

Upper House Majorities and Committee Activity: A Comparative Study*

Maddison Evans

Research Officer, Legislative Council Committee Office of Western Australia.

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Abstract The incidence of double majorities is rare in the Westminster system. Whilst upper house majorities have been the topic of previous studies, I examine its effects on committee activity. I consider Australian Senate committee activity during the majority of 2005 to 2008, and compare it to Western Australian Legislative Council committee activity during the first year of its majority in 2021 to identify any trends. I find that committee activity decreased and changed during the Senate majority, with increased inquiries into bills but with reduced reporting timeframes. I then find that the Western Australian experience has not followed this trend so far in its first year of an upper house majority. These findings are important in establishing trends in committee activity for future case studies into upper house majorities.

INTRODUCTION

It is accepted that government majorities in upper houses are rare in Australia and its jurisdictions, especially if they are elected on a proportional representation electoral system. Studies have been undertaken previously into double majorities, where governments have had a majority in both the lower and upper houses, especially John Howard's Senate majority of 2005 to 2008, but none have focused predominantly on the impact of the majority on committee activity. Another upper house majority has occurred more recently in Western Australia. This article will consider the legislative agendas of both governments and examine the effects of the double majorities on their respective committee systems. As it is the most well-known and there is more data available, the Senate example will be used as the base of comparison to determine if any patterns arise, and if or how committee activity was impacted in order for the governments to quickly pass its legislative agendas. This article will compare the impact on committee activity of the first year of the government majority in the Legislative

Council of Western Australia to the government majority in the Australian Senate in 2005.

This study of committee activity during upper house majorities provides crucial research to the study of upper houses. As the incidences of double majorities are rare, especially in state parliaments, it is important to investigate the precedents and any resulting patterns for future occurrences of double majorities in Australia. This article finds that committee activity changed during the Senate majority, with the focus shifting from subject matter inquiries to bills inquiries, the committee system was restructured, and there was a decrease in reporting times. It also finds that this trend was not necessarily followed by the Western Australian Legislative Council. These findings give rise to important considerations for future Parliaments who may also face double majorities.

BACKGROUND

In 2004 the Coalition Government led by John Howard won its fourth term, with 46.7% of the vote in the House of Representatives and 45.1% of the vote in the Senate.¹ This resulted in the Coalition having 39 seats in the 76 seat Senate and, after appointing a Coalition Senate President, the Coalition held a one seat majority in the upper house for the first time since the Fraser Government's majority in 1977.²

The 2021 state election produced the most one-sided result in Western Australian electoral history, and one of the greatest landslides recorded in any Australian jurisdiction.³ The incumbent Labor Government won 60% of the primary vote in the Legislative Assembly, translating to 90% of that House's seats.⁴

¹ Australian Electoral Commission, 'Senate Results', 2004. Accessed at: <https://results.aec.gov.au/12246/results/SenateResultsMenu-12246.htm>.

² Harry Evans, 'The Senate' in C. Hamilton, & S. Maddison (eds), *Silencing Dissent: How the Australian Government is Controlling Public Opinion and Stifling Debate*, Crows Nest NSW: Allen & Unwin, p. 200.

³ A Green, *Western Australia State Election 2021: Analysis of Results*, Parliament of Western Australia, 2021, p. 2.

⁴ J Paull, 'Pandemic Elections and the Covid-Safe Effect: Incumbents Re-elected in Six Covid-19 Safe Havens' *Journal of Social and Development Sciences* 2021, pp. 17-24.

Mark McGowan’s Government became the first Labor government in the state’s history to win a majority in the Legislative Council, with 60.3% of the primary vote in that House.⁵ This translates to 22 of the 36 seats (or 61%) in the Legislative Council.⁶

For the purpose of this article, the term ‘committee activity’ will refer to committee inquiries referred by either the Senate or Legislative Council chamber, including select committees, bills, and other matters, as well as the resulting reports. Changes to committee related Standing Orders and committee composition will also be considered. This article will not examine self-referred inquiries or delegated legislation as they do not directly result from referrals by the respective upper house chambers.

PARAMETERS

For this article, the Australian Senate experience will serve as the base of the comparison between the two upper house majorities. It is worth noting here that upper houses generally have term change over dates that differ from their lower house counterparts, with the Senate’s being the 1st of July following the election, and the Legislative Council’s being the 22nd of May following the election. The difference in dates allows for an examination of how those houses behave when an impending majority is known, but not yet in place. In order to accurately compare the before and after experiences, the Senate’s 40th and 41st Parliaments will be broken into four time periods.

Period	Start date	End date	Description
First period	1 July 2002	31 August 2004	Covers the majority of the 40 th Parliament from when the elected Senators were sworn in to the election of the 41 st Parliament.
Second period	1 September 2004	30 June 2005	From the election of the 41 st Parliament to when the elected Senators were sworn in.
Third period	1 July 2005	17 October 2007	Covers the Senate majority of the 41 st Parliament, from when the

⁵ C Madden, ‘Western Australian 2021 election: a quick guide’ Parliament of Australia, 2021. Accessed at: https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/WesternAustralianElection2021, pp. 1, 6.

⁶ Madden, *Western Australian 2021 election*, p. 1.

			government majority began until its prorogation. This article will predominantly focus on this period.
Fourth period	12 February 2008	30 June 2008	From the beginning of the 42 nd Parliament to when the Senate majority ended.

The gap between the third and fourth periods provides for the prorogation of the 41st Parliament, the election in November 2007, the caretaker period and the transition to the new Labor government. The Senate did not sit during this period.

As the Western Australian Legislative Council majority is still ongoing, the time periods for the Western Australian study will be shortened. Coincidentally, the 40th and 41st Parliaments of Western Australia will also be studied, with the 40th Parliament being the government minority before the majority was achieved in the 41st Parliament. In order to accurately compare the two however, as the 41st Parliament is only one year in, this article will focus on the first year of both parliaments; i.e., 2017 and 2021.

EXPECTATIONS

Historically, accountability is imposed on the executive through legislating (that is, scrutinising and amending legislation), and inquiring into government activities and matters of public interest. Traditionally governments dislike both activities, and control of the Senate meant that avoidance of both activities was more than likely.⁷

The Clerk of the Senate during its majority, Harry Evans, believed that in order to dismantle accountability measures such as committee scrutiny of bills, the government had two options: abolish them (for example by restructuring the committee system), or leave them in place but use its majority to ensure that they did not operate.⁸

Many commentators may expect a decrease in committee activity relative to the preceding non-government majority, in part due to the government's wish not to see any inquiries into itself that could embarrass or disrupt the expedited passage of its

⁷ Evans, *The Senate*, p. 202.

⁸ Evans, *The Senate*, p. 202.

legislative agenda. One might expect that a government with control over both houses of Parliament also may not have referred as many matters to committees.

Conventional wisdom may also anticipate that, as well as decreasing, committee activity will change in order for the government to more easily pass its legislative program. It is well known that government majorities and committees with government chairs mean that committees are more likely to deliver reports that support government policy.⁹ This article seeks to test these expectations against data gathered with respect to both the Howard 2007 experience and the more recent McGowan double majority.

AUSTRALIAN SENATE

Howard's legislative agenda

In order to fully appreciate the nature of committee activity during Howard's double majority in the Australian Parliament, it is useful to consider the nature of Howard's legislative agenda. The Howard Government's legislative program for the 41st Parliament consisted of bills that prioritised industrial relations reform, economic security, families, immigration policy and security.¹⁰ The cornerstone of the government's industrial relations reforms was what became known as WorkChoices.¹¹ It was seen as unfinished business for the Howard Government as its 1996 industrial relations legislation was heavily amended by a hostile Senate.¹² WorkChoices extensively overhauled workplace relations systems and included amendments that had previously been rejected by the Senate.¹³

⁹ G Singleton, 'The Senate a paper tiger?' in C. Aulich, & R. Wettenhall (eds), *Howard's Fourth Government*, Sydney: UNSW Press, 2008, p. 85.

¹⁰ M Jeffery, *Parliamentary Debates*, Senate, 16 November 2004, p.2; Singleton, *The Senate a paper tiger?* pp. 75-94.

¹¹ M Groot, 'Missing the wood for the trees: Explaining Howard's 2004 victory' in T. Frame (ed), *The Desire for Change, 2004-2007* Sydney: NewSouth Publishing, 2021, pp. 14-56.

¹² S Prasser, 'Controlling the Senate' in T. Frame (ed), *The Desire for Change, 2004-2007* Sydney: NewSouth Publishing, 2021, p.109.

¹³ Prasser, *Controlling the Senate*, p. 104.

*Committee composition*¹⁴

This legislative agenda coincided with a period of some significant recalibration within the Senate committee system. At the start of the 41st Parliament, the Senate Committee Office was administering eight legislation committees, eight references committees, nine domestic committees, two legislative scrutiny committees and two select committees.¹⁵ The legislation and references committees were paired and structured around particular portfolios, for example, the Community Affairs legislation and references committees. They were charged with inquiring into referred bills, subject matter references, and estimates. This paired committee system, with government-controlled legislation committees and non-government-controlled reference committees, has a long history dating back to 1994.¹⁶

The committee system was used to facilitate the government's legislation program but also to hold governments to account, scrutinise executive actions, review and amend legislation, and directly involve the community in the work of the Parliament.¹⁷

In the August / September 2006 change to the Standing Orders, the government brought about a comprehensive restructure to the Senate committee system by amending Standing Order 25. In restructuring, the government effectively halved the number of committees by combining the legislation and reference committees.¹⁸ Membership of the new standing committees increased from six to eight senators.¹⁹ The amalgamated committees would now be known as legislative and general purpose standing committees.²⁰

¹⁴ For the purpose of this article, the term 'Senate committees' will refer to those staffed and administered by the Senate Committee Office.

¹⁵ Department of the Senate, Parliament of Australia, 'Standing committee system restructured', 2021. Accessed at: <http://navigatesenatecommittees.senate.gov.au/events/standing-committee-system-restructured/58>.

¹⁶ Rosemary Laing, and John Uhr, 'The Senate Committee System: Historical Perspectives' *Papers on Parliament No. 54*. Parliament of Australia, p. 11.

¹⁷ C Evans, 'A Not So Humble Anniversary: A Year of Government Senate Control', Australian Fabians, 2006. Accessed at: <https://www.fabians.org.au/a-not-so-humble-anniversary-a-year-of-government-senate-control>.

¹⁸ Department of the Senate, Parliament of Australia, 'Standing committee system restructured', 2021. Accessed at: <http://navigatesenatecommittees.senate.gov.au/events/standing-committee-system-restructured/58>.

¹⁹ Department of the Senate, Parliament of Australia, *Annual Report 2006-07*, 2007. p. 55.

²⁰ Procedure Committee, Parliament of Australia, 'Restructuring the committee system', 2006, p. 3.

After the restructure, the new committees maintained the same responsibilities as the references and legislation committees combined and retained the requirement that half of the members were to be government members from the previous legislative committees. The remaining positions were to be made up of opposition members, minority parties or independent senators. The Chair of each committee was to be a government senator.

It was believed that this restructure was a demonstration of the invoking of the long-observed principle that committees should reflect the composition of the Senate.²¹ However, it is not clear if this was the case or if it was an example of the government exerting its control over the committee system. It's worth noting, however, that this committee restructure returned the Senate committee system to the structure that existed under Labor prior to 1994.²²

The new committee system was found to still be a more effective accountability forum than the Senate chamber, and had become the focus of accountability efforts.²³ The government defended the new committee system, citing its clear mandate, and said that the same number of bills and matters would be referred to committees, if not more.²⁴

Matters referred

During the Howard double majority era, this newly recalibrated committee system would be put to the test. More than 150 matters were referred to committees during this period as the following table shows.

	First period	Second period	Third period	Fourth period
Matters referred to committees ²⁵	156	67	184	70

²¹ Department of the Senate, Parliament of Australia, *Annotated Standing Orders of the Australian Senate*, 2021, Chapter 5. Accessed at:

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/aso/so025.

²² Department of the Senate, Parliament of Australia, *Annual Report 2005-06*, 2006, p. 3.

²³ Senate, *Annual Report 2006-07*, p. 3.

²⁴ Nick Minchin, 'Letter to the Editor'. *Australian Financial Review*, 26 June 2006.

²⁵ Department of the Senate, Parliament of Australia, 'References to Senate Committees 2002 – 2008'.

This data includes bills, items re-referred after prorogation, but not items that were self-referred by the committees.²⁶ It includes packages of bills as one reference. It represents an almost 18% increase in matters referred to committees from the first period to the third period and is not commensurate with the 5% increase in days between those periods. This confirms the above statement by the government that there would be more matters referred, although it is not clear whether this is by design or accidental.

It is important to note that these figures do not take into account how many were referred automatically under the Standing Orders, or if the committees were given shorter timeframes within which to conduct their inquiries. It also does not take into account the complexity of the bills or matters referred.

In late 2004 at the end of the 40th Parliament, there were 14 non-government controlled Senate inquiries. That number halved to 7 by April 2006.²⁷ The number of rejected or defeated inquiries rose from 7 in the early months of the 41st Parliament, before the government gained control in July 2005, to 14 in the following 8 months.²⁸ While the government claimed it was stopping expensive fishing expeditions by opponents, the list of rejected proposals suggests a desire to avoid issues that could embarrass.²⁹ While this is of course a preference for governments, it is not always possible to restrict unwanted Senate inquiries during a minority government term. Harry Evans confirmed in 2007 that the government had blocked the referral of some bills to committees, and that this occasionally happened with no reasons given.³⁰

Although the number of references to the legislative and general purpose standing committees, 73, was the same in both the 2004-05 and 2005-06 financial years, references to legislation committees increased from 45 to 61, and references to references committees fell from 28 to 12. This is similar however to the figures seen in

²⁶ Department of the Senate, Parliament of Australia, 'Work of Committees'. Accessed at: Parliament of Australia: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/woc/index.

²⁷ F Brenchley and S Morris, 'Canberra keeps tight lid on Senate inquiries'. *The Australian Financial Review*, 20 April 2006, p. 8.

²⁸ Brenchley & Morris, *Canberra keeps tight lid on Senate inquiries*.

²⁹ Brenchley & Morris, *Canberra keeps tight lid on Senate inquiries*.

³⁰ Evans, *The Senate*, p. 207.

2003-04. Sixteen proposed references to references committees were negated in 2005-06 compared to 7 negated in the previous year.³¹

The Senate's Annual Report of 2005-06 noted references committees either had no work or very little work as a result of fewer inquiries being agreed to by the Senate. However, there were more bills referred to legislation committees and less time allowed for these inquiries.³² This trend continued in the following year, which was marked by continuing severely constricted time frames for bills inquiries and a lack of reference inquiries. At one point, for example, the Standing Committee on Economics was conducting 14 inquiries simultaneously.³³

Between 1 January 2004 and 30 June 2005, the average timeframe for an inquiry into a bill was 39 days. Between 1 July 2005 and 30 June 2006, after the Senate majority took effect, the average bills inquiry timeframe had decreased to 27 days.³⁴ The reduced timeframe for inquiries obviously put increased pressure on the committees. For example, in the final sitting week before the autumn 2006 break, the Senate referred 13 bills to committees and sought feedback from stakeholders on all of them before the end of the parliamentary session.³⁵

The Senate's 2005-06 Annual Report noted there was an increase in extensions of time given to Senate committee inquiries to report on bills, from 35 in 2004-05 to 55 in 2005-06.³⁶ Based on this 57% increase in one year, the average reporting deadline increased slightly, to 30 days for bills inquiries, however the number of packages of bills referred also increased, from 59 to 79.³⁷

In some cases, committees were given a week to examine and report on bills, or were referred bills that were not yet before the Parliament. The reduced inquiry timeframes also meant a reduced amount of time available to hear witnesses in order to fully inform the inquiries. The inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 was allocated 5 days, during which the committee was required to

³¹ Department of the Senate, Parliament of Australia, *Annual Report 2005-06*, 2006, p. 52.

³² Senate, *Annual Report 2005-06*, p. 3.

³³ Department of the Senate, Parliament of Australia, *Annual Report 2007-08*, 2008, p. 54.

³⁴ Singleton, *The Senate a paper tiger?* p. 84.

³⁵ Brenchley & Morris, *Canberra keeps tight lid on Senate inquiries*.

³⁶ Senate, *Annual Report 2005-06*, p. 52.

³⁷ Senate, *Annual Report 2006-07*, p. 52.

question 105 witnesses, read 5000 submissions, and was given one day to report.³⁸ The committee examining the complex Telstra legislation, a package of five bills, was given one day of hearings to take place 24 hours after the bill was introduced in Parliament, a timeframe described as unfair and unreasonable for witnesses and those providing submissions.³⁹

The Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 (Cth) was referred to the Employment, Workplace Relations and Education Committee on 10 May 2007, and was given a reporting date of 14 June 2007, but the bill was not introduced into the House of Representatives until 29 May 2007.⁴⁰ This happened 12 times in the 2006-07 financial year.⁴¹

The Senate Standing Committee on Community Affairs was referred provisions of the National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007 on 13 June 2007 for report five days later on 18 June 2007. The Committee recorded that the very short inquiry provided insufficient time to analyse concerns in relation to longer term impacts of the reforms.⁴²

The Clerk of the Senate at the time confirmed that the government had used its majority to restrict the time available for committees to examine bills, with the average time allotted declining from 40 to 28 days.⁴³ While the statistics vary slightly, it is clear to see here, when examining the committee inquiry timeframes, that the government in the Senate used its majority to reduce scrutiny of its legislation to accelerate its passage through the upper house. A reduction of legislative scrutiny is evident in committee reports and Hansard.⁴⁴

Reporting time frames in the lead up to the 2007 election were tighter than ever before, with an average reporting deadline of 14.7 days. Following the start of the 42nd

³⁸ D Humphries, 'Howard's power house'. *Sydney Morning Herald*, 24 June 2006, p. 32.

³⁹ K Lundy, *Parliamentary Debates*, Senate, 12 September 2005, p. 81.

⁴⁰ Senate, *Annual Report 2006-07*, p. 52.

⁴¹ Senate, *Annual Report 2006-07*, p. 52.

⁴² Standing Committee on Community Affairs, Parliament of Australia, *Inquiry into National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007*, p. 1.

⁴³ Evans, *The Senate*, p. 205.

⁴⁴ Senate, *Annual Report 2006-07*, p. 60.

Parliament, bill inquiries referred to committees had an average reporting deadline of 49 days, longer than at any time since 2003-04.⁴⁵

This data reveals an overall trend in how references to committees were impacted by the transition to a government majority in the Senate. There was a shift from inquiries into matters referred by the Senate to examination of bills, with more bills referred, and tighter reporting timeframes.⁴⁶ This demonstrates a wish for the government's legislation to be expedited without any inquiries into public interest or government matters. These bills also came under the government's legislative agenda for the 41st Parliament, all being significant and contentious bills, but with considerably reduced time frames for examination and report. This trend detracts from the expectations outlined above, as a decrease in committee activity was predicted but this change in committee activity was not.

Select committees

Select committees differ to standing committees in that they are not permanent, they are created by a resolution to inquire into a specific topic, and cease to exist once they have reported. It is necessary to examine select committees as well as standing committees in order to accurately examine committee activity during upper house majorities.

	First period	Second period	Third period	Fourth period
Select committees established⁴⁷	6	1	0	6

Only one select committee operated during the Senate majority, which was established before the majority was sworn in. The Select Committee on Mental Health was established in March 2005, and reported in April 2006.⁴⁸ No select committees were established during the government majority in the Senate. The 2005-06 financial year was the first since 1996-97 during which there was no appointment of a select

⁴⁵ Senate, *Annual Report 2007-08*, p. 48.

⁴⁶ Senate, *Annual Report 2006-07*, p. 3.

⁴⁷ Department of the Senate, Parliament of Australia, 'Select Committees'. Accessed at: [Navigate Senate Committees: http://navigatesenatecommittees.senate.gov.au/committees#select](http://navigatesenatecommittees.senate.gov.au/committees#select).

⁴⁸ Department of the Senate, Parliament of Australia, 'Select Committee on Mental Health' 2021. Accessed at: <http://navigatesenatecommittees.senate.gov.au/committees/c203--mental-health>.

committee.⁴⁹ Select committees and other inquiries do not fit with the government's legislative priorities, especially while there were fewer constraints on its legislative scrutiny.

The appointment of 6 select committees at the beginning of the 42nd Parliament is an indication that committee activity in the Senate was increasing and therefore returning to normal following 3 years of a government majority.

Committee reports

	First period	Second period	Third period	Fourth period
Committee reports tabled⁵⁰	255	151*	323	48

*31 of these were presented during prorogation.

This data includes all committee reports tabled, including those requesting extensions of time. It represents a 26% increase in reports tabled in the first period to the third period, accounting for the increase in bills inquiries discussed previously and the resulting increase in requests for extensions of time. This increase in committee reports could indicate a higher level of committee activity, and disprove the hypothesis that upper house committee activity decreases in a government majority. However, it doesn't take into account the uneven workloads experienced by the committees or the number of requests for extensions of time. It does show that committee reports increased as the government used its majority to expedite the passage of its legislation through the Senate.

The government response rate to Senate committee reports declined from 39 in 2005 to 29 in 2006.⁵¹ However, after the committee restructure and the increase in referral of bills for inquiry, the number of government responses increased to 45 in 2007, following the pattern of an increased number of committee reports being tabled. This data is clearly in contradiction to the earlier expectation that committee activity would decrease. Although government responses may not be an indicator of committee

⁴⁹ Senate, *Annual Report 2005-06*, p. 63.

⁵⁰ Department of the Senate, Parliament of Australia, 'Register of Senate Committee Reports' 2021,. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/register.

⁵¹ Department of the Senate, Parliament of Australia, 'General statistics 2001 – 2011'. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Statistics/Senate_StatsNet_Classic/Consolidations/general2001.

activity, they provide important insight into how the government viewed the accountability mechanism that is legislative scrutiny by Senate committees.

Estimates hearings

Estimates hearings allow senators to scrutinise how the government has spent tax payers' money, and any future plans for government spending. Since estimates hearings began in 1970, they have been a major accountability mechanism of the Senate, providing an opportunity to question ministers and officials about any activity of government departments and agencies.⁵²

Estimates are referred by the Senate to the eight legislation committees for examination and report twice a year, as they are contained in the main appropriation bills as part of the budget, and then in the additional appropriation bills later in the financial year.⁵³ This process differs to the Western Australian Legislative Council, which has a dedicated estimates committee. This will be discussed further in the WA section of this article.

The effect of government control of the Senate was well demonstrated during the February 2006 estimates hearings, which began with a declaration by the government that it had instructed all officers not to answer any questions about the Australian Wheat Board oil for wheat scandal.⁵⁴ The only reason given was that the Cole Commission was examining the affair, but given that such commissions are not courts and matters before them had previously been subject to questioning, it is believed that this was simply a refusal to answer.⁵⁵ No remedial action was taken that would normally take place because of government control over the Senate.

In May 2006 the government effectively decreased the time allotted for that month's estimates hearings by two days, and these hearings also were marked by several significant refusals to answer questions.⁵⁶ Statistics on the number of delayed or

⁵² Evans, *The Senate*, p. 210.

⁵³ Department of the Senate, Parliament of Australia, 'Senate Brief No. 5: Consideration of Estimates by the Senate's Legislation Committees'. Accessed at: https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief05.

⁵⁴ Evans, *The Senate*, p. 212.

⁵⁵ Evans, *The Senate*, p. 212.

⁵⁶ Evans, *The Senate*, p. 214.

unanswered questions were not recorded or collected for a sufficient time period to provide an accurate comparison, but the then Senate Clerk Harry Evans confirmed that they were becoming more common during the Senate majority.⁵⁷

Estimates hearings play a central role in parliamentary and executive accountability by providing a channel for government organisations to be held accountable for the decisions made in relation to the use of funds appropriated to them.⁵⁸ The trend away from inquiries into matters of public interest seen in the 41st Parliament further emphasised the estimates hearings as the most important accountability forum, despite the increased number of refusals to answer or provide information.⁵⁹

Standing order changes

In addition to the important role of Senate estimates, in 2005, Standing Order 74 was amended to introduce a new accountability mechanism to address the late provision of answers to questions taken or placed on notice during estimates hearings.⁶⁰ The amended standing order enabled a senator to ask the relevant minister in the chamber, 30 days after the answer is due, why an estimates question on notice has not been answered. While it was used during the 41st Parliament, estimates reports and questions at hearings also continued to highlight concerns about the provision of answers after the due date.⁶¹

Standing Order 25 was also significantly amended to allow for the comprehensive committee restructure, discussed previously.

Howard double majority experience – Challenging expectations?

Overall, an immediate decline in committee workload was reported once the government majority was sworn in, but workload pressures continued for a couple of committees that received a disproportionate share of references. The Department of

⁵⁷ Evans, *The Senate*, p. 214.

⁵⁸ G Bowrey, C Smarks, and T Watts, 'Financial Accountability: The Contribution of Senate Estimates. Australian Journal of Public Administration', 75(1) 2016, p. 30.

⁵⁹ Senate, *Annual Report 2006-07*, pp. 3-4.

⁶⁰ Senate, *Annual Report 2006-07*, p. 55.

⁶¹ Senate, *Annual Report 2006-07*, p. 55.

the Senate reported staff were working nights and weekends to meet the reporting deadlines as some bill inquiries had time frames of a week or less.⁶² This article predicted the decline in committee activity but this change in committee activity was not expected.

During the government majority in the Senate there was a shift from committees being referred inquiries into public interest or government matters to bills (which were examined with shorter time frames). Although this led to legislation committees having a heavy workload, this period was also known as the ‘calm before the storm’ as the 2007 election recess drew to a close.⁶³ Committee workload surged in 2008 following the return to the status quo in the Senate – that is, no party holding a majority.⁶⁴

LEGISLATIVE COUNCIL OF WESTERN AUSTRALIA

McGowan’s legislative agenda

Fast forward 13 years and another Australian Parliament now finds itself in the similarly unique circumstances of commanding the numbers in both the lower and upper houses. Going into the 41st Parliament, the McGowan Government’s legislative priorities consisted of electoral reform, Aboriginal cultural heritage legislation, ongoing COVID-19 public health measures, security and anti-motorcycle gang crime legislation, and protecting its position against mining magnate Clive Palmer and the federal government.⁶⁵ Some of these bills had lapsed at the end of the previous Parliament. By the end of the 2021 sitting year, all of these bills had been introduced and passed.⁶⁶

Within six months of the McGowan Government being re-elected, the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 was introduced and two months later passed, abolishing the group voting ticket and full preferential voting

⁶² Senate, *Annual Report 2005-06*, p. 65.

⁶³ Senate, *Annual Report 2007-08*, p. 3.

⁶⁴ Senate, *Annual Report 2007-08*, p. 3.

⁶⁵ K Beazley, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 29 April 2021.

⁶⁶ Parliament of Western Australia ‘Current Bills’. Accessed at: <https://www.parliament.wa.gov.au/parliament/bills.nsf/screenWebCurrentBills>.

system on which the Legislative Council was elected.⁶⁷ This also means that the case of one member of a micro party being elected on just 98 votes is unlikely to happen again. While not directly related to the impact on committee activity, this demonstrates that certain events can be expected following largely one sided elections, giving rise to the idea of patterns emerging amongst those jurisdictions that have experienced them.

*Committee composition*⁶⁸

In order to examine any patterns emerging amongst jurisdictions that have experienced double majorities, it is important to examine the composition of that jurisdiction's committees. Of the Legislative Council's eight standing committees, only one was chaired by an opposition member during the 40th Parliament, the Standing Committee on Uniform Legislation and Statutes Review.⁶⁹

For the 41st Parliament, government chairs were appointed for five committees. The Uniform Legislation Committee retained an opposition chair, and while the Standing Committee on Estimates and Financial Operations had a government chair during the 40th Parliament, its practice is to have a non-government chair. The Committee reverted to this practice for the 41st Parliament as a result of a deal being made between the government and the opposition. This deal will be discussed further in the Estimates hearings section. The Estimates and Financial Operations Committee also is required to have a non-government majority under the Standing Orders.

The other committee with an opposition chair is the Joint Audit Committee, however this consists of members of the Estimates Committee and the Legislative Assembly

⁶⁷ Parliament of Western Australia, 'Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021'. Accessed at: <https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=8244BB10DC5E17A0482587500041A383>.

⁶⁸ For the purposes of this article, the term 'Legislative Council committees' will refer to standing, select, and joint committees administered and staffed by the Legislative Council Committee Office, as well as the Legislative Council Standing Committee on Procedure and Privileges, which is not administered and staffed by the Committee Office. Joint committees administered by the Legislative Assembly will not be included.

⁶⁹ Department of the Legislative Council, Parliament of Western Australia, 'Standing Committee on Uniform Legislation and Statutes Review'. Accessed at: <https://www.parliament.wa.gov.au/Parliament/commit.nsf/WCurrentNameNew/BF7B2C9193BDF5BE48257831003B03AB?OpenDocument#current>.

Public Accounts Committee, and is required under the Standing Orders to be chaired by the chair of the Estimates Committee.⁷⁰

Referral of matters

	40 th Parliament	2017	2021
Referral of matters to committees ⁷¹	42	7	7

These figures include bills, bills re-referred after prorogation, select committees, and inquiries. Unlike the Australian Senate, bills are not automatically examined by committees. In the first year of the 40th Parliament, five uniform bills were automatically referred to the Standing Committee on Uniform Legislation and Statutes Review under Standing Order 126, one was referred to the Standing Committee on Legislation, and one select committee was established.⁷² The Legislation Committee was referred 13 bills in the remainder of the 40th Parliament.⁷³ In the first year of the 41st Parliament, six uniform bills were automatically referred to the Standing Committee on Uniform Legislation and Statutes Review, and one select committee was established.⁷⁴ No bills were referred to the Standing Committee on Legislation in the first year of the government majority. A total of six bills, predominantly the bills making up the government's main legislative agenda, were attempted to be referred to the Legislation Committee in 2021 by non-government members, motions which were

⁷⁰ Department of the Legislative Council, Parliament of Western Australia, 'Standing Orders', p. 126. Accessed at: [https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-lc-standing-orders/\\$file/Standing%20Orders%20September%202021.pdf](https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-lc-standing-orders/$file/Standing%20Orders%20September%202021.pdf).

⁷¹ Department of the Legislative Council, Parliament of Western Australia, 'Work of the Legislative Council in 2020'. Accessed at: [https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-work-of-the-lc-2020/\\$file/LC%20Statistical%20Report%202020.pdf](https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-work-of-the-lc-2020/$file/LC%20Statistical%20Report%202020.pdf)

⁷² Legislative Council, *Work of the Legislative Council*, p. 41.

⁷³ Department of the Legislative Council, Parliament of Western Australia, 'Standing Committee on Legislation'. Accessed at: <https://www.parliament.wa.gov.au/Parliament/commit.nsf/WCurrentNameNew/100B093DBC8DCE5A48257831003B03A5?OpenDocument#previous>.

⁷⁴ Department of the Legislative Council, Parliament of Western Australia, 'Legislative Council statistics'. Accessed at: Parliament of Western Australia: <https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/content/legislative-council-publications-legislative-council-statistics>.

then defeated by the government.⁷⁵ This number is up from the two that were defeated in 2017.⁷⁶

The fact that the Legislation Committee have not been referred any bills, and the fact that the time frame allotted for the Uniform Legislation and Statutes Review Committee's bill inquiries is generally required to be 45 days under the Standing Orders, makes it difficult to determine if the Legislative Council is following the Senate's decreased time frame trend.⁷⁷ If the shift from subject matter inquiries to examination of bills as seen in the Senate example is present in the Western Australian Legislative Council, it is not yet evident. The trend was occurring in the Senate within the first year of the government majority but this is not occurring in Western Australia as of 2021.

Select committees

	40th Parliament	2017	2021
Select committees established ⁷⁸	6	1	1

One select committee was established in the first year of the 40th Parliament, the Select Committee into Elder Abuse, chaired by an opposition member. The Legislative Council went on to establish another four select committees during the 40th Parliament, all chaired by opposition or cross bench members.⁷⁹ The Joint Select Committee on Palliative Care in Western Australia was established by both Houses in the final year of the 40th Parliament, administered and staffed by the Legislative Council Committee Office, and was chaired by a government member of the Legislative Assembly.⁸⁰

⁷⁵ S Thomas, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 24 June 2021, p. 2026; T Sibma, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 26 October 2021, p. 4727; N Goiran, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 30 November 2021, p. 6019; N Goiran, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 15 December 2021, p. 6427. N Thomson, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 8 December 2021, p. 6228.

⁷⁶ Legislative Council, *Work of the Legislative Council in 2017*.

⁷⁷ Legislative Council, *Standing Orders*, p. 67.

⁷⁸ Department of the Legislative Council, Parliament of Western Australia, 'Work of the Legislative Council in 2020', p. 9. Accessed at [https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-work-of-the-lc-2020/\\$file/LC%20Statistical%20Report%202020.pdf](https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-work-of-the-lc-2020/$file/LC%20Statistical%20Report%202020.pdf)

⁷⁹ Legislative Council, *Work of the Legislative Council in 2020*, p. 10.

⁸⁰ Legislative Council, *Work of the Legislative Council in 2020*, p. 10.

Generally, non-government controlled select committees or inquiries are established in chambers with government minorities either to foster good will and/or as part of a deal making process. As seen in the Senate example, when the government has the numbers in the chamber, it can negative or refuse to agree to any proposals for a select committee. Interestingly, this was not the case in the Western Australian Legislative Council, with the Select Committee into Cannabis and Hemp established with a cross bench member as chair in October 2021.⁸¹ In 2021 there was one motion to establish a select committee that was withdrawn, to be discussed in the Estimates hearings section.⁸² This contradicts the example set by the Senate, possibly indicating that there is no pattern forming in upper house majorities, at least not one being followed by the Legislative Council of Western Australia.

Committee reports

	40th Parliament	2017	2021
Committee reports tabled⁸³	107	18	14

These figures include all committee reports, including those requesting extensions of time. The data represents a 22% decrease in committee reports from the first year of the 40th Parliament to the first year of the 41st Parliament, possibly indicating a decrease in committee activity following the transition to the government majority. This decrease can also be accounted for by considering non-government referred matters, a decrease in self-referred inquiries and in bills referred to the Legislation Committee.

All but one government response requested by Legislative Council committees were received in the 40th Parliament, with the one not being provided due to prorogation.⁸⁴ The high government response rate could continue, either because the new majority has not or will not affect the provision of government responses, or because the

⁸¹ Department of the Legislative Council, Parliament of Western Australia, 'Select Committee into Cannabis and Hemp', Accessed at: <https://www.parliament.wa.gov.au/Parliament/commit.nsf/WCurrentNameNew/0496E1B11C984DBD4825876D007EF670?OpenDocument#current>.

⁸² S Ellery, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 11 May 2021, p. 386.

⁸³ Legislative Council. (2021). *Legislative Council statistics*.

⁸⁴ Department of the Legislative Council, Parliament of Western Australia, 'Tabled Papers - Legislative Council'. Accessed at: <https://www.parliament.wa.gov.au/Test/Tables.nsf/screenAdvancedSearchLC>.

majority of the committees are government controlled there is a likelihood that the committee findings and recommendations are sufficiently government-aligned. However, it could also increase or decrease. The provision of government responses does not pertain directly to committee activity but is worthwhile to note as a basis of comparison for the remainder of the current parliament.

Estimates hearings

In the weeks before the new Legislative Council members were to be sworn in, a Liberal party member moved a motion to establish a select committee into the transparency and accountability of government.⁸⁵ The motion was later withdrawn, as the major parties agreed to the Estimates Committee and the Uniform Legislation and Statutes Review Committee being chaired by opposition members.⁸⁶

Of these two committees now chaired by members of non-government parties, the Uniform Legislation Committee historically has predominantly inquired into and reported on matters relating to bills declared to be uniform by the government.⁸⁷ This leaves the Estimates Committee, which has the power to investigate any matter relating to the financial administration of the state.⁸⁸

In contrast to the Senate's experience of estimates hearings during a double majority, the WA Legislative Council Standing Committee on Estimates and Financial Operations did not report any flat refusals to provide information in its first budget hearings since the election. It stated that it was satisfied that its consideration of the 2021-22 estimates positively contributed to the scrutiny of government and its operations. It is yet to find that it has been dissatisfied with the level of non-provision of information.⁸⁹ No significant differences were recorded in relation to the new government majority in the Legislative Council.⁹⁰

⁸⁵ N Goiran, *Parliamentary Debates*, Legislative Council, Parliament of Western Australia, 5 May 2021, p. 152.

⁸⁶ Ellery, *Parliamentary Debates*, p. 386.

⁸⁷ Legislative Council, *Standing Orders*, p. 125.

⁸⁸ Legislative Council, *Standing Orders*, p. 123.

⁸⁹ Standing Committee on Estimates and Financial Operations, Parliament of Western Australia, 'Consideration of the 2021-22 Budget Estimates' p. 13.

⁹⁰ Committee on Estimates and Financial Operations, *Consideration of the 2021-22 Budget Estimates*.

It is important to mention here that the Legislative Council's first estimates hearings during a double majority cannot be directly compared with the Senate estimates hearings of 2006, as the Senate's double majority was already well established by 2006. It does, however, provide an important basis for comparison with future estimates hearings in WA. It is also vital to note here that as the Senate does not have a dedicated estimates committee as the Legislative Council does, procedurally the two jurisdictions' experiences with estimates hearings will differ. The Senate's portfolio (or legislation) committees examines estimates relating to their respective portfolios, whereas the Legislative Council's Estimates Committee examines estimates relating to any and all portfolios.

As stated previously, statistics on answers and information provided during Senate estimates were not kept at the time focused on in this article. In order for an in depth comparative study of the effects of a government majority on upper house estimates hearings to take place, information pertaining to answers provided, non-answers provided, and answers not provided by government would need to be collated. The Legislative Council also does not collect this data.

Standing order changes

Through the Legislative Council's Procedure and Privileges Committee, the government made changes to the Standing Orders in the first year of its double majority, however, the amendments were procedural in nature, predominantly impacting the procedures in the Chamber, and did not significantly affect the Legislative Council's committee system.⁹¹ This is clearly in contrast to the committee restructure that occurred in the Senate in 2006, however as with the estimates example, the Senate's government majority was well established by 2006, whereas the Legislative Council's government majority is still in its first year.

⁹¹ Standing Committee on Procedure and Privileges, Parliament of Western Australia, 'Review of the Standing Orders'. Accessed at:

[https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/B79C1B7380770AD24825874400094593/\\$file/Report%2064%20web.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/B79C1B7380770AD24825874400094593/$file/Report%2064%20web.pdf)

McGowan double majority experience – Not following the trend?

Examining the Western Australian Legislative Council Committee Office's first year of an upper house majority reveals committee activity on a level comparable with the previous Parliament. If the McGowan Government is following the trend in the Legislative Council set by the Howard Government in the Senate, it was not evident in 2021. Committee activity has only very slightly decreased, not by the significant amount as seen in the Senate, with the Legislation Committee receiving no referral of bills in 2021. However, the fact that a select committee was established, the Estimates Committee reported no significant refusals to answer questions, but all legislative priorities were passed indicates that committee activity does not need to be significantly decreased for the government to expedite the passage of its legislative agenda, nor does there seem to be a desire to actively decrease committee activity.

There is no evidence in 2021 of the preference for bills inquiries over subject matter inquiries, the trend set by the Senate. The results of the Western Australian study pull against the previously stated expectations of decreased committee activity and demonstrate a lack of formation of a pattern within the two studied jurisdictions that have experienced double majorities. These results are surprising due to the widespread expectation that governments with such an overwhelming mandate and control over both houses would take advantage of the majority to accelerate the passage of its legislation. The Western Australian example has proven that this is not necessarily the case at least in the first year, as the McGowan Government's legislation was passed easily without any significant changes to Legislative Council committee activity.

CONCLUSION

This article has challenged the conventional wisdom that governments with popular political mandate and control over both houses take advantage of this position when interacting with or participating in the work of parliamentary committees. For example, it was expected that committee activity would decrease with a government majority in the Senate because governments in this position would be expected to take advantage of the majority and attempt to bypass any form possible of legislative scrutiny or accountability imposed on it from the committee system. However, from the data obtained and presented, it seems at first glance that for the most part, committee activity actually increased with the government majority, at least in the Senate example. The government took advantage in a different way; by restructuring the committee system and shortening inquiry time frames it was able to accelerate the passage of its legislative program. The data, however, does not take into account the

disproportionate workloads amongst different Senate committees, or the fact that a decrease in committee activity was actually reported by the Department of the Senate.

The Senate experience was then compared to the Legislative Council of Western Australia to assess if similar behaviours were observed or followed in the first year of its government majority. This does not seem to be the case. The government was able to pass its legislation easily in its first year of a double majority without significantly decreasing committee activity as the Senate did. This disproves the initial hypothesis that committee activity decreases in jurisdictions with a double government majority and reveals that the Western Australian Legislative Council, at least in its first year of a government majority, is not following the trend set by the Senate.