees. As Leader of the Opposition at that time I was a member of the Procedure Committee. The April 2009 report of the committee accurately records the basis of the committee recommendation, subsequently adopted by the Senate, to reinstate the 1994 arrangement. Importantly, the committee noted that one of the motivations for the 1994 changes had been to reduce the need for the appointment of select committees, effectively by having the separate references committees do that work. In 2008-2009, under the scheme of unified committees, eight select committees were appointed and the Procedure Committee, I think wisely, advised that in recommending a return to split committees no more than three select committees should exist at any one time. The committee also sensibly advised that there should be an understanding that bills be referred only to legislation committees, thus dealing with what I referred to before as the previous abuse of the split system.

The one change that was made to the committee system under the coalition's Senate majority has, with coalition support, now been erased, and we are back where we were in 1994. Part of the title of this session is 'lessons from 2005-08'. I am not sure what they are, but I suppose the big lesson for me is never to underestimate the capacity of your opponents to indulge in scaremongering, hyperbole and hypocrisy in relation to Senate committees. I do hope that the Senate has learnt that if the spirit of the 1994 changes had been observed between 1996 and 2005 then the quite unsavoury confrontation and political point-scoring of 2006 could well have been avoided.

I think it is also an experience that reminds us that, whatever system you have in place, the opposition of the day, whether it is Labor, Liberal or whatever, will always be motivated to use the Senate committee system to embarrass the government of the day. That is just political reality: partisanship will always reign supreme. But I hope the reality of that period, 2005 to 2007, also demonstrates that it is wrong to believe that no government should ever have the opportunity to be a majority in the Senate. The point is—and I know others have said it—that the committee system is robust and the institution of the Senate is sufficiently robust. After the enlargement of the Senate in 1983, a function of certain parties wanting more seats in the lower house but being caught by the Constitution which requires the Senate to be half the size of the House, I for one thought that no government would ever again achieve a Senate majority. We did surprise ourselves at the 2004 election when a one-seat majority was achieved. I simply want to state here today that I think we used that one-seat majority responsibly.

Government Senate majorities are going to remain extremely rare, but I think it right and proper that it remain at least possible under the electoral system with sufficient voter support for a majority to be obtained. May I conclude by saying that, with the formal alliance between the Labor Party and the Greens, entered into by Prime Minister Gillard and Senator Bob Brown, one

could reasonably argue that, from 1 July 2011, there will, again, be a government majority in the Senate and even, dare I say, government control.

**QUESTIONER 1 (Ms MARGETTS)**—I am just curious: when I was in the Senate there was a particular difference in committees between the lower house and the upper house inasmuch as the lower house committees often had people coming into the secretariat who were under the control of ministers. They were people who came from departments rather than independents. I wonder whether that position has changed. Theoretically, you are meant to have independent people who are not just employed to conduct committees, because otherwise they will feel they will need to please governments to get employed and be on the secretariat. Has there been any change? I certainly was on a joint committee where someone came from Defence, under the control of the defence minister, and only the senators understood there was an issue there. Have there been any changes to the secretariats—that is, the secretariats who are employed the whole year round or who come from departments and just participate in a particular inquiry?

**Senator MINCHIN**—Dee, I think that question is more appropriately directed to the Clerk of the Senate. But certainly as a senator I can say no, there has not. We are blessed with a very high standard of secretariats in the Senate committee system. I was not conscious of the observation you made about the House. But, from my experience, that is certainly not the case in the Senate.

**Senator MOORE**—Dee, I think the Joint Standing Committee on Foreign Affairs, Defence and Trade has a formal arrangement whereby people from the military serve a period of time on that committee, working on that committee. That would probably be the one to which you are referring. We are unaware of anything like that and certainly of no contravention of the independence in the way the Senate committees operate.

**QUESTIONER 2 (Ms McCLELLAND)**—I am Robyn McClelland, Clerk Assistant (Table) in the Department of the House of Representatives. I think what the former senator may have been referring to is our practice of having secondees work with us in our secretariats. We have a fully staffed secretariat or committee office in the Department of the House of Representatives supporting our committees, but on occasions we do use secondees from departments. When secondees work with us, they work very much as staff within the Department of the House of Representatives and they are not answerable to ministers.

In terms of the Parliamentary Joint Committee on Foreign Affairs, Defence and Trade, we do have a military adviser on attachment to that committee, as the senator said, and that role is very much a professional advisory role; it is not one of accountability to the minister.

**CHAIR**—Thanks, Robyn. I would add: that practice also exists with the Department of the Senate. There have been a couple of secretaries of the committee on legal and constitutional affairs I recall who had been seconded from A-G's and, from time to time, research officer level people are seconded from departments. Are there any other questions?

**QUESTIONER 3 (Mr BARTLETT)**—Ex-senators are dominating question time here! There are many things I could say to that—speeches—but I shall not. I shall just ask questions. One question is to Senator Minchin, on the statistic—and I know statistics have their problems in terms of comparisons—where I think you said 23 times, crossing the floor, in that period. Firstly, how many of those were Barnaby Joyce? Secondly and more relevantly, how does that compare—you probably do not know off the top of your head but you would probably have a

rough idea—with the number of floor-crossings of the coalition senators? It is a noble tradition, I might say, being able to cross the floor—at the time when the Fraser government nominally had a majority. This is a question to Claire, or perhaps to both of you, in terms of the issue of at least reducing the problem of the dynamics that can affect the effectiveness of senate committees, when the government nominally has control. The notion has been raised, I think a number of times over the years, about whether the Senate should not have ministers. I guess I am asking Claire, as, I think it is fair to say, someone who does not see themselves as there to try to become a minister—and I think that is part of why you were a very effective chair. It is not the only reason but it is one. Is there some merit in looking at that? A problem that can come—though it does not always come—is where government people see themselves in the chair as partly there to demonstrate that they are suitable for higher service, and that can distort the way they operate.

**Senator MOORE**—There was some discussion of that yesterday, Andrew, and my own view is that we should have senators who have the opportunity to serve in every capacity. The history of senators who are ministers, on all sides of parliament, is very strong. I think someone said yesterday that it gave a certain edginess to the debate. I am not sure whether they are the words I would have used, but the whole concept of having good government and good parliament means that the people who can best serve are able to serve. In my extensive experience: when I was in opposition I thought that the senators from the government, at that stage, were able and effective senators and put their cases effectively, and I think the Labor ministers do the same. So I think we should have that. And it is a shared government process, so the government of the day is in the House of Representatives and the Senate—and this is a minister from the Senate, who may have a personal view about the situation.

**Senator MINCHIN**—Just briefly: yes, I second that! I do think it is important that senators have the opportunity to serve as ministers. I do not know quite how the business of government would be handled in the absence of ministers, entirely, from the Senate. But what you find is that certain senators on both sides set themselves on endeavouring to become members of the executive. Others make the quite deliberate decision that they do not want to follow that career path; they want to be good legislators and pursue legislative careers, and I think that is healthy. What matters is both parties being able to attract high-calibre people to the Senate. I think that the absence of any opportunity to serve in government would have a deleterious effect on the quality of senators that the parties could attract, frankly.

In relation to your first question, Andrew—it is nice to be reminded of being asked questions by Senator Bartlett back in the old days—that was a cheeky question. I would not want to bring personalities into this matter—I think that would be quite unfair! But certain senators did cross the floor more than once—that is certainly true. Indeed, my predecessor, Senate government leader, Robert Hill, was one of the most prolific floor-crossers in the Fraser years, you might recall. There is a qualitative difference between a Labor government having a Senate majority and a Liberal-National coalition having a Senate majority, because of the fundamental difference between our two parties on the question of the right of senators or members of the House of Reps to cross the floor. It simply has not happened in the Labor Party, but, as you and I have observed, it does happen quite a lot on our side.

**Mr CARTER**—We will have to wrap it up. We are about five minutes over time. Please thank our speakers in this session.

[9.51 am]

### **Committees: can their performance be measured?**

**Ms MORRIS**—I am the Senior Clerk of Committees. It is my privilege to chair the next session which is on whether the performance of committees can be measured. Our speakers are Dr Phil Larkin and Mr Francis Sullivan. Dr Larkin is a lecturer in public policy at the University of Canberra. In addition to his academic research, he has worked as a researcher for both Australian Senate committees and the committee office of the House of Commons in the United Kingdom. Mr Sullivan has been Secretary-General of the Australian Medical Association since 2008 and, prior to that, he was the Chief Executive Officer of Catholic Health Australia for nearly 14 years. Please welcome Dr Larkin.

**Dr LARKIN**—Thank you. Having also had the privilege to speak at an event to celebrate an anniversary of the House committees a couple of years ago, I am somewhat of a gatecrasher at these events. You have heard loads of people with extensive committee experience in the Senate. Mine is limited—a couple of shortish secondments; enjoyable but short—and that hardly qualifies me as an expert, and of course I am a Pom, so I also feel I am intruding slightly in that respect. I am moving back to London at the end of the year, so I will be gatecrashing rather less, regrettably. Before I go, I would like to abuse my position here to publicly thank the staff of both the Senate and the House who have been unbelievably generous to me with their time and cooperation with my research. They have unfailingly delivered information that I have been too daft and too useless to find for myself. They have given me their time, their resources and their support, and I would like to publicly thank them very sincerely for that.

I go on to the main task: can committee performance be measured? There is a short answer and a long answer to that. The short answer is yes, of course. If you rephrase the question slightly differently—can it be measured effectively—then the answer is slightly more complicated. I do not have extensive experience in committee work—many of the speakers have decades to draw on—so my speech will be slightly more general and a wee bit more esoteric perhaps, but, I hope, thought-provoking.

Before I start on the issue of whether you can measure committee performance, I would like to consider why you might bother trying. I think that is a good starting point. Again, there are two types of answer. The political science answer, with my academic hat on, is ‘because they are there’. Academic political scientists like to measure stuff. We like typologies, we like to categorise and classify things—strong committee systems, weak committee systems—and assessing committee performance could be just another aspect of that activity. In that sense measuring committee performance provides a sort of care in the community role for academics—it keeps us off the street, it keeps us out of trouble. God knows what we would get up to if we did not have these things to keep us entertained.

More importantly, the reason for doing it relates far more to concerns about the quality of parliamentary processes and I guess democratic processes more generally. The reason you might want to measure committee performance is that committees are generally and increasingly seen as a good thing. They are seen to add something to parliamentary processes that other institutions of parliament do not deliver. So you might want to assess how well that role is being performed. Reflecting on that, a number of international democracy promotion bodies have explicitly identified committees in their assessment frameworks, and they have been looking at

ways of trying to assess committee performance in various ways. I am in the middle of trying to write something which explains how they are not really doing it very successfully yet. I have not finished it but I can field some questions on that later, if you like.

To paraphrase one academic attempt to measure committee performance, the reason you might want to do this is because a strong committee system seems to be a prerequisite for a strong legislature, and strong legislatures are increasingly seen as a good thing. On that point, it is probably worth pausing for a moment to consider why we actually have committees at all. What are the positive things that they are thought to bring? Firstly, they provide a division of labour. If you have a number of committees, you can process more parliamentary business. You can have bills going through simultaneously rather than have them waiting in line to be dealt with one after the other. At least in relation to Westminster systems more generally, it is worth bearing in mind that committees, unlike in continental Europe for instance, have their roots not in the scrutiny of legislation but rather in the ex post scrutiny of government spending and government activity.

What else can they do? They can provide expertise. We heard quite a lot yesterday about the way in which committees that specialise according to their policy area or their type of legislation can develop genuine expertise, and with that they can better scrutinise legislation or they can better hold government to account. They are better equipped to ask government the sorts of difficult questions it might not want to answer. We heard various examples of that yesterday, as I say.

Linkage is an area that Professor Ian Marsh, who is now at the University of Tasmania and who many of you will have read or met, is very big on. In an era when party politics, parliaments, are seen as increasingly distant from the public, the fact that committees work publicly, take submissions, hold hearings and engage with groups and individuals that might be outside the normal political machinery is seen as giving legitimacy and transparency to the process. In doing so, it is also improving the quality of legislation.

Consensus politics is again something we heard a lot of individual examples of yesterday. Although this is a Westminster system with classic adversarial traditions, committees can modify that adversarialism. The idea is that small groups develop an ethos of give and take; there is a shared esprit de corps, if you like. Moreover, because they rely on evidence submitted to them, that confronts the established party positions. Andrew Bartlett made that point quite forcibly in the session I chaired yesterday.

So, on to the main thing: how do you assess committee performance? Well, the obvious way is to look at their formal powers, look at the standing orders, and see which committees can do what. However, this is a very imperfect guide. I will use the famous example of the difference between Japan's Diet and the US congress. The US congress has probably the most powerful committee system in the world. The Japanese Diet's committee system is 'an exercise in futility', yet it is modelled on the US congress. The two systems share very, very similar formal powers, yet one is incredibly powerful and the other is an exercise in futility. It is not so much the formal powers that are at issue but what you do with them. So the obvious thing is to look at what committees actually do.

If you look at the reports of the US Senate office or the UK House of Commons—which every year produces a telephone directory sized report on their annual activity and spending—you will

find various records of what their committees got up to for the year. They list the number of reports tabled, the number of hearings they have held, the number of submissions they have received, the number of trips they have gone on and the amount of money they have spent. These reports shows activities, in some respect, and you could look at that. But I do not know that these input measures—which is what they are, even though they are treated as an output in this context—actually tell us a tremendous amount about performance in this respect. It does not tell you how effective the committee has been; it just tells you how busy they have been. Having said that, they can clearly tell us how ineffective they have been. If there have been no reports tabled, no questions asked, no witnesses heard and no submissions received then clearly that is useless. But the inverse—that activity equals effective performance—does not necessarily hold true.

A more sophisticated way is to look at the impact of committees on legislation. And that is okay; you can look at the number of amendments they make to bills that come through them. Obviously, not all amendments are the same. A handful of amendments to important and significant bills is far more relevant and a far better gauge of performance than a load of minuscule amendments to insignificant bills. But you can weight that and control for that, so that is fine. However, I did mention all the other things that committees do. Examining bills is only one part of what committees do, so how you capture estimates in that? We heard a lot about estimates and how effective that has been. All that activity, and all references, would be excluded from that if you just looked at legislation and amendments.

So what else can you do? You can look at committee recommendations and compare the government responses to them. Somebody has actually tried doing this in the UK. The problem is that government never says: ‘You’re right. We would never have thought of that. What a fantastic idea. We shall do that immediately. Well done. Thanks very much.’ I have never seen that. What we found when we did this was that they usually say: ‘Yeah, all right. We’d already thought of that, so we are doing it anyway; we just haven’t told you. Occasionally they say, ‘That’s stupid,’ but rarely do you get an open armed embrace of a committee recommendation.

You could always—and we did try to do this—look at subsequent legislation rather than just the government response. That, of course, assumes that you get a government response. You could look at committee recommendations that slowly drip-feed their way into legislation as a measure of influence. That is theoretically possible but it is actually quite hard. Even if you can track that, it is very hard to prove direct influence: maybe everybody did just think of the idea simultaneously. In the absence of the minister saying: ‘You’re right. Bang to rights, we would never have thought of that. It was your idea. Well done,’ you cannot actually prove that it was one person’s idea. Again, that rarely happens. In the absence of that, you are assuming that the similarity between the two is actually influence.

It is also worth bearing in mind that we found that just bringing a subject up can cause change. The specific recommendations might be rejected, but the committee’s activities have caused action to be taken. That also would not be picked up in that way. And then there is, of course, the possibility that committees can change public opinion and cause more indirect influence on government that way. Could you measure that? It is theoretically possible but incredibly difficult to do that consistently. You might be able to do it for individual instances, but to do that across a committee system over time would be unbelievably hard.

I have not told you how to measure committee performance—I am aware of that; I have told you how not to measure committee performance—and that is because if I had thought of how genuinely to measure committee performance I would probably be a lot more senior than I currently am! It is a tricky one. It really is extremely tricky. And, just to complicate things further, Robert Ray mentioned yesterday how estimates actually caused change by public servants anticipating what was going to happen in the estimates committees. If governments start anticipating committee perspectives, that surely is the most effective committee system of all. How do you measure that? There would be no amendments. There would be no inquiries. There would certainly be no hostile recommendations. Everything would be perfect. The committee would agree with the government entirely. So, in any attempt to measure that, you would find it very hard to distinguish between an unbelievably inactive and weak committee system and an incredibly powerful one. I honestly do not know how you deal with that. How the hell do you measure that?

To end, just to add a further complication, I would flag another couple of problems. One is: what do you measure against? I have mentioned how you might look at committee influence on policy, and that is ultimately what committees—sort of—do through bills or reference inquiries, but that is only one aspect. I have also mentioned consensus. If you prioritise process over or equal to outcome, sure, you then look at the internal committee process and judge the effectiveness of the committee system there. Certainly some people have done that. There are measures of deliberation in parliament now and ranking systems to do with that, the idea being that nice, consensual policy making is better than adversarial. The other thing is that, simply, there are no agreed benchmarks. How much committee influence is enough committee influence? Do you want more or less? When is too much enough? When is enough too much? I honestly do not know, and I am not sure that that is necessarily one that can be resolved in the abstract. Anyway, I will stop.

**CHAIR**—I call Francis Sullivan.

**Mr SULLIVAN**—Good morning, and thanks for the invitation. It is great to see present and former senators here. I was present the last time you had one of these, which was 10 years ago, because I have been fronting Senate estimates committees for 17 years, primarily as an advocate. I do not come to this discussion in any way as an academic reflector or someone with a burning passion for the intellectual nuances of the Senate. I come at this discussion as a practitioner to push a view, because that is what people like me do. We push a view because, at the end of the day, for us politics is about passion and voices and getting yours heard. Thank you for the applause—there you go; I'm done! That is what I said 10 years ago, and I knew it would work! What I really mean is that you use any opportunity, any forum and any vehicle to get that voice heard. So, when it comes to committees and their inquiries and their considerations, it is just another place.

Firstly, one of the difficult things for committees in managing their performance is actually balancing the passions that come before them. The second thing is that in any other organisation we are involved with, if someone said, 'Hello, welcome to your KPIs, your key performance indicators,' this is called how you stay employed. That is what a key performance indicator really is to people: if I get those, they can't sack me. So if you look at the senators now in a new light: what do they have to really do not to be sacked? They don't have to listen to me, they have to win. Every now and then they have to make sure they are at the right number on the ticket in order to win. This is their core business. That is why when you talk about performance, don't



forget what is in the back of their mind all the time, which is their obligations to the party, to their electorate and to their bank account. Like the rest of us, that is the mixture.

Then you get thrown into this job in the Senate on the committees. Now you have got this huge ambiguity, because the parliament may have a set of expectations for senators on committees the parliament in theory does—this is what you are meant to do: consider, reflect, review, judge and act. But as party members there is another set of expectations. It is manage the political issue of the day in that committee. I am trying to tell people how to suck eggs here but all I am trying to do is to show you how we then understand what really goes on when you go to a committee. You have got to put your view in the context of how it is going to be heard. We think most of what we say is being heard through a jaundiced perspective, it is not an academic exercise.

The way I looked at this this time that is to probably say three areas for how you judge performance. The first is how does the committee perform. In my experience, the committees have fluctuated but generally there has been a trend towards more provocative interaction with the witnesses over the time. I think a lot of witnesses get intimidated by that if you do not go that often and if you do not have a thick Irish Catholic hider like I do. If you are going there with an expectation that you are going to have a reasonable conversation and you get a little frustrated. They do not ask you the right questions or they do not listen to your answer or the second senator asks exactly the same question or the senators are walking in and out of the room or there are only two there when it starts and you get this great apology that you have flown three people from across Australia to the hearing and there are more of you than them and it was your money, your time—people get frustrated with that and they begin to say, what is the point?

Another thing that can happen is the government said that this is a massively important issue and you have got a day and a half until you have the hearing and you have got 13 hours to get the submission in and then you spend a lot of resources on getting the submission up and you do not even get a gig. Or you get mentioned in the references but not in the text. A lot of people go, what is the point? Particularly at the end of the day when you have got a strong view and it does not matter anyway because the government has got the numbers and that is the majority report and then there is the minority report and then it goes into the Senator and falls on the numbers anyway. People go, what is the point? So I think there is a bit of a people management issue there that the Senate committees could work on by asking the people who are involved.

Secondly, I think it is always impressive when you see senators of different parties appearing to like each other—that is a great PR exercise. It shows that being civil is still a value in our parliament. I am not trying to be cynical. A lot of people do not realise that senators might actually like each other. They certainly do not know if that is true in the House of Representatives, but they still think it is possible in the Senate. It will be interesting to see how that develops. But be mindful of the fact that, when a provocative atmosphere emerges, in the end it is counterproductive because it influences the type of information that comes back from the witnesses. It flavours that information. It is not a place for politicians to grandstand—we have seen that over the years. Groups like mine and the one I used to work for planned for that, to be honest, and played into it, so it is not all one way. I do not think the two-party system has helped. I look forward to the day when we have a lot of mini-parties running the whole show together; that would be quite good. It would give you a chance to actually have a coalition of ideas and interests. Those are my thoughts on the performance of committees.

I know I am short of time, but I just wanted to say that what the committees produce by way of adding value is important, isn't it? If it is a legislation committee, you can seriously see it as a great opportunity for community groups. Committees represent the only time in my experience where, if you want to get amendments to legislation seriously examined, you can do so. You can go to a couple of senators and say, 'This is what we need to get changed here,' and, depending upon their degree of interest in what you are on about, they may engage with you or they may say, 'Look, I'm not worried about the amendments yet. Let's talk about the high-level stuff; the amendments will flow through at the appropriate time.' Depending upon the experience of the senator, they can manage you really well—they can manage you right out of it. The idea of putting it before a legislation committee is really good, because at least if you put your concerns in a submission you have drafted already they have to be considered by someone. Then you can seriously get that debated in the committee or at least get it into a report. Oftentimes in politics if you have a criticism and a solution you are in the door. If you have only a criticism, people say, 'Hello? I'm tired.' But, if you have a solution, at least they will talk to you. It is like life—it is like managing an 18-year-old: if you have a solution you at least have another day in your life. I think legislation committees are good in that way.

On the subject of references committees, they are okay because they give some groups of voice, but you must enable the groups to speak. I have to say, it is all very well for people like me, but there are many voices that do not get heard. I know committees try to bundle voices together, so sometimes there will be a hearing and there will be an array of people because the committee is trying to be respectful of all the submissions. The committee will consider that various groups genuinely have the same types of concerns, but—hello?—if they are different groups they have different concerns. Governments like lobby groups to sort of be of one mind. That is the government's need; that is not the need of the lobbies. So we need to think that through. I do not know how to do that; that is your problem. It is just an issue.

The trouble with that, of course, is that all of us have to have our members seeing us doing things, so when you turn up with this gang of people you have to think of a really clever way of getting your voice heard. So it becomes a competition of information rather than quality. Then most of us with any brains go outside and do a press release anyway and get ourselves into the media one way or the other.

I will finish up very quickly with two things. The last time I spoke at this—as I said, it was 10 years ago—we had just had the passage, or were in the process of the passage, of the GST. I had a lot to do with Senator Harradine at the time. You may recall that famous speech of his. I am sorry Senator Minchin left, because he would remember this day quite well. A few of us knew that Senator Harradine was going to do the speech that afternoon. He walked into the chamber and began his speech, and eventually said, 'With regard to a GST, a tax on my children and my children's children'—I think his words were something like this—'I cannot.' You may recall that. As he gave this speech, the word around the Senate grew that something strange was going to happen here, because I think they did not think he was going to do that. All of a sudden the government's benches started to fill, and one of the first people to walk into the room—I was sitting upstairs watching it—was Senator Minchin, because the government knew that now they had to deal with a new party. Senator Lees rang me that afternoon to say, 'It's wonderful; we'll be talking to you on Monday.' Monday never came, of course, because we were lobbying for a particular outcome on that GST. But the Senate committees were helpful in getting a lot of junior voices up in those debates. Also, it was a time of vibrancy and activity in the Senate. It has been repeated many times since, but for me it was a great learning experience about how someone not

from a major party could be a voice. I am not saying whether his voice was right or wrong, but I am saying that something of his passion and potency is important in politics. That is three Ps!

To finish with, I would like to go to one thing. It is frustrating for many groups to find the same inquiry all the time. Hello? How many inquiries on aged care have we had? The best thing about the inquiries on aged care is that we are all there now. It has taken so long. We are all there and we all get it, so you do not have to worry about whether elderly people are important. Secondly, you can always pull this one out of the drawer when you are in trouble, so I figure that that is why the reporting time is less. The real point I want to make—and I pick up Bill's point—is that, if you want to take an inquiry, you should look at its recommendations and work out if it has an impact. When we had that famous inquiry on mental health back in 2006, that was a massive inquiry. We have also had really good inquiries on poverty, if you recall. There was a good inquiry about the pension, which there was eventually action on some years later, so I really applaud the people who pushed that. We have to remember that the senators themselves have great commitment in these areas and work inside their own settings to promote things.

I want to say one quick thing in finishing. The mental health inquiry came up with 13 recommendations, and each of the recommendations generally had about three if not four sections to it. It was a great inquiry. Since 2006, only one of those recommendations has been enacted in full. In 2007 the Howard government came up with its own package for mental health and did not refer to this thing at all. Supposedly in 2011 the Gillard government is going to come out with a big mental health package. Will it refer to the 2006 inquiry or will it do what governments often do: redesign, recreate and refocus? If that is the case then we have a problem with a disconnect. If it is not the case then you can see that reports are used behind the scenes, although they may have to change and be nuanced. But something that worries me is that, although in 2006 so many resources—both parliamentary and community—went into something so profound and important, we are facing the same dilemma today. Let us all hope that that real thinking and passion is encapsulated in what the Prime Minister comes up with next year.

**CHAIR**—We have a few minutes for questions.

**QUESTIONER 1 (Mr DAWSON)**—This is probably mostly for Dr Larkin but it does relate to Mr Sullivan's points about the view from the other side of the witness table—that is, I am thinking, as a performance indicator, of how the committee process and committee reports are received by their stakeholders and other people who have been involved. Often you see bureaucratic reports now where at the front there is a little sheet with a few boxes in which you are invited to make some comments about what you think of the report. I am just wondering if you are aware if any parliament or congress has tried to survey, in an orderly way, how their activities are received by the stakeholders who have contributed to them.

**Dr LARKIN**—In an orderly way, no. Having worked on committees, including yours, briefly, it is something you are aware of and you monitor, as you know, but I do not know of any surveys as such. I have been involved in an ongoing research project which has canvassed opinions from people that submit to committee inquiries, and that is pending, to be honest, so I will have to get back to you on that one.

**Mr SULLIVAN**—If we do not get mentioned in a report, we want to know why. If our views are not at least dealt with, we like to know why. Over the years, we have found it is good to keep close to the person who is writing the draft and to be of assistance wherever possible, and that

helps. As a lobby group you can often predict what the report will say; but, if you felt there was something seriously amiss there, you would usually try and pressure an elected member accordingly. But remember that the lobby groups that are well resourced and loud are always involved somehow. That is part of the political theatre and it is not always a value-add, I get that; but that is what happens.

**CHAIR**—Any other questions?

**QUESTIONER 2 (Ms MOULDS)**—I am from the Law Council of Australia and have had some of the same experiences as Francis. We have had some positive outcomes when we have actually been consulted by the department prior to a committee hearing, which has led to government sponsored amendments after the committee hearing, where the department was able to also give evidence acknowledging some of the concerns that the profession had raised. I just wondered: is that another outcome to throw into the mix in assessing the performance of committees; and have the AMA or other groups that you know of also been able to establish those positive working relationships with the departments, either prior to the bill being introduced, which I guess is the ultimate, or, if not, at least once the bill moves into the Senate?

**Mr SULLIVAN**—That is a great example of a successful lobby. If you can get that sort of outcome, congratulations. Yes, there have been occasions when a piece of legislation has gone in and we know there are great problems with it and privately the government has realised there might be an issue. I can remember a couple of times when we were asked to take the foot off the pedal a little bit in how we might express our views because a good result was going to come and, on other occasions, putting forward the amendment. Sometimes it comes down to who prefers to lead with an amendment. I think that, although not common, can happen. And I think the relationship with the department is fine. It is not really that relationship that matters in the end; it is the emotional engagement of the minister around having to make a change.

**Dr LARKIN**—I would just like to flag the role of pre-legislative scrutiny—bringing in a role for parliament. What is the harm? We do not always have to legislate in haste. If you are genuinely not sure and you do genuinely want to get stakeholder views, chuck out a draft, get comments on that and then introduce a bill for the technical working-out. Why not?

**Mr SULLIVAN**—I might just finish with a point I wanted to raise—I am sure it is of interest. The frustration a lot of people have now is with government putting in enabling legislation and leaving everything important to regulations. I have turned up at committee meetings where even the committee says: ‘Like, hello? There is nothing here of substance for us to address.’ I think that is a real problem coming.

**CHAIR**—Please join me in thanking both our speakers for a very thought-provoking discussion. Just before we break for morning tea, I need to let you know that there will be a brief tour of the old committee rooms here in the Old Parliament House at the end of today’s session. If anyone is interested in participating in that, please register at the registration desk during morning tea. With that, we will break for morning tea.

**Proceedings suspended from 10.31 am to 10.50 am**

### **The future of Senate committees: challenges and opportunities**

**Ms WEEKS**—I am the Clerk Assistant (Table) in the Senate, and it is my pleasure to welcome the panelists to the last session of this seminar. We have sort of mishmashed this session. Originally we were going to have two sessions, but unfortunately Senator Xenophon has been forbidden by his doctor to travel, so we will have a session with the original two panelists. Then we will have some questions, and then a third member of the panel, Senator Humphries, will arrive. The two senators we have—Senator Crossin, at the far end, and Senator Milne, who will be the first speaker—are both long-term senators. Senator Milne is an Australian Greens senator, and she has also represented citizens of Tasmania in the Tasmanian parliament. So she brings not just her Senate experience but also the experience of another legislature to the meeting this morning. Senator Crossin is currently a government senator for the Northern Territory. She is Chair of the Senate Standing Committee on Legal and Constitutional Affairs. Both senators promise to be a little controversial, which I always think is a good thing, particularly in the last session, when we all might be finding our brains on overload. Senator Milne, welcome.

**Senator MILNE**—Thank you for the welcome. I would like to acknowledge that we are meeting on Aboriginal land and also celebrate the fact that we had the innovation with the opening of parliament after the recent election with the welcome to country. That has been a really significant move for our parliament and has enhanced the status of our parliament in the eyes of the community. It is something that we can be really pleased to have been part of.

I would like to speak today about ‘The future of Senate committees: challenges and opportunities’. The subtitle to this is, ‘if you don’t value what you have—if you abuse it, if you show it a lack of respect—then you will lose it’. That is really the subtext of what is going on with the Senate and its committees at the moment. My experience of Senate committees has been between 2005 and 2010 as a senator, but actually my experience of trying to understand the Senate committee system goes back a bit further than that, because I was in the Tasmanian parliament. Between 1992 and 1996 we had a parliamentary committee—a review of parliament committee. It was one of the only things that ever did anything effective in the Tasmanian parliament. It was driven by the Greens but looked at a whole range of things, including the role of third parties or minor parties in a Westminster system, because it was pretty obvious in Tasmania by that time that it was going to be permanent, and there needed to be changes to the standing orders and all sorts of things to recognise that.

In the course of that committee hearing, we looked at instituting a committee system for the Tasmanian parliament which would be modelled on something like the Senate committee system. In particular, the value could be seen in the context of going to a three-party system or even more than that—a multiparty system—of having prelegislation committees or exposure draft legislation type committees for a house of government in a multiparty parliament to expedite and try to build support around legislation before it actually got to the parliament.

That experience was important, but it all ended in 1998 with the push from the Labor Party in opposition, joined by the government as a minority of Liberals, to reduce the numbers in the Tasmanian parliament to 25, whereupon the committee system disappeared completely. With 25,

you cannot run a Westminster system. It is as simple as that. They have had more than a decade's experience of the disaster that that has been, and now they are moving to restore it to 35.

The relevance of that to this is that they will now be looking to set up the committee system that we recognised was important back in the eighties and they will be looking at the Senate committee system as it operates now as a bit of a model. I understand that Victoria is also working towards or maybe has already adopted a committee system similarly. So it is important that, as the other states are looking to the Senate, they pick up on the good things about the Senate committee system and recognise the dangers of the way the system is currently operating so that they do not inherit things that will undermine the confidence in the system.

The first thing is that the Senate obviously is a house of review. Its reputation largely, over a long period of time, has been the strength of the review process being in its committee system. In the Senate we did have quite a strong reputation for having a powerful committee system. But I would argue that over the last five years that reputation has been significantly undermined. There has been a rapid decline into partisanship in the Senate committee system. The use of committees has become no longer about bringing about change. It is much more used now as a campaign tool and an awareness-raising tool rather than a tool for bringing about change. There has been as a result a failure to take the Senate system seriously in the broader community.

How has that happened in that period of time? I know you had a session yesterday on what happened to the committee system under the majority government of Prime Minister Howard. Whilst it is the Senate that refers references to the committees and so on, when you have a majority in both houses it is effectively only what the government of the day will accept that goes to a Senate committee.

During that period of time, the Greens moved a great number of references. Only one was accepted, and that was on peak oil, Australia's future oil supplies and alternative sources. As I will indicate further on, it was a very good report. We put a huge amount of work into it to get a consensus report, and absolutely nothing has been acted upon in the five years since. It sits on the shelf. It is a very good report. At some point in the future when people realise that we have peak oil and we should have done something about it, somebody will recall that someone said that once somewhere.

Then, post the Howard government, we had a supposed restoration of the Senate committee system with an ability to have select committees—and there has always been the option of having select committees. But these have turned into what can only be called political charades. They are seen in the broader community as just campaigning tools for the coalition. If you are going to have a select committee, it needs to be on a specific subject for a specific period of time. It has to be seen to be topical and worthy of a special Senate inquiry, and then it has to be done properly, and it ought to have cross-party support for that reference so that it is taken seriously. Instead of that, it has been a mechanism for the coalition to run a party political campaign at the taxpayer's expense through the Senate committee system and has completely undermined it, to the point where a number of organisations, when approached to appear before those Senate committees, say no because they realise they are just going to be wasting their time and involved in a political charade.

How is it then that you can get a reference to a select committee without the general support of the Senate or at least some reasonable support of the Senate? It is because the coalition with

Senators Xenophon and Fielding can get one up. Frequently those two Independents support those references with no intention whatsoever of serving on the committees, and they do not. They just get them up for the coalition. In return, they get support for various things that they want in the parliament but, overwhelmingly, they do not actually serve on those committees.

The other thing that they have been used for is to sort out internal dissension in the parties. For example, Senator Heffernan wanted to be chair of the rural and regional committee. The coalition did not support him for the chair and supported Senator Nash for the chair. However, the consolation prize was the support for him to be chair of an agricultural production committee to run parallel. So we had two committees. The rural and regional committee is the one that is supposed to be doing this work. We ran parallel committees, so there was a wage rise and a status and a consolation prize given to someone in the coalition. That is not the way to run a Senate committee system.

As a result of these select committees, as a result of competition about who is going to get profiled for chairing committees and so on; we have had incredible duplication of effort. The dairy inquiry, for example, was on in two committees at the same time. We had managed investment scheme inquiries in two or even three committees at one stage. At the moment we have the Murray-Darling matter—there is a reference to a House of Representatives committee and there is a reference to a Senate committee. We have all these references happening. In the standing committees, the legislative and reference committees, the partisanship is high. The government has control of the legislation committees and so the result is that frequently you do not get a fair and honest assessment of the legislation; you simply get what the government wants for that particular bill. The reference committees are seen as the preserve of the opposition parties; the government is there to make sure there are less harmful recommendations than would otherwise be achieved, but there tends to be a disparate level of commitment at either one depending on who has control of the committee.

As a result, the old concept where you would have a Senate committee to look at a bill in order to really determine what the problems with it might be, how it might be fixed and how you might build support for it, really has gone out of the window. I could not give you a better example than the bill I had—the Safe Climate (Energy Efficient Non-Residential Buildings Scheme) Bill. This bill had been developed by a number of the major players in the commercial building sector—multinational players who had had a lot of experience with energy efficiency in commercial buildings in the UK, in the US et cetera. They worked with us to develop a bill. It was referred to the committee. The chair said at the start that she expected a majority report and a dissenting report, and that was really how it was going to be. So, when the committee actually made a report and I sent remarks in commenting on the report, the chair did not even circulate the remarks to the other members of the committee. Yet, when we met to tick off the report and I pointed out that those other members of the committee had not even seen the edits that had been sent around by the person who proposed the bill, they did not think that mattered; they did not have to see it to know that they did not support the bill.

Interestingly, the people sitting in the room through the Senate inquiry process were the people who had helped work on this—the multinationals involved—and they were absolutely disgusted by the fact that the other members of the committee had not even read the bill and did not know what was going on. The public servant who turned up from the department obviously read it on the way from the department to the Senate inquiry, so he did not have a clue about it but he also felt competent enough to say it was no good.

What has happened as a result of that is that those companies now say that they would be hard pressed to see why they would ever bother submitting to a Senate inquiry or turning up again, because they felt that the whole thing had been a contemptuous process. Since that time Rand Corporation in the US, not particular friends with the Greens, have written a report to say that that bill is the best bill on commercial buildings anywhere in the world. The principles of it have now been taken up in Tokyo and in Seoul through these businesses, and we are going to see at some point where a government in the future says we have this tremendous experience overseas; we probably should consider doing something like that here. That is an example of how confidence in the system is being lost.

I have also mentioned references committees and how both the government and the coalition treat them. People put a huge amount of work into submissions, you might have quite a few hearings, the report comes down and the debate in the chamber is poor or does not occur at all—half an hour, maybe 10 minutes per speaker, and that is it. After hundreds of hours of people's submissions going in, there is hardly any comment at all. The government has three months to reply; they may or may not respond in that time frame. If they do, we have got to the point of total contempt now where sometimes the government can respond to two or three reports in one page—this is the government response to all this work.

So if you have put in a submission, you are waiting for the inquiry; you are waiting for the debate in the Senate and it gets hardly any time; you are waiting for the government response and it is one page or, if you are lucky, a couple of pages. Then, when the government's response is presented to the references committee, there is no debate about whether it was an appropriate response from the government. Are we are going to fight that response? Are we actually going to push to do something here? No. My experience has been that committees generally do not debate the adequacy of the government's response to the committee reports. And there is no systematic review at any time down the track of whether the recommendations have been implemented. There is no process to go back and say, 'In the last three years we had these reports, these were the recommendations, these were the government's responses and this is what has happened since.'

Apart from the partisanship undermining community confidence in a system which is meant to establish fairly the merits or otherwise of proposals, there are too many inquiries and no prioritising of those inquiries. At the moment, anyone can get anything up any time, almost. The result is we have the system completely clogged up, with some critically important inquiries and others that are just there for partisan political campaigning, and no ability to prioritise those.

As a result there is exhaustion from the submitters. If you are an industry body, for example, you are getting asked to submit to this inquiry, that inquiry, this one coming, another one coming. They do not have the capacity to properly deal with these, so what is happening is that they are just changing the front page and saying, 'Find enclosed the submission I made to that inquiry and it might be relevant to this one.' There is fatigue out there in the industry bodies, the community bodies and so on about responding to the number of inquiries.

There is also fatigue in the government departments. They are struggling to take many of these Senate inquiries seriously. Why would you keep on turning up to these Senate inquiries? They are sending lesser and lesser status people from the department and putting less and less time into the government's responses because they know that nothing is going to happen anyway—there will be a report but, even if it is an adverse, nothing is likely to happen as a result of it. It is



being taken less and less seriously by Commonwealth and state bureaucrats, which simply undermines the system.

You are getting exhaustion from the secretariats who are run off their feet trying to write reports when there is very little engagement from a lot of the senators on the committee because they are overrun. They cannot read all the submissions and go to all these inquiries. So the draft report comes out and it is the secretariat who has had to try and pull it together and second-guess what people might have thought or said. You are also getting exhaustion from the senators. As a minor party in the Senate we cannot cover these inquiries—we just cannot cover the number and give them the level of input we would like. I am sure I am not speaking just to myself; this goes for right across the Senate. The senators cannot keep up with the volume of business that these Senate inquiries are trying to handle. As a result there is a lack of respect for the witnesses. Sometimes they are all shoved on together or they might get half an hour. People travel here for half an hour. But even if they have put in a huge amount of work and they get their half an hour, at the end of it they get nothing out the other end so they ask: ‘Why bother?’

We do not travel as much as we should. We are meant to be representing the nation. Part of the status of the committees is that they are able to go to the regions and talk to people. There have been attempts to do this by videoconferencing. I think the rural and regional committee tried to do a good job and get out there to consult on access and support issues for student allowances. Committees do try and get out there as much as they can, but it is desperately difficult for the secretariat to round up the senators and get them to travel to Western Australia or Tasmania for a full Senate day—they just will not do it. The result is you end up in Western Australia with Western Australian senators, in Tasmania you have mainly Tasmanian senators—and there is an expectation that the others, fairly, ought to travel. So the community is not getting the input that they would expect from a cross-party, serious Senate committee and, as I said, no outcomes.

What to do about it? I think it is at the crossroads. I think there is a serious question about community confidence, disappointment and the inability of the Senate committees to drive outcomes, and that is building in the community in a range of sectors. I think the community sector still has a lot of confidence in the committees that deal with their issues, because the people on those committees have generally tried really hard to keep on having that level of access, but in some of the other committees there is very little confidence. With minority government, now there is the question: where is the focus of committee work going to be? Is it going to be in the Reps, where people are going to have to do this negotiation; is it going to be in the Senate; or are we going to change the joint committees so that they are no longer executive committees and are more representatives? Therefore, on the Murray-Darling, would you do a joint inquiry rather than this duplicative process? You would need to change the balance in the committees to make that a feasible outcome.

Where we are now is that we are seriously compromised. The Reps have no intention, in my view, of taking the committee system seriously. This is an interim ploy while there is a minority government, and as soon as there is not they will go back to how they were before. So the Senate committees are here to stay—they are where this focus ought to be—but I think that we need some serious reconsideration from all sides of the parliament as to how seriously we are going to take them. My recommendations would be that we need some way to reduce the load of inquiries, increase the value of the inquiries that we do have and restore their status.

One of the ways of doing that would be to use the chairs committee that currently meets—the committee of chairs of committees—as a filtering process to enable the committee chairs to seriously look at how many references have been made and which are the ones that genuinely have cross-party support and commitment from senators to seriously engage. Then you might get the kind of support for the committee system and a bit more restoration of the respect for the system that used to be there. But, if we do not do that, I think we are rapidly going down a path where we will want to have inquiries and people will not want to make submissions or turn up. Then the question that will be asked is, ‘What is the point of the Senate as a house of review?’ because it will not be seriously reviewing what the community wants or what the legislation is. So I think we have some serious challenges, but there are opportunities to restore it. The question is: will this new parliament actually take up that challenge in a minority government context as we now work out where the committees in the parliament are going to sit in this period of government?

**Senator CROSSIN**—Good morning, everybody. Let me begin by paying my respects to the Indigenous Ngunawal people of this area. Thank you for the invitation to address your conference today. I am going to look at the next 40 years of the Senate committee system. I suppose that once you get to 40 you think that you are a bit over the hill, but I hope that after today and the presentation from Christine and me you will think you have a few more challenges and a few more hills to climb before you get there. By the time I am finished, you will have to come to the conclusion that Christine and I did not concur with each other on what we were to say, but there are many, many similarities, I have to say.

I had a look yesterday at your program, and you have looked at the past and at how Senate committees are operating. There is no doubt that if you asked a general person in the street, ‘What function do you think that the parliament serves?’ then they would say to you, ‘Passing legislation and being accountable.’ Those would be the two priority areas where I think you would get a response from people. But, if you looked at the Senate and at one of its roles, I think that you would have to say that in this country this chamber has the role of scrutinising the legislation and making sure it stands up to the test of fairness. I do not need to convince all of you that I think it is one of the best chambers in the world for that. Everywhere I travel people want to know about our committee system and how we operate. We constantly have delegations from overseas here asking us questions because they see what we do, they like it and they want to try to replicate it. So it is great to be here for 48 hours—almost like an action research project, I guess—having a look at what we do and trying to make those improvements and move forward. I think, though, that we are now at a very crucial crossroads in the journey of how Senate committees evolve. How do Senate committees not only stay relevant but remain an important and vital vehicle for change and for that scrutiny of legislation?

There is more to parliamentary democracy than just seeking a mandate from people at periodic elections—although I think that, from time to time, governments are inclined to believe otherwise. But, generally, people do not subscribe to the view of a mandate when they step into the ballot box at election time. The last two elections show that nearly two million people in this country voted very differently in the House of Representatives than they did in the Senate. So I think there is a large majority out there who very clearly and consciously believe that the people who should be the government of the day should not necessarily be the people who control and run the Senate chamber. Increasingly, people do differentiate their votes between the two chambers. I think they are looking more and more at the role of the Senate and wanting it to be a chamber in which the government does not necessarily have a mandate.

We heard from people this morning about what happened when the Senate did have that mandate. When I look back on my 12 years in the Senate it has been one of the most unproductive and frustrating times in the Senate. But people often say to me: 'Trish, you've been in opposition and now you're in government and you don't have control of the Senate—certainly not in the last three years. That must be frustrating.' Well, to be honest with you, it is not as frustrating as when there was one party in this country that did have control. People often say to me: 'How do you think the House of Reps is going to cope now that they have all these minor players to deal with?' I say to them: 'Welcome to the world of the Senate; that is the world we have operated in for the last decade or so in my experience. It is a world that I think actually produces better scrutiny of legislation, where you have to actually talk to people and get negotiated outcomes and sometimes compromise what you are trying to achieve.' In every piece of legislation that I have been involved in, where that compromise and discussion has happened—and we have tried wherever possible to be bipartisan—I think we have got a better piece of legislation at the end of the day than the piece of legislation that we started out with.

The Senate, as you would know, passes around 98 per cent of the legislation that is put before it. Usually, less than one per cent of legislation is actually laid aside by the government in the House after the Senate makes amendments that the government does not accept. But, at the end of the day, the government does actually realise there is some benefit in those amendments and the bill is passed—for example, the ASIO terrorism bill that we did back in 2002. So there is in reality less disagreement than people think. There is a lot of confusion about the Senate being obstructionist. If you look really closely at the facts and figures, it is not the case. The Senate does provide a safeguard. It ensures that laws are not passed without proper deliberation. Its main feature, of course, is that it has control over its own proceedings. These are two areas that you are well versed in and operate within.

But I want to take you through four areas that I believe are essential pieces of a future agenda that needs to be considered for Senate committees. We need a further discussion about the operation of Senate committees if we are going to remain relevant and functional in 2010 and beyond. The first of those is: how are Senate committees going to interact with House of Representatives committees now? We know that Senate committees are increasingly the vehicle that brings the federal parliament to the people. They provide an avenue for participation in the implementation of change. This participation by the community and specialist organisations and experts has until now rarely been a feature of the House of Representatives. We are still in the early stages of dealing with the new arrangements in the House, so we are yet to see how many bills will be sent to the House committees for consideration and their timeline. Remember, I am talking about a House of Representatives system that usually takes 15 months, 18 months or two years to look at an issue—predominantly a reference, not legislation. I suppose that, up until recently, I would fundamentally refer to the House of Representatives as 'the tick and flick palace'. The Senate predominantly takes all the House of Representatives legislation and sorts it out—and we have made roast lamb out of mincemeat a lot of the time!

So it will be interesting to see exactly how many bills the House of Representatives get, how long they take to deal with them and how much interaction there will be with the Senate. If the House of Representatives make changes to a bill and those changes are picked up by the government, does that mean that we will not get the same bill in the Senate? My guess is: 'No. I don't think that'll be the case. I think we will still get that piece of legislation.' Christine's call to look at the review of some of the joint standing committees to deal with the legislation so that it is not duplicated might be a way to go. I do not think there will not be too many. In any case,

how many of those will be referred to the Senate committees for consideration? I suppose we will need to just watch this space. If the dynamics in the House of Representatives change after the next election, you will see their committee system and their choosing to deal with legislation revert back to the way it was, or it will be a less important means of scrutiny.

I want to look at how the bills are referred to the Senate committees for reference. I think that the Selection of Bills Committee is totally inefficient. It is time to either abolish this committee or totally rework the way in which it operates and deals with legislation. I chair the Senate Legal and Constitutional Affairs Legislation Committee. I have to say that to suddenly be told on a Thursday afternoon—after the Selection of Bills Committee has met that day and reported to the Senate—that I have now got another five bills to inquire into and to report on and also to table my report within five weeks is a ludicrous expectation of my committee and the witnesses whom I expect will appear before me. Standing order 24A provides for the Selection of Bills Committee to consider all the bills that are introduced in the Senate and to report on them. What I predominantly see is one signature at the bottom of a page, very little discussion, a random reporting date given to me and a rough idea of who the committee think we might want to meet. It is done without any consideration or discussion of the workloads of the committees at any one point in time and, in some cases, with the most unreal expectations.

The legal and constitutional committee is one of three of the busiest committees in the Senate at this point in time. We handed down 40 reports in 2009—three of those were references. In 2010 we have looked at 29 reports. Six of those were one-page reports which were tabled when we moved into the election mode. But 23 reports in six months of this year is a pretty heavy workload. I think either the eight chairs of the standing committees have to become members of the Selection of Bills Committee, or we need to rethink how this sausage factory works, quite frankly. It is probably realistic that a committee gets every single bill to look at; it is not realistic that three, four or five people can sit around a table and randomly tick a box that says: ‘Yes, that’s going to legal and cons,’ or ‘That’s going community affairs. And they’re going to report in two weeks time.’ That is not realistic. We need to fundamentally change the way that operates.

I think Christine is incredibly right. One of the most frustrating things I find about chairing a committee, both in opposition and now in government, is the response from the government. They take far too long to get back to us. If we are going to make three months as the mandatory time for them to get back to us, then perhaps a new committee that inputs the bills, such as the Selection of Bills Committee, can also monitor the outcome of the reports and start to hold a government to account about their reporting time lines, the quality of the reports and the quality of the responses. It is a bit like a sausage factory—in through the Selection of Bills Committee, into the committees, onto the table and gone. We do need to make sure that we have bookends in the Senate committee selection process of the bills that they look at. We do need to make sure that we at least talk to the chairs of the committees. I had seven pieces of legislation that needed to be tabled in the next fortnight—well, guess what, I was not doing it. I picked up the phone to the minister and said, ‘It’s not happening.’ So we have met and changed some time lines. With legislation it is pretty easy. You do see the outcome—either the recommendations of your reports are picked up and amendments made to legislation or not. But we need to have a function in the Senate whereby the government is held to account for the quality and the timeliness of their responses to references committees.

Senate committees, I think, also need to look at witness fatigue and the role of scrutiny when there are only a few submissions commenting on legislation. In the legal and constitutional area,

I could pretty much name you the 20 organisations and individuals we hear from regularly. A lot of the legislation we deal with in this country would not be shaped into quality legislation were it not for the Law Reform Commission, the Law Council and some of the legal experts who are outside of the parliament. We rely on their expertise incredibly heavily. Senator Moore is here and I am sure she would say the same to you about some of the health issues that arise in the community affairs area.

But it is unrealistic to expect us to inquire into a piece of legislation the way we do now when there are only a few submissions. Let us take yesterday as an example. I flew from Darwin, Senator Barnett came up from Tasmania and we had three witnesses before us, one of which was the department. I am not saying that the work we did was not useful; it was very useful. In fact, I was not convinced by the person from the Attorney-General's Department that the changes in the legislation they are proposing are needed—and I am the committee chair. One of the rules I have as committee chair is that I am not there to hand down reports that just rubber-stamp the view of my government's legislation program; I am there to uphold the good name that I believe the Senate Legal and Constitutional Affairs Committee has. If that means that I, as a government chair, have to hand down a report that has recommendations adverse to the government in it, I will do that. I took that lead from when Marise Payne, who I admire very much, handed down the report that said, 'The sedition section of this piece of legislation should not proceed.' I thought that was an incredibly courageous effort and I admire her for doing that. I uphold the same principle as the chair of the Senate Legal and Constitutional Affairs Committee and there have been a number of times I have handed down a report with recommendations saying, 'Unless you do A, B, C and D, I do not think this legislation should proceed,' and I will continue to do that.

But we really have to look at whether or not we can modernise how inquiries are held. To what extent can technology be used to streamline this process? Video conferencing, using the internet and teleconferencing have to be relied upon in the future. We have to move into the next arena of using those methods of telecommunication. We cannot continue to fly around like a swarm of bees to capital cities to hear from two or three witnesses and then pack up and move on the next day. We have to do it better. We know that, more and more these days, most people are accessing their information from the internet. As a parliament, we need to have a look at a better way of doing this. I think it would make the system more relevant, I think it would modernise it and I think it would make it more efficient. So that is my third challenge: how do we modernise the way in which we conduct inquiries—how do we do it efficiently and effectively rather than just continuing to get on that Qantas flight, move everybody around the country and pretend that the only way to have an efficient public inquiry is to have everyone sit in the one room together at the same time? We need to rethink that.

The last thing I want to say is that I think Senate committees need to be more pro-active than reactive and I want to cite a couple of examples here. The Senate Community Affairs References Committee, under Senator Moore's chairmanship, picked up the issue of petrol sniffing and we inquired into what was happening in Central Australia. But then, six or nine months later, we had another reference to look at what was happening again. So we went back to the issue; we followed it up. It was a single issue and we have kept tracking it. I hate to say this, Senator Moore, but I think there is a third report coming on the reluctance of people in Kakadu and north-east Arnhem Land to have Opal fuel in their service stations. That is an example of where the committee was pro-active—exceptionally pro-active because it followed an issue every six

or eight months and continued to have further inquiries just to track the progress of the implementation of those policies.

Myself, I went to Robert McClelland in 2008 and said to him, 'We have had the Sex Discrimination Act for 25 years; it is out of date.' 'What do you mean?' he asked. I told him: 'Well, we need to have a little bit of a look at it. Is your department intending to do that?' He said, 'No', so I said: 'Well, can I? I will get my committee to do it.' And we did. We had an inquiry into the Sex Discrimination Act and we came up with three packets of measures: those you could implement now, those that you might do in a year or so and, of course, the one human rights act for this country, which will take a while to achieve. And what have we got coming before us in the parliament in the next month or so?—changes to the Sex Discrimination Act that pick up that first packet of changes that we recommended. So I think Senate committees can be pro-active.

Let us have a look at the Northern Territory Land Rights Act. It is out of date. All of the land in the Northern Territory has been claimed under that act and it is time to actually look at how effectively that act is operating. The Native Title and Indigenous Land Fund Committee we do not have anymore because section 10 of the Native Title Act abolished that committee after 10 years. But no-one has had a really good look at what is happening with the native title legislation and how effective those bodies are. You are not going to get that from government unless they have got an idea of changing policy or changing implementation. But I would guarantee there is a swag of bills that are sitting on the shelf that probably need modernising and need updating, and I think there is a role for Senate committees to do that.

The other thing is that the Senate committees can look at draft legislation. We did this as well in the Legal and Constitutional Committee. We took the draft of the personal property security legislation and we had an inquiry, and this is the way we addressed witness fatigue, I think. It was a very extensive inquiry to begin with and we handed down a report that had numerous recommendations to change that draft. Then when we actually saw the final piece of legislation that reflected a lot of those changes, we had another inquiry, but witnesses had seen that their suggestions had been picked up, so we did not have as many witnesses for the actual inquiry into the bill and we did not have that fatigue from witnesses. Then when there were consequential amendments we only had four or five submissions. So that was a way of actually getting around that, to have draft legislation and make sure that people were involved in the process from the beginning. That was one way of addressing that.

In summing up, I think that the changing nature of community expectations, responding to voting patterns, needs to be balanced with the valuable role of the Senate and its committees to ensure that the nature of Senate committees actually evolves and is continually reassessed. I think conferences like this are terrific. I hope you do not wait another 40 years for the next one. We need to assess whether what we are doing is effective, whether we are meeting, let's face it, at the end of the day the community's expectations of the role of the Senate and the sort of legislation people in this country expect. If we do not continue to evolve and evaluate how we are operating, we won't remain effective and we won't remain efficient.

I want to congratulate you on this conference and I will leave you with those four areas of thought. I look forward to the first meeting where we look at how we replace the Selection of Bills Committee!

**CHAIR**—Thank you, Senator Crossin. Both of our presenters so far this morning have given us a lot of food for thought. Are there questions or comments? There are microphones on either side of the room and I ask people to go to those.

**QUESTIONER 1 (Dr LARKIN)**—Senator Milne raised the question of the allocation of chairs. I wonder what you think about their being elected, and most of the successful candidates having bipartisan nominations as well. It is too early to see whether it has fundamentally changed the atmosphere, if you like, or the climate but it is certainly a step in that direction, I think.

**CHAIR**—Perhaps I can ask Senator Milne to comment first. Senator Milne unfortunately has to leave in 10 minutes, so Senator Milne and then Senator Crossin.

**Senator MILNE**—I think that is an interesting idea and well worth considering. Again it would mean that you would have, I think, greater respect for people in those chair positions because they would be elected by the Senate and would have to have, as you have suggested, cross-party support and so it might give it extra status and give it the responsibility. I think that is quite a good idea. We are very interested to see how it works out in the UK. Of course, the issue is the way the system is set up currently the government expects to control legislation committees and the non-government parties the references committees. Where you would maintain the balance after the election—I guess they do. I do not know how it works there. I think it has got merit because at the moment it is really just a choice of the party and it is internal political machinations that determine who the chair is, and whether they have got the skills to chair or even the commitment to the committee to chair is almost irrelevant in many cases. Some are good and some bad; it is as simple as that. So it is worth thinking about.

**Senator CROSSIN**—I think it is worth thinking about in terms of the references committee. I am not so convinced about the legislation committees because I think sometimes there is benefit in having that direct access with the minister's office to try and clarify some issues that are raised during the inquiry. I am not sure that that access would be afforded to someone if they were not a member of the government. But, again, how do you get around it if one party controls the Senate? And in the current situation, as Senator Milne said, occasionally we are faced with two individuals who will vote with the coalition. So you would want to be guaranteed that, if you went to a system where all the chairs were elected, there would actually be selection on merit, on expertise or on capability rather than, again, down party lines. And, to be honest with you, I do not think, from the way parties operate in the Senate, they are sophisticated enough to accept that responsibility at this time. That was a bit controversial, wasn't it?

**CHAIR**—Other comments? Kris?

**QUESTIONER 2 (Dr KLUGMAN)**—I am Kris Klugman, from Civil Liberties Australia. I feel like I am one of those fatigued witnesses. We have made quite a lot of submissions to the legal and constitutional affairs committee. I am delighted to see some discussion of this sort, even if it is so late in the conference. It has been, I consider, a little too much self-congratulation and not enough critical evaluation. I would like to see in the future conferences some more involvement of voluntary community groups. We are the ones who put the hours into the submissions. We are the ones that get disillusioned if there seems to be no account taken of the hours that we put in, free, for the government's benefit, of the knowledge that we draw from Civil Liberties members. I would like to see more account given to this by the committees

themselves in their attitude towards the people who are giving a witness and also more feedback about the way in which our efforts have been received. I would like to see the next conference take more account of the non-government organisations, the community organisations, and give them a better voice. Thank you.

**CHAIR**—Thank you. Do either of you want to comment on that? Senator Milne?

**Senator MILNE**—I think it would not be a bad idea to randomly select 100 witnesses to the Senate inquiries this year and send them a questionnaire asking them what they thought about the process, what they thought about the outcomes and whether they would now appear at another Senate inquiry in the future. It would be very interesting, because, if we are to bring about the changes that Trish and I are talking about, it is not going to be just parliamentarians saying, ‘This is how we need to fix the system’; it is actually going to be pressure from the community to say, ‘Lift your game.’ That might be a way of responding to that.

**Senator CROSSIN**—Yes, and I think another way of taking into account more this witness fatigue that we are talking about—and, let us face it, we do rely on their expertise to mould what we are doing and to respond to the issues—is that perhaps we could move to have more roundtable discussions. Even when we have legislation, let us get the eight key players in the room—for example, if we are dealing with a review of the Migration Act—and have a roundtable discussion about it so that we are not always stuck on this model of a 10-minute introduction where you speak to your submission and then we go to questions and then those witnesses leave the room. Two hours later, I have often thought to myself: ‘Gee, that’s a great comment. I wonder what Civil Liberties three hours ago would have said about that comment.’ So I think we need to be a bit more flexible about how we deal with it as well.

One thing I did not say in my speech and I should have is that lot of the goodwill from the non-government organisations comes about because of the work of the committee staff, quite frankly. They do an enormous amount of work. They make an enormous number of phone calls, and they have that rapport with the organisations and the witnesses. We do not often give the committee staff enough credit for the time and their effort to make sure that the public hearings we have operate in the seamless and calm fashion that they do. We should acknowledge that relationship and that rapport in a better way than we currently do.

**CHAIR**—Thank you. Are there any other comments or questions?

**QUESTIONER 3 (Mr ROWLINGS)**—I am Bill Rowlings, from Civil Liberties Australia. We seem to be doing all the talking. I would like to give you an example to back up what Trish Crossin and Christine Milne have said about fatigue. When the new parliament resumed, in 36 hours we got six requests to comment on bills before the Legal and Constitutional Affairs Committee. It is actually possible for a volunteer organisation to deal with something like that, but in the space of two days, there were six bills that we were asked to comment on. I would like to take that forward and explain to you what some of those bills were and how they resulted in hearings before the legal and cons committee yesterday. There were three of them. One was the Human Rights (Parliamentary Scrutiny) Bill and associated legislation. To put this in context, this is the only result that Australians got out of a national consultation, and instead of a bill of rights there was this bill. It is a scrutiny bill under which there is to be a new committee of parliament. That got about 90 minutes consideration by the legal and cons committee. There were two other bills which were part of this six. One was the Civil Dispute Resolution Bill 2010,



which is largely a mechanical bill about new ways of going about resolving legal cases. That got 110 minutes of consideration. The third was the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010, which has the most draconian rules about how people can invade not only your house, if you are a suspect, but the neighbours' houses on either side, without needing to tell anyone about it. That bill got 225 minutes consideration. I ask you: which of those three bills—the second two, which are mechanical bills, or the one discussing the human rights of Australians—should have got more time yesterday—and much more time than 90 minutes consideration? Thank you.

**CHAIR**—Thank you. Senator Crossin, do you want to make a comment?

**Senator CROSSIN**—You will be pleased to know that we did not have the hearings into the human rights bill yesterday. I decided as chair that two bills in one day were enough and that we did need more time for consideration of the human rights bill. So we are conducting hearings next Thursday night, we are looking for another night to conduct further hearings, we have put the reporting date off to the middle of December and I have told the minister that the bill will not be debated this year. We are going to defer it, and it will have to be considered in the February or March sitting next year. You are right: we do need much more time to consider that. So we only dealt with two pieces of legislation yesterday. That is where I think the initiative of the chair sometimes comes into play. You actually have to say, 'No, I am not going to be dictated to by this timeline. I will set the agenda for this committee, as chair, in consultation with my deputy chair.' Sometimes you just need encouragement and support to achieve that.

**CHAIR**—Our third panellist has now joined us but, before I call on Senator Humphries, I would like to thank Senator Milne for her thoughtful and thought-provoking contribution this morning. Our third panellist is Senator Humphries. He, of course, is a senator for the ACT, but he, like Senator Milne, brings experience from a previous life in the Legislative Assembly.

**Senator HUMPHRIES**—Thank you very much, Maureen, senators and other parliamentary colleagues, ladies and gentlemen. Thank you very much for the chance to contribute here today. I assume that my delayed arrival has been explained. I have been tree planting with the Governor-General and Her Excellency was late, so that is why I am also late in getting here—not that I can criticise the vice-regal party, but that is the case.

I am very happy to be able to contribute to this particular section of the conference. I have not been able to take part in any previous segments in the conference but I have had the advantage of being able to follow it closely on APAC. It is a great innovation for people like me and many others in this room to be able to rely on a resource like that to keep up with what is going on. Until recently, I have been a strong and enthusiastic participant in a number of Senate committees, but appointment as a shadow parliamentary secretary has caused me to push back that commitment, unfortunately. But I am hopeful that I will remain in touch with the important processes that are going on through the Senate's committees. It has always been one of the most satisfying and empowering parts of work as a senator.

I will start by putting what I see as the role or the purpose of Senate committees. I know that people summarise very simply as being about reviewing legislation—seeing that the 'i's are dotted and the 't's crossed and whether the work had been done and what the possibilities for misinterpretation might be given rise to and so on. I see it in a slightly more social context. I believe that there is a very clear tradition or part of the political culture of Australia which

dictates that we do not exercise power in a way which overbears people's capacity to participate in our system or amounts to a trammelling of existing rights of people in our community.

Professor Don Aitkin, the former vice-chancellor of the University of Canberra, once put this to me as the right of veto which citizens have. If a large and significant constituency in our community can say that they are badly or adversely affected by a particular measure, there is almost a presumption that their concern and need to be heard and listened to will be taken into account before a decision gets made. That fear of the naked exercise of power by parliaments is what gives rise to the true nature of Senate committees. It is there that we very often explore how power is to be exercised and what parties will be affected adversely by a particular piece of legislation. It is there that the proposition of how far you can go is tested.

A good example of that was the legislation introduced after the 1998 election to implement the GST. The GST was an issue that the government had taken to the election that year. It had won a 'mandate' for its GST. It went to a parliamentary committee and issues were tossed about there about how this process would work. Eventually, a compromise was reached that seemed to satisfy everybody. It is not as if the government could not have said, 'We want the GST that we took to the election or nothing.' But there was a sense that there needed to be some modification of this major change by virtue of people's concerns about it. That was what played out in the Senate committee before it ultimately was passed into law. That factor should educate us as to how we should look at the work of Senate committees.

What is the future of Senate committees? It follows from what I have said that the work of those Senate committees reflects very much the values of Australian democracy and the peculiarly Australian way in which democracy works here. Forecasting the future role of those committees means predicting how Australia's democratic system as a whole will evolve in the future. I recognise that our representative parliamentary democracy is an outstanding model of government in a world in which many practical examples are in fact deeply flawed in the way that they work. It has served Australia particularly well. But we need to acknowledge that it will come under greater pressure in the future as the needs of our system and the nature of our society change.

I believe that the biggest pressure for change will come from the failure of our system to meet the expectations for participation from an increasingly well-educated, electronically informed and politically literate electorate. The citizens of, say, 2050 are quite unlikely to be satisfied by the right to be consulted about decisions when their capacity to do anything about decisions that they dislike are limited to voting for or against the government of the day every three or four years. That sense of decisions being made in the interim between elections entirely by people who are unaccountable to those electors between those periods is a concept that will be under greater and greater pressure as each year goes past.

Changing government is a very blunt instrument. You have to throw out the good with the bad. Between elections, I think we are used to simply taking our lumps with the bad decisions that we dislike. I think it is possible to design a system which is more sophisticated and which does not say, 'With government A you get everything that you like and dislike about it, and if you do not like the totality of government A then you have to go to government B.' At elections citizens have great power. Between elections they have, in fact, very little. Governments at the present time are conscious of this fact, and they are responding to that fact by engaging in ever more elaborate forms of consultation and by making the reading of opinion polls an almost devotional

process in an attempt to bridge that widening gap. I think that we will find greater need to address this issue in more and more sophisticated ways. I think that, if ever there was an electorate which typifies that phenomenon, it is here in the ACT, where there is a very high level of education and people are very conscious of how parliament and the process work. Very often well-educated citizens can roll into the offices of members of parliament and give them chapter and verse about why what they are doing is inappropriate, wrong or misguided. It is often very hard to argue with them and win, and I think that indicates the kind of change that is on its way for Australian society.

Our committee system, I think, will increasingly be called on to help bridge that gap. As an example of what is potentially possible, we see the case of committees in the US congress, which in a sense already perform something of that role—having power and status to influence decisions—and to which even American governments need to bow. It may be that the Senate committees will be the beneficiaries of the process whereby governments need to be seen to share their power. The trend of the last 50 years has unquestionably been towards centralising power—bringing power from the states to the Commonwealth and from the parliament to the executive. But, for the reasons I have outlined, I believe that trend is likely to reverse somewhat as highly centralised governments find themselves more and more unable to satisfy the urge for participation by citizens.

What other opportunities are there for reform? The Senate committees have acquired a formidable reputation for being able to traverse complex issues and to act fearlessly and independently of the government of the day. The fact that these are Senate committees rather than committees of the House of Representatives that are taking on that role and acquiring that reputation is a reflection of the standing orders, which require that the committees mirror the make-up of the Senate itself. Of course, as the Senate generally is not dominated by a government—generally the government is in a minority—Senate committees have that independence and freedom which is a reflection of the make-up of the body which creates them.

But the load on Senate committees at the present time is very heavy, and as populations expand and the role of government in people's lives grows and committee workloads increase—they are already, I think, very large—the Senate committees are likely to be placed under heavier and heavier pressure. I think that some of that load could be shared with House of Representatives committees. Whether the House will find itself hosting minority governments more often in the future remains to be seen. Whether the new paradigm of power sharing survives this particular parliament also remains to be seen. But if governments more often find themselves in need of legitimisation through power sharing, as I believe they will for the reasons that I have given, then it will be important to bolster the potentially legitimising factor which independent committees represent whether they are in the House or the Senate.

There is no reason that this model of committee independence could not be grafted onto the House of Representatives, notwithstanding its generally different composition. Backbench members of House committees, I am sure, would revel in that opportunity. In those circumstances, the value of joint committees operating in the mode of Senate committees that we are familiar with could become a more common occurrence. The amalgamation of the broad perspective of senators, looking at their whole jurisdiction or the whole nation, and the electorate-centric view of MPs could in certain circumstances be a very valuable dynamic for looking at issues—you might say, an amalgam of idealism and practicality.

Another consequence of power-sharing in the future might be that the barrier to House based ministers appearing before Senate committees is knocked down. The constraints for Senate committees when they are unable to examine House ministers are very obvious to anyone who has been involved in a Senate inquiry that wants to examine the minister or the minister's department and cannot do so because that minister is the other house. In estimates committees we are all too familiar with seeing a blank look from the minister's representative at the table and the retort 'I'll take it up with the minister' when a question is a bit too hard. The reasons that prevent ministers from appearing before Senate committees are historically important—and as I stand here I am sure that those reasons are running through Maureen's mind: 'We can't possibly force House ministers to appear before Senate committees.' But I think that if there is a will there is a way, and those reasons would be surmountable if the parliament decided collectively that it was in the interests of scrutiny and accountability that ministers appeared wherever they were required to answer to the parliamentary process that they are servants to. I think that the scrutiny role of parliament would be enhanced if that were the case.

The ideas that I have referred to for a broader and stronger role for Senate and wider parliamentary committees assume that we can accommodate the surge towards greater participation by our citizens purely by changing the arrangements within parliament. Frankly, I am not sure that would be possible. I am not sure that there do not need to be extraparliamentary mechanisms to deal with that issue. In the future, one of those could be the use of citizen initiated processes, such as citizens initiated referenda. I have three times introduced legislation into the ACT's parliament, twice as a minister in the parliament, to obtain a form of CIR for the ACT, and the legislation has been rejected three times—and I do not pretend it is going to happen any time soon there or in any other parliament. As I said, with the pressure on parliaments and particularly governments to explain and account for their actions between elections, growing as each year goes past, I think mechanisms of that kind will inevitably have to be looked at.

Another possibility is that committees in the future transmogrify into committees of both parliamentarians—senators and members—and other citizens. That would certainly increase the interaction between the parliament and the citizenry, and it would also create the possibility of an infusion of expertise, which committees desperately need sometimes. One good example of that, I would suggest, is an inquiry presently being undertaken by the Senate Standing Committee on Community Affairs into the patenting of the human genome. That exercise amounts to a very complex interaction between intellectual property law and medical research, and there are days in that inquiry when I desperately feel the need to have a constitutional lawyer or a research scientist sitting beside us at the table to help us.

In fact, dealing with problems like this through joint committees of parliamentarians and experts would address an issue which I think bedevils Australian politics generally, and that is the quarantining of experts from policy-making and administration by virtue of the exclusivity of the parliamentary process. That is not a problem, for example, in the United States, where members of the executive are drawn both from inside parliament and from outside the legislature. In Australia, our failure to do this means that sometimes, to be frank, rank amateurs are making decisions of a highly technical nature that could be made by people with much better and more appropriate skills—not necessarily as ministers in governments but in a range of ways which draw them very closely into the parliamentary process. Perhaps breaking down that unfortunate barrier, through the more innovative operation of parliamentary committees, would be a good experiment to try—and, again, the Senate would probably lead in that area.

I will conclude by simply saying that the success of our parliamentary committee system lies in its ability to take the grand constitutional processes of our parliamentary democracy down to the level of individual communities and individual people and their problems. It is stepping outside parliament itself—it is going to regional communities and it is visiting places that are significant for whatever reason—to obtain a first-hand picture of what is going on. All of this is very important in building a clear picture for parliamentarians of where our duty lies and what we ought to be doing with the power and the privilege to legislate.

I saw this very vividly with the inquiry into children in institutional care: adults who had been mistreated decades before in orphanages and homes sobbing into a microphone as they told, sometimes for the very first time in their lives, their story to a body they felt could be trusted with this very personal information. That capacity, to dive into the heart of things and to reflect on them accurately for the benefit of the Senate, makes the committee system an indispensable asset to our democracy, and we need to use it in other, better, more innovative ways in the future.

That committee power and role cannot fail to change with the nature of change going on in Australian society itself. As I said, I believe the most important future role of Senate committees will be to bridge a growing gap between the relatively powerful and the relatively powerless and, in doing so, to create opportunities for committees to come into their own in new ways we have not yet envisaged. Thank you very much for the chance to say those few words today, and I am sorry to deliver them so late in the course of the proceedings of this session.

**Ms WEEKS**—We are almost out of time, but we have a couple of minutes left if anyone wishes to make a comment or ask some questions.

**QUESTIONER 4 (Mr CONSANDINE)**—My question is to Senator Humphries. Senator, we heard from you that, on no less than three occasions in the parliament here in Canberra, you initiated or instigated citizen-initiated referendum proposals which were rejected three times. I think I should go on the record, in asking this question of you, as saying that once upon a time I was a CIR advocate myself. My party, the Republican Party, had that in our platform up until our Caloundra conference in 1997. We took it out of our platform after a lot of submissions and a lot of experience we had with CIR advocates in Australia—more particularly, in the period from 1990 to 1996-97—and we opted in favour of a bill of rights combined with multiparty democracy. I am wondering if the efficacy of a combination of those two—combined, conflated—issues could be a better way to go than a CIR. And would you like to tell us why you have been, and maybe if you still are as passionate a CIR advocate?

**Senator HUMPHRIES**—Thank you for that question. CIRs have had a very chequered history in the parts of the world where they are used. There are lots of examples of where CIRs have been, I think, not just ineffective but even damaging to the political process. We know that in the United States, for example, it is relatively easy to get a question put to people in a referendum coinciding with an election, and sometimes you get some pretty crazy things happening through that process. I think that, rather than interpreting that as a lesson on why not to do a CIR, it is a signal to us to rethink the way in which we might approach it in this country.

You mention multiparty democracy. A multiparty approach—I assume through changing the electoral system to have more of a proportional representation base for parliaments—is one way of getting more views into parliament. Sure, sometimes parliaments get locked away in major parties without the chance for people on a broader basis to have their views made known.

I do not think any of those measures, though, based on a purely parliamentary model—a Bill of Rights, even, on the same basis—fully addresses the question. We have a citizenry which understands how parliament works. It is very articulate and very knowledgeable. It sees big decisions being made and it has no influence, effectively, over the making of those decisions except that at the following election, which could be three years hence, people can throw out one party or the other. That is all they can do about those decisions. I think that will be seen as archaic one day. It will be seen simply as an exercise in making decisions which just does not work anymore in a complex society with a sophisticated electorate. If we have mechanisms to allow people to influence those changes between elections, I think they will be welcomed if they can be devised and made to work well when they are brought about.

Lots of things will be tried. I think we will see a lot of change in the next few decades as we grapple with this issue. The rate and complexity of consultation mechanisms which governments at every level are engineering at the moment are an indication of how the problem is playing on the minds of government even now.

**QUESTIONER 4 (Mr CONSANDINE)**—Madam Chair, may I ask a supplementary question, please?

**Ms WEEKS**—Yes, very quickly. We are virtually out of time.

**QUESTIONER 4 (Mr CONSANDINE)**—Senator Humphries, usually the CIR advocates are hand in glove with those who are voter recall and parliamentary performers, parliamentary representatives, recall. Do you see that those combined principles can be a threat, even to our two-party sham Washminster democracy?

**Senator HUMPHRIES**—I think we are out of time. I do not think I am going to have time to answer that question. Some would say yes, that is logical. I would say, on the other hand, that if citizens can actually exercise some power with respect to the decisions the politicians make, overruling the politicians in the decisions that they might make on a particular occasion, it avoids the need to recall them. There is an argument you can run to that effect. I am agnostic on that issue, I suppose.

**QUESTIONER 5 (CATHRYN MADDEN)**—I would like to ask a quick question, if I may. Senator Humphries, you mentioned opinion polls. This is a question for all the people up there: have you an example of how important opinion polls are in mobilising public opinion in elections?

**Senator CROSSIN**—I am happy to answer first. Two words: climate change.

**Senator HUMPHRIES**—Yes, I was about to mention that.

**Senator CROSSIN**—That is a perfect example from just the last 12 months. I think of how the opinion polls—and we could debate all day, I suppose, their accuracy and whether they are rigged or not rigged—combined with the media commentary played a huge role, I believe, in formulating one way or the other, rightly or wrongly, people’s views about the whole gamut of issues surrounding climate change.

**Senator HUMPHRIES**—Yes, that would have been the issue I would have put on the table as well in that context. But it is actually not easy to pin down exactly how this influences the work of governments, because the process of using opinion polls is now such a dark art that the opinion polls that the parties use are not generally disclosed, even to mortals like us who are backbenchers or junior shadow ministers. The information obtained from these things is kept very close and secret to the bosoms of the government or the opposition.

**QUESTIONER 5 (CATHRYN MADDEN)**—A democratic poll like a like newspaper poll—

**Senator HUMPHRIES**—Often what is in newspapers will be a reflection of what parties have engineered for themselves in a slightly different form. You can sometimes guess what is in party polling by virtue of the sorts of things that are published in newspapers. The questions are obviously skewed differently for political parties to put more emphasis on what they should do next or how people will react if they do something or other. It is both a democratising and a sinister development, in my opinion.

**Ms WEEKS**—We are now well and truly over time, so I would like to firstly thank our panellists for their wonderful contributions for the last session. I think it has given us all a lot to think about and go away with, particularly those who participate in the committee process. I would also like to thank everyone for their contributions over the last couple of days—the panellists, the chairs of the panels, those who have participated from the audience who have been brave enough to offer opinions and also David and his team for organising such a wonderful conference.

**Conference adjourned at 12.15 pm**