

Work of Senate Committees: Minor Party Perspectives

CHAIR (Mr HALLETT) — My name is Brien Hallett and I am the Usher of the Black Rod, one of the Clerk Assistants working in the Senate department. It is my very great pleasure to introduce this session. Before lunch, a couple of our speakers articulated something that I have often wondered, and that is how senators who are not members of the major parties manage to get across the complexity of legislation that the Senate deals with. I am looking forward to this session very much. It is my great pleasure to introduce two former senators: Mr Andrew Bartlett and Ms Dee Margetts. We will start with Mr Bartlett.

Mr BARTLETT — Thank you very much and thanks to all of you for coming along and showing an interest in this very important topic. I would like also to acknowledge the traditional owners of the land we are gathered on and the presence of Rosemary Laing, the Clerk of the Senate. I have many regrets in not being in the Senate anymore, but one of them is not being able to spend much time under the clerkship of Rosemary. I endured many years of life under Harry Evans. He was a fabulous Clerk, but a fresh regime would have been wonderful to experience more of. But, anyway, you cannot have everything.

This session is about the minor party perspectives on the work of Senate committees. I would firstly like to say that, whilst in my period of time in the Senate I was in the Australian Democrats and, as some of you may know, I am now a member of the Greens and was a Greens candidate in the last election—an unsuccessful one, I might say—I am not sure I like the term ‘minor party’. ‘Smaller party’ perhaps or ‘harder working’, as was probably alluded to in the introduction, by virtue of having smaller numbers, but whilst it is, I guess, a comparison to the term ‘major party’—Labor and Liberal being seen as the major parties and everyone else as minor—‘minor party’ is, particularly in the context of the Senate, probably not the most accurate term. That is not meant to big note; it is really just to emphasise the importance of each individual senator, including independent senators. It is not a minor role. For those of you who have heard the contributions throughout today, each of the individual perspectives of people you have heard will have made it very clear that each individual senator, whatever size party they are in—even if they are a party of one or an independent—can play a major role.

It is a very apt day for this particular conference and this particular segment. Some of you may know, if you have had the opportunity to hear what is going on in the outside world today, that the High Court brought down a very significant decision today in an appeal over a particular aspect of the Migration Act. This is, of course, an academic occasion, not a party political occasion, so I am being purely objective in my

commentary here. The court in its judgment referred specifically to six pieces of legislation which were passed one after the other in September 2001, all of which were assented to and, in most part, came into operation on the same day. What the judgment does not say—because it is not relevant for the judgment, but it is very relevant for this conference—is that every single one of those pieces of legislation was forced through the Senate without being sent to a Senate committee, against the objections of some of us in what might be called the minor parties of the time.

As I just heard Senator Coonan, I think it was, say with regard to the value of the scrutiny process, it is not just about ‘my policy view didn’t get up and yours did’; it is about what you find when you look at something properly. As Senator Coonan said—and I hope I am quoting her correctly—you often find when you look at it that there can be many unintended consequences. What happened with those pieces of legislation is that the Senate did not look at them. We did not get the chance to look at them. Senate committees were expressly prevented, by a decision of the majority of the Senate, from looking at them. That is what happens. It can take a long time—and we will leave aside comments, important as they are, about the people who have been subject to injustices as a consequence—but, purely from a legislative point of view, if you do not do your job properly in the first place it is not that surprising that some time down the track the courts, when they look at it, will say, ‘Hang on; you’ve got this wrong’. It does not matter whether or not you agree with the policy; it is the process. I will not get all ‘legal’ on you, but the courts found that the process that was followed was not lawful.

All of the expense of that—and we will have fingers being pointed and people being blamed for the cost of that—would have been saved if we had looked at it properly in the first place. I am not saying that Senate committees get everything right all the time and I am not saying that, even when people do point out potential problems, politics do not operate in a way in which things are passed, but it as sure as hell increases the chances that, even if you disagree with the policy aim, it will at least be put in place in a way that is going to be lawful.

We heard the question earlier about the Magna Carta. One of my more ironic experiences in this place was when I took a group of people on a tour of Parliament House. They, under this law, had been locked up on Nauru for four or five years and were finally allowed in as refugees. They had a guide. As you may know, a very rare and very valuable copy of the Magna Carta is here. The guide said, ‘This is the Magna Carta. It is the foundation stone of our democracy and ensures that people cannot be locked up without some form of legal process’. I am not sure how irony translates into Farsi for people from Afghanistan, but I found it ironic. It is an example of what happens of when you do not look at the detail to start with.

I emphasise the point because it is significant about this chamber as a legislature. Most of the focus on what happens in Parliament House, including, sadly, in the Senate, particularly with regard to folks in the press gallery, is on politics, including the politics of what is passed and what is not passed, and all those sorts of things. There is not really very much understanding of the primary purpose of particularly the Senate and, within that, the Senate committee process, which, as we are acknowledging here today, is as the law-making body. It is not the politics behind the laws; it is the laws and the bits of paper that the courts then interpret, that the governments administer and that the law enforcement agencies enforce. They all start here with the parliamentarians, and particularly the senators, deciding whether something should become law. We really do not have enough recognition of that understanding. In that sense, I wish it were more like the US where, instead of talking about politicians so much, they call people lawmakers or legislators. That, to me, is the primary role of most of us and that is the core value of the Senate committee process. I think you got a lot of that from the last two speakers.

We can go further back. Part of legislation that was forced through without any scrutiny in the space of a day back in 2001 was built on a similar thing that happened in, I think, 1992 with regard to the area of mandatory detention. A High Court decision happened which the government of the day did not like—it was a Labor government, just in case people think I am picking on one party over another—and the government of the day said, ‘We can’t have that’. They rushed through a piece of legislation relating to mandatory detention the day after the court decision to retrospectively validate what would otherwise have been the unlawful detention of people. It was not until 2004 that we finally had a definitive High Court ruling that found that the consequences of the legislation that was passed without being looked at was that people could be locked up forever without any form of charge or trial. That law still stands. Again, I think that was not intended by the Parliament of the day, but it was not examined.

There is another example. This might not sound like it has a lot to do with a minor party perspective, but it does in the sense of the role of smaller parties—not just about the balance of power role and the balance of power when both major parties disagree and the smaller party on the crossbenches decides whether something is passed or not. More often than not, the two larger parties will agree and the smaller party’s view does not matter at all, and reasonably often all parties agree. A lot of things are not actually that controversial. A lot of things, including the legislative scrutiny committees that you heard about, operate in a non-partisan way. The key thing is that they have to get to those committees in the first place and the Senate has to show respect for what those committees find. That, to me, is the key purpose of smaller parties—parties that are not caught up in the day-to-day battle of being in government or trying to get into government. They are trying to put the focus back on the role of the Senate: to scrutinise the reality of what is being put into law.

I will give one other example. In smaller parties you are often talked about as pushing minority interests. Sometimes that is part of your role—to focus on those issues that, for whatever reason, others are not focusing on or do not agree with. The example I will give is from a legislative committee that I was involved in and that, again, happens to involve migration law. There was some Senate committee scrutiny of the relevant legislation and, again, this emphasises why the whole process can be so valuable, and often you cannot tell how and when. The piece of legislation related to character and conduct provisions of the Migration Act. I think it was examined in 1997 or 1998, and it was passed. I did not support it. I complained about it bitterly, but—democracy—in the end the majority won. But in the process of a Senate committee inquiry you get to hear evidence from a range of people who have, in many cases, expert opinion and from government officials and department officials. Because I was unhappy about this piece of legislation, I asked a fair few questions about what it meant and how it was going to apply—what does this section mean, and how are you going to interpret it? They gave all their answers.

This was nothing that could have been predicted, but it just so happened that in subsequent court hearings 10 years later, in 2008, in a case you might have heard of involving a man called Mohamed Haneef, the court ruled—I think quite wisely—that that power was used wrongly and unlawfully by the then minister. In making that judgment—and I am not saying that this is the sole reason they came to that view—they quoted the answer given by department officials to that Senate committee inquiry 10 years earlier about what the intent of that particular section was. They contrasted that with what the minister was saying in 2007 about how they were applying it. I am not saying that that is the only reason that Mohamed Haneef won his court case. I suspect, given the case in question, that quite a few arguments could be put. But it gives an example of the importance of getting things on the public record about what is in these laws, what they are meant to be for and how they are supposed to be applied, because they can and do affect everybody—often unexpectedly. That is why you need to make sure that, whether or not you like the end product, at least some proper scrutiny is given to it. I think that is the role of every senator, and a lot of senators—including in major parties—see that as their role.

In closing, I will give the contrast of the period when the former Howard Government had a majority in the Senate for three years. They prevented a lot of legislation being looked at by committees or, just as effectively, they allowed it to go to committees but provided virtually no time for things to be looked at. Even within that process, some of the government's own senators recognised the importance of the committee process and did try to use it to ensure that there was at least some proper scrutiny. It was only because of scrutiny of one piece of legislation—again, relating to migration issues and to

do with Nauru—that enough government senators were convinced that this was unjust and unworkable. That was, I think, the only piece of legislation in that period of the government that did not get through because government senators indicated that they would not support it. Again, it shows what can happen when the standards of and respect for the Senate decrease.

We had a circumstance which, again, I think was worthy of criticising, in regard to the Northern Territory intervention. I am sure all of you would have heard of that legislation—emergency, urgent; that is all fine—in response to the report *Little Children Are Sacred*, regarding child abuse in the Northern Territory. It was only after enormous outrage that the government agreed to allow the Senate one day to look at that legislation, which overrode Northern Territory law, overrode the Racial Discrimination Act and did a lot of other things. Because the government controlled the Senate committee processes, used their majority and had such contempt for the importance of the Senate, they even used their numbers to prevent the authors of the *Little Children Are Sacred* report from giving evidence to the committee that was looking at the legislation that was supposedly in response to the report.

I guess that is a political point but it is not meant to be. It is a point about what happens when standards drop and when there is contempt for the Parliament and the Senate. All of us are elected here—I am not at the moment. We are all politicians and politics apply, and I do not suggest that should not happen. But we do have to operate within a framework where some basic standards apply. If we do not, the losers are the public because it is the public who are subjected to the laws that are passed without proper scrutiny. So it is actually a point about a matter of public interest and not a political point. That is a particular focus for minor parties because, by definition, they are not in government. I hope the value of this conference today is that it reinforces the fact that it is of concern to people, whatever size the party they are in. Hopefully, it is of concern to you, the public, as you have come along today to show an interest in the Senate. It is a message that I think is pretty essential: we need to communicate more widely.

Ms MARGETTS — I also would like to acknowledge the traditional owners. I was both surprised and delighted to be invited to participate in today's conference; thank you very much, Rosemary. Before I begin my main theme today, I would like to give a couple of examples of how, during my time in the Senate, WA Greens senators made some impact on the Senate committee process. When I first arrived in the Senate in 1993, Prime Minister Paul Keating invited Christabel Chamarette and me to meet with him. In the first five minutes, he was reasonably genial. He then said that he assumed that Christabel would not continue with her motion to enable the Senate, the media and the community to have time to assess government legislation. When Christabel said that she would continue, he threatened to call a double dissolution election. He was surprised

when we did not respond negatively so he then indicated that, if there were a double dissolution election, one of us would lose our seats, to which we replied: ‘So what’. The result was that Christabel succeeded and the Senate improved its ability to use its committee processes to check out legislative problems. Christabel also assisted in enabling the Senate to operate committees without their necessarily being controlled by the government. In the mid-1990s, as a Greens senator from the other side of the country with considerable electorate, legislative and committee work commitments, I asked that the Senate enable its members to attend committees by video or phone links. Fortunately, Michael Beahan, the then President of the Senate, supported my request and the change was made.

Today, however, I will be explaining how and why I have spent years since my Senate term, investigating some of the problems the Senate helped to create when both major parties supported one of the most significant socioeconomic policy changes without bothering to find out what impact such a major policy direction would have, and is still having, both on the community and on Australia’s democratic processes.

My theme today is national competition policy (NCP). What happens to committee processes when both major parties agree to a highly controversial policy change that the minor parties oppose? In my first Senate speech in August 1993, I expressed concern about the potential impacts of corporate globalisation in the Australian community as a result of Australia’s signing up to the Uruguay Round of GATT (General Agreement on Tariffs and Trade). The impacts on Australia of corporate globalisation were not just about global so-called free trade but also about enforcing a version of corporate globalisation into the domestic economy. In the late 1980s, Paul Keating commissioned an Industry Assistance Commission inquiry, inviting corporations to come together with the economic rationalist elements of federal bureaucracy to find ways of reducing their government non-tax costs in order to increase their so-called international competitiveness.

The corporate wish lists, along with the economic rationalist goals of part of the federal bureaucracy resulting from this inquiry, became the basis of the Hilmer inquiry and national competition policy. Apart from pushing to privatise many government services, NCP was not actually about increasing general competition; it was based on enabling more market dominance by corporations. Despite concerns from the state representatives that the agreement would impact on ordinary government activities, the federal Labor government introduced the Competition Policy Reform Bill in late March 1995, before they finally managed to get the COAG NCP agreements signed in April 1995 through the use of promised tranche payments—an interesting issue.

For those who think the COAG NCP agreements were based on an understanding and support of the states and territories, the June 1996 article in the *Australian Journal of Public Administration* by Susan Churchman, from the South Australian senior executive of the competition policy division, explains how much the federal bureaucracy, particularly the structural policy division of the federal Treasury, controlled the process. I was therefore very pleased to hear today of John Uhr's recommendation for greater assessment of COAG agreements. I believe that is absolutely necessary.

With very little explanation of its basis, and its potentially widespread impacts in promoting it by claiming that the main beneficiaries would be Australian consumers and manufacturers—not!—the Labor government aimed to push through the Competition Policy Reform Bill as soon as possible. This was an unusual situation because the normal impacts of such a major and controversial policy change would be the subject of substantial media debate and coverage but, as both Labor and the coalition officially supported NCP, there was very little media coverage. So there remained very little public understanding of what was happening—and that is still the case. By 29 May 1995, the Economics Legislation Committee—of which I was a participating member, thank goodness—commenced the first of just two hearings on the Competition Policy Reform Bill 1995, as it had been given a timeframe of just over one week, with a deadline of 7 June, to complete its legislative inquiry into what I considered to have been one of the most significant policy changes in Australia's political economic history.

The Institute of Engineers was one of the first representative bodies to give evidence, on Monday 29 May. They indicated that there could be some important advice about the impacts of a form of competition policy in the UK, and they offered to contact their colleagues in the UK to provide the committee with information about any problems that were being experienced. In reality, just one week was insufficient time for the committee to receive and discuss that type of information, and the legislative inquiry was not extended. National Party senator Ron Boswell kept asking me to ask this question and that question to those giving evidence at the hearing. When I turned and quietly asked him why he could not ask some of those questions himself, he shook his head and said, 'Don't ask me'—indicating that those in the coalition who opposed NCP had been told to stay quiet about their opposition to such a major policy change.

One thing clear about the two hearings was that there was very little information available on what the actual impacts of NCP would be, but it concerned the Greens that NCP would be largely out of democratic control. That is definitely what has been the case. My concern about this major force policy direction has never gone away. I spent the next few years trying to get the Senate to undertake an inquiry into its impacts, but it was not until 1999 that the Labor Party, then in opposition, decided to support such an inquiry. Unfortunately, although I was a member of the Senate select committee when it

began, the inquiry was not completed until after my Senate term had finished. Although the report was quite critical of the way NCP was introduced and assessed in terms of public interest, the recommendations were very mild, both major parties having supported NCP.

When my Senate term finished in mid-1999, I thought I would need months of rest because I had been so exhausted. But within two weeks I had re-enrolled at Murdoch University to produce a master's thesis on the problems in the set-up of the national competition policy and the lack of proper public interest assessment in particular for pieces of WA state agreement Act legislation which were anti-competitive and for which public interest assessments were not properly undertaken. My master's thesis was accepted by 2001, the same year I was elected to the WA upper house for the Agricultural Region. During my four years in the WA upper house, amongst other things I investigated a range of problems associated with NCP in WA and other states. When my state parliamentary term ended in mid-2005, I took a few months rest but by early 2006 I had enrolled at University of Western Australia (UWA) to commence a PhD on the real impacts of national competition policy. This was not because I had always wanted to be an academic, but because when both of the major parties had failed to find out what was actually happening with some equivalent of a second constitution, impacting virtually all legislation, somebody needed to find out what were the impacts compared to the assumptions in the public statements of those pushing for major economic rationalist changes. No one else appeared to be doing it.

I did take a year off during my PhD but I am still working on this and on several major case studies, starting with the impacts of NCP on the Australian dairy industry compared to the assumed outcomes. Anyone who wants to have a look at the kind of work I have been doing so far on my PhD can find a range of publications and committee inquiry submissions by Googling 'Dee Margetts dairy'. I did bring with me some hard copies of my full dairy case study, published by the UWA Global Studies Research Centre. I do not own these copies, but they can be purchased for the nominal price of \$10. The money goes back to the research centre.

Late last year I was advised by Greens Senator Rachel Siewert that the Senate economics committee was undertaking an inquiry into the major problems in the Australian dairy industry, so I put together a detailed submission and was invited to give evidence to the committee earlier this year. They had received a considerable amount of information about what was happening in this industry and my submission, along with my attached academic publications, helped explain how and why those changes were happening. It was very encouraging to see that the Senate economics committee had come to the conclusion, from both the dairy inquiry and a range of relatively recent inquiries, that the federal government should commission a major assessment of the impacts of national

competition policy and it has made a range of other important recommendations relating to the dairy industry. Their findings included a considerable concern about the manner in which the Australian Competition and Consumer Commission (ACCC) is overseeing and policing national competition policy with a very corporate and not public interest focus.

My second major PhD case study was on the impacts of national competition policy on the Australian retail grocery sector. I am in the process of organising to get that academically published by mid next year. I am currently working on case study no. 3: the impacts of NCP on Australia's water resources. It is very interesting. So what are the main committee issues on such a major policy change like NCP? There can be a major problem if there is a poorly constructed major policy direction supported by both major parties with almost none of those party members understanding what they are agreeing to. The minor parties who were expressing concern over the lack of protection for the public interest were ignored. The media also chose to largely ignore the actual impacts of such a major policy change to the point where the majority of Australians had no idea what it was about and why both federal and state governments, who are continually pushed to do things in an undemocratic way, created increasing corporate market domination.

The Senate needs very much to follow up the concerns expressed by the economics committee in order to find out a way to fix a range of NCP policy impacts which have not been in the public interest and make sure that Australia does not continue to make such major policy changes in the future without properly checking if they are going in the right direction. But do not give such an inquiry to the ACCC. In 2008 Professor Don Harding of La Trobe University pointed out that the ACCC refused to release their data from the fuel watch inquiry. He related it to the UK experience that policy-based evidence rather than evidence-based policy has been given as government agencies filtered out information that was inconsistent with government policy. I strongly agree that that is happening in Australia with regard to the impacts of the NCP and certainly in relation to the retail inquiry. The unique outcomes of the recent federal election must at least enable some of these serious issues to be reassessed and, hopefully, amended.

CHAIR — I would like to thank both our speakers. Do we have any questions or observations on the two papers that have been presented to us?

QUESTION (Dr LAING) — I thank you both for very interesting case studies and examples. I have a comment on the long-term impact of some of the committee work that happens here. Some of those migration decisions came 10 years after Parliament looked at the legislation and NCP is obviously something that is going to go on for a long time and come under scrutiny for a long time. I am reminded of the other week

when we launched volume 3 of our *Biographical Dictionary of the Australian Senate*. Some senators in that volume had been in touch with us and commented about the value of the committee work that they did as senators. It is interesting that several of them looked back to those select committees of the 1960s that I referred to this morning—things like Australian television production and container method of handling cargo. When asked what achievements as senators they were most proud of, it was interesting that several of them fingered those inquiries as being the basis of everything that they were to achieve later on during their careers. I suppose by way of a comment I say do not lose heart. All of the work that both of you have done personally in the past on committees and in the Senate is bubbling away, is going to gain importance and will bear fruit eventually.

Ms MARGETTS — I certainly hope so. From the work I have been doing, there are a lot of people in industries around Australia who are relieved that someone is doing this kind of research. There are people I know from both major parties who have background and interest in this and this current opportunity to look at some of these issues is really important. I put up my hand and emailed as many people as possible and said, ‘If you need any assistance, please ask’.

Mr BARTLETT — You cannot always tell if the question you ask at a committee hearing in 1998 is going to be scrutinised by a Federal Court judge 10 years later. Plenty of committee inquiries sit on shelves and gather dust but some are incredibly influential. You cannot tell which is going to be which. But you have to have the inquiries to start with—which is the point I made and I hope that came across—and they have to be thorough enough and provide the opportunity to explore different issues. I focused mostly on the legislative committees, but the select committees and some of the broader policy inquiries provided senators with the opportunity to have their say and the evidence presented is relied upon by a whole lot of other people with an interest in the area. The submissions, the public hearings and the reports are on the public record, and a lot of people rely on those for all sorts of policy, legislative and other social research purposes often for decades to come. Some of them, nonetheless, sit on a shelf gathering dust.

This also gives me the opportunity to mention the importance of select committees set up specifically to examine topical issues outside the general committee process and what happens when a lack of respect for the Senate’s role has too much strength. During that period when one party had total control of the Senate no select committees were established at all by the government. Contrast that with the very first day after that government lost office but still had the numbers in the Senate and they thought it was suddenly a very good idea to set up four Senate select committees, all of which were controlled and chaired by them. That again reinforces the point about (a) having the

inquiries in the first place and (b) having some respect for the importance of the process rather than just using everything as a political tool. That is certainly not where committees do their best work—when they are used as a mechanism for people to score political points. Of course I never did that; I have left that till now.

QUESTION — Unmistakably, we are being confronted with the monopoly of the two-party system. We are only discussing the monopoly of a two-party system, and the talk you are giving is from the minor parties' perspective. Some genius said, 'If you have four per cent of the vote, you have a voice'. How about speaking up and getting four per cent, and recovering democracy in Australia?

Ms MARGETTS — I would not mind mentioning a time I was flying to Canberra when I was in the Senate. I had a bureaucrat sitting next to me who said, 'You have been asking a lot of questions about education and other issues in the Senate estimates committee'. I said, 'Yes, and a number of other committees as well'. He said: 'You are asking a lot of questions and a lot of them are really well put together. Where do you get them from?' I said, 'All through the community'. He said, 'How do you control that process?' I said, 'We don't'. He looked horrified. I thought the really important point out of that was that the Senate estimates committees can be not just a political process but a means by which the community can find out and provide information on political and budget issues.

QUESTION (Senator MOORE) — I have a question about chairing. Andrew, you were talking about the fact that having the role of the chair is important. For a period of your career there was availability for the Democrats to have some chairs. I would like you to comment about what difference that made, if any. I know, Ms Margetts, in your period that did not happen for the two Greens, but you have watched the Greens now, and into the future hopefully, having an opportunity to chair committees. I would like to see whether you have any comments about whether having that option to chair a committee is important to the smaller parties in the Senate.

Mr BARTLETT — Thanks for that. In being in a smaller party and in a balance of power context at that time where the opportunity arose for smaller parties to hold committee chairs, it was the Democrats initially who had sufficient numbers in the Senate to have two committee chairs for a period of time. I was chair of the environment references committee for a little while until the government got control of the Senate and took all the committee chairs back for themselves. I think the value of that only applied in the circumstance again where no one party had control of a committee. With that circumstance, the dynamics can apply within a committee as they do within the Senate as a whole. If no single party has a majority then you have to talk to each other. You have to try to get agreement across your party lines which creates a very strong

encouragement to communicate. Some people do it better than others. It is the same with committee chairs, some people do it better than others. The nature of politics is such that even amongst the smaller parties there is a bit of who gets to be the chair and who does not. It is not always done solely on the basis of merit. It can be seniority and all sorts of other things.

I cannot think of any way that it would actually work, but what would be the ideal would be if the Senate could somehow have a totally non-partisan secret ballot and select the best chairs because there are some really good chairs from the larger parties and some shockers. I cannot speak for the Greens even though I sort of can a bit these days. In my time in the Senate I could not speak for them but within the Democrats there were some of us that were good at some things and not others. Again I think the value with the, I hesitate to use the words, ‘minor party’—not just because I am trying to pretend that we are not minor, we are as major as the larger ones—is really about trying to make the whole system work. I saw that as a big part of the Democrats’ role and even though it is going further than your question I am enjoying the luxury of being in the Senate and not having a little time clock that means I have to stop talking after two minutes. To me the biggest legacy of the Democrats in their 30-year history was in galvanising the effectiveness of the Senate. Hopefully, particularly these days, I can say that without sounding too self-interested, and it was really sometimes, perhaps to our political detriment, that an absolute obsession with most Democrats senators was making the committees work. The opportunity of being able to be a chair in that context with that sort of ethos behind it is something that I think enhanced the effectiveness of committees. I am very confident the Greens can build and match that legacy as they are now moving into the Democrat role.

Ms MARGETTS — At least there were some opportunities even when the Greens were deputy chairs of committees. I think from memory I was the deputy chair of the uranium mining inquiry select committee. I remember coming across Bill Heffernan in an airport once and he said, ‘Do you know Rachel Siewert?’ I said ‘Of course I do’. He stopped for a while and he said, ‘She’s good’. I said, ‘Yes, I know’. She was the deputy chair of the committee he was on and so I guess he was surprised to see that she had had this experience and done a lot of work in regional Australia and especially WA. In particular, with those kinds of issues where the most information, background, networking and so on has been with the minor parties, it may well be that one of the most effective ways of doing an inquiry is to have someone who knows the issues so that the inquiry can canvass a range of issues in order for everyone to have a look and make decisions.

Mr BARTLETT — Can I add to that, particularly seeing that no one is about to ask questions or provide a supplementary response. The evolution of the Greens has meant it has increased its numbers and moved into what will shortly be a sole balance-of-power

role for the first time in that party's history and into a very comparable position with the position the Democrats occupied for most of that party's history. I also think that mechanism—not just being a chair of a committee but cross-party Senate committees that are not just government-dominated—is a key part in the evolution of the effectiveness of smaller parties. Dee mentioned Rachel Siewert, and I can pretty confidently say, at least from the feedback I have had, that she would be very widely respected across all of the larger parties. She would perhaps be the most respected of the Greens senators in terms of the work she does in Senate committees, not solely because she has been a chair—she may be a chair now; I am not sure, and, I think, Christine Milne is now also a chair—but as you are getting larger as a party you have that extra responsibility to be a chair. And when you are from a smaller party, as a chair you still cannot tell everyone else what to do because you still do not have the numbers. As soon as you start being too much of a jerk, you lose the argument pretty quickly. But it is also a key part, again, of what I see as a central part and the purpose of cross-bench, smaller party senators, to make the system work for everybody. That extra responsibility and extra diversity comes about by enabling people from smaller parties and diverse backgrounds to play those roles. It also provides the opportunity to demonstrate—as again, I think, Dee's comment emphasises—there is actually a lot more common ground than you realise. A greenie from WA has an enormous amount in common—sometimes a disturbingly large amount—with Bill Heffernan. You often have a lot more common ground with National Party senators from Queensland and ratbags from Tasmania than you realise and, when these processes work well, that is when you demonstrate that.

QUESTION — Because this section involves government accountability and Senate committees, can you comment on when the government is not accountable? For example, with the former committee into ministerial discretion and the former committee into a certain maritime incident, when the government was not particularly keen to assist the committee in any way with documents, with access to ministers, with access to the Department of Immigration and Citizenship staff et cetera. Can you comment on how you think it makes them accountable? What outcome works if the government is not assisting anybody in the committee to do their job properly?

Mr BARTLETT — Briefly, I was on the former Senate Select Committee on A Certain Maritime Incident, which is perhaps more colloquially known as the 'children overboard committee'. It was set up to examine that and the 'Pacific solution' and a wide range of other things. In the context of a conference like this it had some very significant and probably historic stand-offs between the committee and the government of the day about who they would allow to appear. They would not allow ministerial advisers to appear. There was a lot of toing and froing about whether Peter Reith should be called to appear and, when he said no, what steps should be taken to encourage him further and how far we could go in forcing him to appear. He was out of Parliament in those days. There is a

lot of, sometimes arcane, literature about the power of parliamentary privilege and that sort of thing, but the core point is the point behind the question. It is not about political argy-bargy; it is about transparency of government. That is really at the cutting edge. That was probably the only time I can recall when Harry Evans gave advice that I did not like—which I do not have time to go into now—where he did not want us to push it further to try to put the heat on Peter Reith, subpoena him and those sorts of things. So we have not tested those things.

That process and the stand-offs led to a Senate committee inquiry and further recommendations and, I think, some gradual reform about what we then do to allow some transparency to prevent that sort of Chinese wall that had managed to be built up between government and department—with ministerial advisers and personal staff stuck in the middle—and that had actually become a mechanism to prevent transparency. That process in itself and the problems that were identified at least helped to move things a little bit. I guess it is not until you come across the brick wall that prevents adequate transparency that you become aware of the nature of the problem, and that in itself provides some impetus to look for ways to fix it. I do not think we have fully fixed it now, but I think we have gone a tiny bit further.

Ms MARGETTS — One quick addition is that one of the issues that I found over time was that, when there was an issue that should have been looked at, one of the only times when the government tended to be forced to do that was when the media actually started putting that out in the public arena. But when there were occasions when the two major parties were both going in the wrong direction, a lot of the time the media sat on their hands, because they got sucked in, instead of actually asking questions.

CHAIR — I know I have enjoyed this afternoon's session immensely and I invite you to join me in thanking our speakers.