

# **Reform of the Senate Committee System: Evolving back to the past?**

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## ***Abstract***

This paper outlines the history of changes to the Senate committee system, including the 2006 changes, and also assesses whether the reforms are a return to the old days under Labor, as argued by the Government.

## ***Introduction***

On June 20 2006, Government leader in the Senate Nick Minchin and deputy Senate leader Helen Coonan proposed a restructuring of the Senate committee system, known as the legislative and general purpose standing committees. The existing structure was eight pairs of committees, with half (the legislation committees, which include the estimates function) chaired by Government Senators and the other half (the references committees) chaired by opposition parties. Their proposed restructuring was to condense each pair of committees into one, and to add another two, with Education, Science and Training, and Environment and Heritage portfolio's becoming stand alone committees (Minchin & Coonan 2006). The media release outlining the proposal stated that: 'The membership and chairmanship of the committees will reflect the composition of the Senate' (Minchin & Coonan 2006), which meant that all would be chaired by Government Senators based on the Coalition's Senate majority (Lewis 22/06/06).

The proposal coincided with the departure of Robert Hill, former leader of the Government in the Senate, who in May 1993 as leader of the Opposition in the Senate proposed changes to the chairs of the committees in order to more proportionally reflect the composition of the Senate. His proposal became a reference into the Procedure Committees inquiry into the committee system, which formed the basis of the 1994 changes (Evans 2004 — 'Membership and Chairs of committees'; Laing 1995: 12). The 2006 proposal, slightly amended to establish eight instead of ten committees, was agreed to by the Senate on August 14 for

implementation on September 11, with the Government using its majority of one to pass the motion.

Minchin argued that the proposal would improve the efficiency and effectiveness of the committees: 'there is no longer any good reason for this duplication – the paired committees share the same policy portfolios, the same secretariats and many of the same members' (Minchin & Coonan 2006). Coalition senator Barnaby Joyce argued that it would result in 'greater independence' and allow a larger number of issues to be examined, with the Government reluctant to refer issues to references committees in the past because of Labor control (Lewis 22/06/06). These points have also been discussed by former Senate committee secretary John Nethercote (28/06/06; 23/08/06), who notes that the dual committee system is inefficient and the references committees have reportedly had a 'light workload' over the last year.

In response to Labor's criticisms over the proposal, Minchin argued that these changes would 'return the Senate committee system to exactly the system that prevailed for the whole of the 13 years of the Hawke and Keating Governments' (CPD 14/08/06:75; see also Lewis 22/06/06). *The Australian* editorial two days after the announcement, however, disputed this argument: 'Minchin is indicating hubris when he claims this will restore the Senate to the way it functioned during the Hawke and Keating governments. His is only half the story since under the pre-1994 system, policy and estimates committees were separate' (Editorial 22/06/06).

This paper will outline the history of the Senate committee system to assess Minchin's claim that the Government's proposal is a return to the pre-1994 system. It also includes a detailed examination of the 2006 changes, from the Government's original announcement through to its passage in August. These changes have already been discussed by Liz Young (2006) on the *Democratic Audit of Australia* website. Young's paper covers the evolution of the committee system, concentrating on broader issues such as the rationale behind Senate committees and the impact of the Senate on executive Government. She concludes by arguing that the 2004 election result of a Government Senate majority was an anomaly that will be rectified by the electorate in the future.

### ***The Birth of the Modern Committee System***

The modern Senate committee system was created in June 1970, with five estimates committees and two legislative and general purpose committees, which became seven by October the following year after the rest were phased in over twelve months (Odgers 1991: 741). The membership of these estimates committees was agreed to be eight, with four Government Senators, three Opposition Senators, and one independent or minor party Senator: the original proposal was for the Democratic Labor Party to have a member on four of the committees, with an independent to sit on the other. Membership of the other standing committees was to mirror that of the estimates committees, including one independent to sit on one

committee. Yet when the resolution was passed in the Senate in March 1971 to establish the remaining legislative and general purpose committees, membership was changed to six Senators, with three Government members, two from the Opposition party, and one from a minor party or an independent (Odgers 1991: 737–38, 740).

It was convention at the time that the chairs of both estimates and legislative and general purpose committees were to be Government Senators, even though the Government did not have a Senate majority (Odgers 1991:716). This gave the Government the majority on the even-number committees by virtue of the chair's casting vote:

The chair, or deputy chair when acting as chair, in addition to a deliberative vote, has a casting vote when the votes are equally divided. Most select committee resolutions also include a provision to this effect. In all other cases, standing order 31 applies, whereby a chair has a deliberative vote only, and in that situation, where the votes for and against a motion are tied, the question is resolved in the negative (SO 32(1)) (Evans 2004 — 'Equally divided votes').<sup>2</sup>

According to Evans (1995:392): 'This convention probably survived from an earlier view that committees were fact-finding in nature and did not aspire to decision-making. There was no requirement that they represent the voting strength in the Senate'.

By March 1977 the legislative and general purpose committee system had been 'firmly established' with its own Standing Order (36AA) (Odgers 1991: 728–30). Similarly, the estimates committees were also 'firmly established' with their own Standing Order (36AB) in March 1977, and by this time their membership was also six: three Government members and three non-Government members (Odgers 1991: 645). Even Senate select committees usually had six members: although originally membership was seven in order to have representation from each state, 'the trend is towards committees of 6' with the growth of the committee system (Odgers 1991: 747). The number of members for a select committee is set out in the resolution of its appointment. Membership has varied between five and nine, while six to eight member committees were 'once the norm' and gave the Government a majority via its position as chair (a position they usually held before 1994). Odd number committees tend to give minor parties or independents that hold the balance of power in the Senate a majority (Evans 2004 — 'Select Committees').

From 1970 up until the next major reforms in 1994 the number of committees varied, although the basis of membership (six for estimates and legislative and general purpose standing committees with a Government majority on each via their position as chair) remained the same. In 1993, the number of legislative and general purpose standing committees was reduced from nine to eight, reportedly because the Government had trouble getting numbers on all the committees (Laing 1995: 12)! Table 1 details the change in numbers up to, and including, the 1994 reforms.

*Table 1: Numbers of Estimates and Legislative and General Purpose Committees, 1970–1994\**

| <i>Year</i>      | <i>Estimates</i> | <i>Leg. &amp; General Purpose</i> |
|------------------|------------------|-----------------------------------|
| 1970             | 5                | 2                                 |
| 1971             | 5                | 7                                 |
| 1973             | 6                | 7                                 |
| 1974             | 7                | 7                                 |
| 1976             | 6                | 7                                 |
| 1977             | 6                | 8                                 |
| 1981             | 8                | 8                                 |
| 1983             | 6                | 8                                 |
| 1991             | 6                | 9                                 |
| 1993             | 6                | 8                                 |
| 1994 post reform | 0                | 16 (eight pairs)                  |

\* Post 1994 reform up until the 2006 changes, the number of legislative and general purpose committees have remained the same.

(Data sourced from Evans 2004 – ‘Appendix 8’)

### ***Second Round of Reform***

The changes to the committee system made on 24 August 1994, described by Evans (1995: 375) as ‘The most significant change to affect the operation of the legislative and general purpose standing committees’, were based on the recommendations of a Procedure Committee report that aimed to restructure the committee system to be more aligned with the composition of the Senate, with no party having a Senate majority at the time (Laing 1995: 9, 12). The main rationale behind the restructure was the allocation of committee chairs, as previously the Government chaired all committees and therefore had majorities on the even number committees. The 1994 Procedure Committee report suggested that Government majorities on all committees ‘had been the price paid’ for their support of the 1970 reforms (Laing 1995: 12).

The 1994 reforms established eight pairs of legislative and general purpose committees (one for each subject area), with each pair containing a references committee and a legislation committee. The legislation committees, which ‘inquire into bills, estimates, annual reports and performance of agencies’ (Evans 1995: 375),<sup>3</sup> had six Senators, with the Government having three members including the chair (and therefore the majority) on these committees, the Opposition two and one from a minor party or an independent. The references committees, which ‘inquire into matters referred to them by the Senate, other than matters to be referred to legislation committees’ (Evans 1995: 376), had eight members, with the Government only having three members (and therefore being in the minority), the Opposition four and one from a minor party or an independent. Of the eight

references committees, six chairs were members of the Opposition party in the Senate, while the other two chairs came from the largest minority party. The estimates committees as separate entities were disbanded, with this function now performed by the relevant legislation committee (Evans 1995: 375–76; Laing 1995: 9–11). Another change to come from the 1994 Procedure Committee report was for the sharing of select committee chairs to become ‘standard practice, reflecting formal arrangements for the sharing of standing committee chairs’ (Evans 2004 — ‘Select Committees’).

In December 1998 the references committees changed from eight to six members, with two Government, three Opposition and one from a minor party or an independent (CPD 03/12/98: 1158). This arrangement once again reflecting the trend towards six member committees. The chair arrangements remained the same.

### *The 2006 Changes*

On 20 June 2006, Senator Minchin informed party leaders of a proposal to change the legislative and general purpose standing committee system, and that evening Senator Chris Evans, leader of the Opposition in the Senate, gave notice that the following day a motion would be moved to send the proposal to the Procedure Committee (CPD 20/06/06: 84). This motion was subsequently agreed to unanimously (CPD 22/06/06: 53).

During debate over the motion, Evans outlined his view of the Government’s proposal: ‘He (Minchin) dresses it up as a question of reducing 16 committees to 10; anyone who knows anything about the Senate knows that it has nothing to do with that. It is about getting control of the references committees’ (CPD 21/06/06: 112). Senator Ellison, manager of Government business in the Senate, put forward the argument that the changes would increase the committee systems’ efficiency and effectiveness, with others pointing out that a dual committee system is out of step with other assemblies such as the United States, the United Kingdom and Indonesia (Eggleston in CPD 14/08/06: 71–72). Ellison also pointed out that Minchin’s letter sought advice as to whether the number of committees should be eight or ten, the area of portfolio coverage, and the number of Senators on the committees (CPD 21/06/06: 116). It did not, however, mention the issue of chairmanship. Another argument floated by the Government was that they should take up the chair positions because it was their mandate (McGauran in CPD 21/06/06: 133).

The Procedure Committee considered the number, portfolio coverage and the membership of committees. The report was limited to considering the ‘practicability’ of the changes, and made clear that unanimous support of the report did not mean support from non-Government Senators for the restructure. The report considered the reduction from sixteen to eight committees, with the original suggestion to have one committee for ten portfolio areas no longer considered. This

may have been because of a combination of the potential difficulty for Government members to fill their positions on ten committees of eight members, and after advice from John Vander Wyk (Clerk Assistant Committees) and Hilary Penfold QC (Secretary, Department of Parliamentary Services) outlining the logistical problems in accommodating the two extra committees (these reports were tabled in the Senate and are available on the Senate Procedure Committee website.<sup>4</sup> See also Faulkner cited in CPD 14/08/06: 73–74). Minchin dismissed this latter problem by saying that if they were to proceed with ten committees, additional resources would be allocated to overcome any problems (CPD 14/08/06: 77). Another suggestion was that ten committees were originally proposed just to make the Government look like it was cooperating and compromising (see Ray in CPD 14/08/06: 57; Evans in CPD 14/08/06: 67). Faulkner even argued that the switch to all Government chairs and ten committees was based on the remuneration provided to chairs: ‘a couple of coalition senators getting their hands in the taxpayers’ pockets’ (CPD 14/08/06: 73).

The other parts of the proposal included each committee having a chair nominated by the leader of the Government in the Senate, and membership being four Government, three Opposition and one minor party or independent Senator, for a total of eight. Deputy chairs were to be selected in the same way as chairs were selected for references committees: six for the Opposition and two for minor parties. Other arrangements, including those for estimates hearings, remained the same (SPC 2006).

A significant reason behind the shift to eight member committees appears to be to combat the problem of absenteeism: it was the motivation behind the other ‘minor’ issue of substitute members of committees in the motion to change the committee system (see SPC 2006: 3; CPD 14/08/06: 54–55). It is designed to make it easier for substitute members to be appointed from the participating members if the original member cannot attend a committee meeting. Absenteeism was a particular problem with committee hearings interstate (Ray in CPD 14/08/06: 57; Ferguson in CPD 14/08/06: 65), and something Robert Ray recognises as a problem both sides of politics are guilty of (CPD 21/06/06: 138).

As Senator Evans mentioned, one of the key consequences of the reform was to deprive the Opposition and minor parties of chairmanship of references committees. The Government argued that the legislation/reference distinction was being undermined by the opposition referring legislation to references committees: ‘a complete corruption of the current system’ (Minchin in CPD 14/08/06: 75; see also Ellison in CPD 21/06/06: 117). To counter the commonly voiced view that less was getting referred to references committees unless it was on the Government’s own terms (for example Bartlett in CPD 14/08/06: 60), Senator Ferguson argued: ‘We are not referring them to Senate committees, because we know the opposition has the majority on the committees and we are not prepared to send them there because of the political nature the inquiry will have. I hope that we get to the stage where we will be able to send matters’ (CPD 21/06/06:142; also raised by Ferguson in CPD

14/08/06: 66). Senator Coonan went another step, arguing that a Senate majority changes the dynamics:

The fundamental point that does not seem to have been acknowledged by previous speakers is that a majority destroys the very rationale for the separate references committees. When there is a different political composition in the Senate, an opposition dominated references committee can play a distinctive role because its deliberations are backed by the Senate. When the governing party has the majority in the Senate, the rationale for separate or paired committees is undermined (CPD 22/06/06: 46).

The proposal of the Procedure Committee was agreed to by the Senate on the 14<sup>th</sup> of August 2006, with the Coalition using its Senate majority of one to secure its passage (CPD 14/08/06: 86). The debate was dominated with references from the government of improving efficiency and that this was simply going back to the way it was under Labor (for example, Ellison in CPD 14/08/06: 55). On the other hand, opponents argued that proportionality in committee chairmanship, something that the Coalition had argued for when pushing for the 1994 reforms, was now being lost (for example Bartlett in CPD 14/08/06: 60–61).

Having an outright majority in the Senate means that the Government could curtail the business of references committees anyway, by using its numbers to refuse to refer contentious matters. According to the *Procedural Information Bulletin* (Department of the Senate 2006c: 2) there is evidence of this occurring, with only seven out of twenty-two proposals made to refer issues to references committees having been passed since the Government's majority came into force in July 2005: 'This pattern supports what has often been said, that the government will not allow the committees to inquire into any subjects which might be inconvenient to the government'. However the Government now has a majority on the committees if issues were referred, which Ferguson (CPD 14/08/06: 66) believes will result in referral of more controversial issues. Even outside references, according to the *Procedural Information Bulletin* (Department of the Senate 2006a: 3) the Government majority has resulted in fewer amendments to legislation recommended by legislation committees being accepted. In addition, the Government used its majority and passed a motion cutting the number of days for estimates hearings from nineteen to seventeen (Department of the Senate 2006b: 1). In the case of select committees, it would be the same case if non-Government members wanted to set up an inquiry: the Government could just use its numbers to reject the motion, or if they agreed to establish one the Government would control the conditions, including the terms of reference and membership.

The arguments from both sides are political: the opposition argue that not referring matters to references or select committees is just a means of avoiding scrutiny; while the Government argues that they will not allow the Opposition and minor parties to use references committees as a vehicle for political attack. The attempt to set up a references committee inquiry into the AWB Iraq wheat issue while the Cole commission was inquiring was a case in point, with Government Senator McGauran

arguing that it was simply an attempt by the opposition ‘to bring down their own points of view and political slant on the whole matter’ (CPD 21/06/06: 133). On the other hand, Faulkner pointed to the work of the select committee inquiry into a Certain Maritime Incident, which he argued wouldn’t occur again with a government majority (CPD 14/08/06: 74).

The chair of a committee has a casting vote that determines the final report in the event of a deadlock. Senator Evans (CPD 14/08/06: 67) was not so much concerned with control over the final report but by how the process may be affected: what issues are covered, the method of investigating these issues, when they are investigated,<sup>5</sup> and who gives evidences. The Senate Standing Orders state that the chairman ‘in accordance with the orders of the committee’ directs the secretary in relation to which witnesses to invite or summon and what documents to request or obtain (SO 34). Eggleston (CDP 14/08/06: 70) reported that in practice the secretary usually recommends who to invite. The Standing Orders also specify that the chairman prepares the draft report for the committee, signs off on the majority report and presents it to the Senate (SO 38). In terms of what the committees inquire into, for references this is determined by the Senate based on the terms of reference. Otherwise, inquiry is based on the departments and agencies the committee is assigned to cover (SO 25).<sup>6</sup> Summing up the potential changes to the process, Eggleston believes that ‘Nothing, in my opinion, will change very much at all’ (CPD 14/08/06: 71). Whether committee processes change significantly will only be observable once the system has been in place for an extended period of time.

### ***Conclusion: Back to the Old Days?***

The changes, to take effect on the 11th of September 2006 are, partially, a return to the pre-1994 system. Although *The Australian* is correct when it argues that ‘His (Minchin) is only half the story since under the pre-1994 system, policy and estimates committees were separate’ (Editorial 22/06/06), under the pre-1994 system the Government chaired and therefore had a majority on estimates as well as legislative and general purpose committees. The committees will still cover estimates and the same issues that the legislation and references committees did, the difference being it will be the exact same committee covering all three, and all will have a Government majority via the chair position. It is also worth noting that Government control of the Senate has already had an influence on the committee system, particularly regarding referrals to references committees, which will now be reinforced by Government chairmanship and majorities on all committees. ▲



Table 2: Summary of Changes to Senate Committee System

| Period     | Number of Estimates Committees                                | Membership  | Number of Legislative & General Purpose Committees  | Membership   |
|------------|---|---|---|--|
| 1970-1994  | Between 5 & 8   | Settled on 6, with 3 Government members including chair (therefore majority), 2 Opposition & 1 minor party or independent | Between 2 & 9   | 6, with 3 Govt members including chair (therefore majority), 2 Opposition & 1 minor party or independent   |
| 1994-2006  | Disbanded, estimates performed by legislation committees      | -   | 8 pairs (divided into legislation & references), total of 16  | Legislation: 6, with 3 Government members including chair (therefore majority), 2 Opposition & 1 minor party or independent; References: originally 8, but changed to 6 in 1998, with 2 Govt members (therefore non-Govt majority), 3 Opposition & 1 minor party or independent. Chairs divided between Opposition (6) & largest minor party (2) |
| Sep 2006 - | Disbanded, estimates performed by new consolidated committees | -   | Original proposal of 10, settled on 8. Portfolio coverage remains the same, however the legislation & references division is scrapped | 8 members: 4 Government, 3 Opposition and 1 minor party or independent. All committees chaired by Government Senators  |

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### ***Commonwealth Parliamentary Debates***

*Senate 03 December 1998*

*Senate 20 June 2006*

*Senate 21 June 2006*

*Senate 22 June 2006*

*Senate 14 August 2006*

### ***End Notes***

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- <sup>1</sup> Research scholar in the Political Science Program at the Research School of Social Sciences, Australian National University. Many thanks to Harry Evans, Rosemary Laing, and especially Professor John Uhr for assistance.
- <sup>2</sup> Additionally, 'a chair is not obliged to exercise a casting vote' (Evans 1995: 418), and a motion is defeated if it remains deadlocked.
- <sup>3</sup> This function of scrutinising annual reports and bills referred to them was granted in 1989 (Evans 1995:375,376).
- <sup>4</sup> [http://www.aph.gov.au/Senate/committee/proc\\_ctte/reports/index.htm](http://www.aph.gov.au/Senate/committee/proc_ctte/reports/index.htm)
- <sup>5</sup> The main exception, as pointed out by Faulkner (CDP 14/08/06: 71) being estimates, which sit on set dates.
- <sup>6</sup> The Senate Standing Orders can be found at:  
[http://www.aph.gov.au/senate/pubs/standing\\_orders/b00.htm](http://www.aph.gov.au/senate/pubs/standing_orders/b00.htm).