

The Future of Senate Committees: Challenges and Opportunities

CHAIR (Ms WEEKS) — I am the Clerk Assistant (Table) in the Senate, and it is my pleasure to welcome the panellists 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 panellists. 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 earlier 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 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 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 need 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 gets, 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 to 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 proactive 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 proactive—exceptionally proactive 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 proactive.

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?

QUESTION (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.

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?

QUESTION — 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.

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 round-table 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 round-table 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 a 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.

QUESTION — 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?

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.

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 A-PAC (Australia's Public Affairs Channel). 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 is 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 (CIR). 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.

CHAIR — 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.

QUESTION (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.

QUESTION (Ms 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.

QUESTION (Ms MADDEN) — A democratic poll like a 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 the Procedure Office for organising such a wonderful conference.