

Dividing the Senate

We know relatively little, and certainly less than we should, about the attitudes of Australians toward their Senate, and their perceptions of what things it does and how well it does them (Young 1997: 9–10).¹²⁹ So I am speculating when I suppose that relatively few Australians have an image in their minds of the Senate at work that differs very much from their mental picture of the House of Representatives. I suspect that the public's perception of the Senate probably is shaped by its perception of the House, and the image of the House that most Australians receive from the media is of a highly partisan and contentious body in which each party is able to find in almost any noteworthy development further compelling evidence that the other party (or parties) is, if not corrupt or dishonest, then at least bereft of able leadership, new ideas, sound judgment, and a sympathetic understanding of the needs, interests, and preferences of the Australian people. Depending on the circumstances, either that other party deserves to be kept from winning office or it needs to be removed from office at the earliest possible opportunity.

This is the message that party leaders and spokesmen often are at pains to communicate in media interviews, just as it is the impression they convey during Question Time, which is the only slice of parliamentary proceedings that average citizens are likely to see. Perhaps the fact of non-government Senate majorities has become widely-enough known so that most Australians now differentiate between the two houses and associate the Senate more with concepts such as deliberation and compromise. But perhaps not. The proceedings of the Senate can make the same impressions as those of the House,

129 Goot (1999a) has summarized the available data—for example, on public attitudes toward non-government majorities in the Senate and the frequency with which voters have voted for one party in the House and another in the Senate (as many as 17 per cent)—and Bean (1988: 51–52) has reported that a slim majority in a national survey wanted the Senate retained as is and only 11 per cent wanted it abolished. These findings are informative, but they tell us much less than we should want to know about Australians' understanding of what the Senate does and what it should do.

particularly during its Question Time and during debates at which the reputation or core policies of a party or the government are at issue—as, for example, during the debate on the 2002 report of the select committee established to report on the ‘children overboard’ incident. Yet I believe that the sometimes raucous debates in the Senate, though usually more decorous than those in the House, disguise a little secret that is well-known to those who serve in and work for the Senate but that may come as a surprise to most Australians. The secret? That the work of the Senate often is characterized by cooperation, conciliation, and legislative agreement.

This is particularly true of Senate committees. Take as prime examples the Committee on Regulations and Ordinances and the Committee for the Scrutiny of Bills (see, e.g., Reid 1982). The former was established in 1932 to examine proposed new delegated legislation to ensure, as provided by Standing Order 23:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for parliamentary enactment.

Almost 50 years later, the Senate used this committee as the model for a new Committee for the Scrutiny of Bills, which Standing Order 24 charges with examining all bills to determine whether they:

- (a) trespass unduly on personal rights and liberties;
- (b) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
- (c) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (d) inappropriately delegate legislative powers; or
- (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

It is easy to imagine how non-government Senators could try to turn the work of these committees to partisan advantage. Just consider the opportunities for accusing the government, rightly or wrongly, of issuing regulations that are inconsistent with the law, of proposing ordinances or bills that trespass on personal rights and liberties, and of supporting statutory or delegated legislation that puts the interests of Aussie battlers in the hands of unelected and unaccountable bureaucrats

hidden away in their artificial enclave of Canberra. What aggressive party publicists would not salivate at the prospect of using these committees to launch regular attacks on their parliamentary opponents? Yet ask parliamentary observers and you will be told that both committees conduct their business in a measured non-partisan way and almost always manage to reach conclusions in which all their members join, regardless of party.

In similar fashion, if to a lesser extent, the Senate's other standing committees conduct much of their business in a manner that is not nearly as overtly partisan and adversarial as are some of the Senate's proceedings in the chamber. In general, it is fair to say that proceedings in the chamber typically are considerably more decorous and thoughtful than during Question Time, and that proceedings in committee often are more decorous and thoughtful than they are in the chamber.

If so, what accounts for the difference in tenor and tone? In a body as large and diverse as the Senate, no single explanation can suffice. It is reasonable to suppose, though, that some Senators who might prefer a 'come, let us reason together' style recognize, and accommodate themselves to the fact that a primary purpose of some chamber proceedings, especially Question Time, is to provide a setting for gladiatorial combat in which MPs demonstrate their skill to their allies and inflict rhetorical wounds on their partisan opponents.

In committees, on the other hand, the very lack of close media attention allows Senators to concentrate on working together to make good national policy, rather than being preoccupied with the need to claim credit for a monopoly on public wisdom and to take positions designed to influence the outcome of the next elections. More than a century ago, Woodrow Wilson, a future US president who was then a young and all too self-confident political scientist, described (1885 [1956]: 69) the floor proceedings of the House and Senate as 'Congress on public exhibition whilst Congress in its committee-rooms is Congress at work.' In quite a different context, perhaps it can be said that Wilson's first assertion is true of the Australian Senate, and that many Senators wish that his second assertion were even more true than it already has become in the past several decades.

Again, all of this is speculation; it is only a series of hypotheses, if you will, based on my observations and what others, far better informed than I, have told me. However, these speculations do suggest fertile ground for research by Australian political scientists. How do Australians perceive the House of Representatives and the Senate? How and to what extent do they differentiate between the two—in the constitutional functions of the two houses, in their political arrangements, and in their activities and operational styles? What are

the attitudes among Senators themselves toward the institution in which they serve—including, for example, the adversarial style of the Senate on public exhibition—and is this the style of policy making and scrutiny they would prefer? There is much work to be done on such questions from which students, scholars, and political practitioners alike would benefit.

Opposing government legislation

Early in his classic study, *Legislatures*, Kenneth Wheare comments on the relationships between the nature of parliamentary politics and the size and shape of parliamentary chambers. He argues (1963: 12) that ‘A semi-circular chamber would undermine the two-party system. You must be either for the government or against it; you must be on one side of the chamber or on the other. An oblong chamber not only assists you, but compels you to take sides.’ In making this argument, Wheare was taking sides with Churchill who, during a debate on how the House of Commons chamber should be rebuilt after sustaining damage during World War II, contended that:

Its shape should be oblong and not semicircular. Here is a very potent factor in our political life. The semi-circular assembly enables every individual or group to move around the centre adopting various shades of pink according as the weather changes. I am a convinced supporter of the Party System in preference to the Group System. The Party System is much favoured by the oblong form of chamber. It is easy for an individual to move through those insensible gradations from left to right, but the act of crossing the floor is one that requires serious consideration. (quoted in Coghill and Baggage 1991: 17)

Interestingly, Wheare pointed to the Australian Parliament as one that had not adopted the Westminster chamber design. In this he was correct, whether he had in mind the old Parliament House or the new one, which also has members’ seats directly opposite the Speaker’s and President’s chairs, seats that are neither on the government nor the Opposition side. Yet if we compare the design of any of the Canberra chambers—House or Senate, old or new—with the designs of the chambers in London and Washington, they resemble the British chambers much more closely than the wide semi-circular chambers of the US Congress. In Canberra as in London, the government ministers and the Shadow Cabinet sit facing each other on the front benches with most of their respective supporters arrayed behind them. Members of the US House and Senate sit together in their chambers with all the

other members of their respective parties, but they face their presiding officer, not each other.¹³⁰ Also, they can vote from any place in their respective chambers, but members of the Australian Parliament vote in divisions by moving to sit on one side of their chamber or the other. There is no disguising when one of them is crossing the floor to vote with the Opposition, or there would be no disguising it if it ever happened among ALP or Coalition Representatives or Senators. Both the design of the Senate chamber (soon to be discussed) and the method of voting convey a sense of Government *versus* Opposition—the sense, to repeat Wheare’s observation, that ‘You must be either for the government or against it; you must be on one side of the chamber or on the other.’

Not surprisingly, several Nineteenth Century British parliamentary leaders have been credited with the assertion that ‘the role of the opposition is to oppose,’ or words to that effect.¹³¹ Is this a fair and accurate characterization of the posture of the Opposition in the Australian Senate? Of the other, smaller non-government parties? One way of approaching this subject is to look, as we already have begun to do, at the record of divisions in the Senate, when each party takes a public position on whatever question the Senate is considering. In the previous chapter, we examined all the divisions that occurred during 1996–2001 for what they revealed about the attempts of both the government and the Opposition to form winning coalitions in the Senate—the two major protagonists joining forces with each other or

130 An Australian expert on the subject has observed that, in the Old and New Parliament Houses, seats facing the Speaker or President were not installed in order to approximate the semi-circular patterns found in Washington and elsewhere. Instead, once a decision was made that the Australian chambers should be able to accommodate all members (which is not the case in London), it also was decided that having some seats facing the Speaker or President was preferable to the alternative of extending the government and Opposition benches to the point that the chambers would become too long and narrow to be practical. Personal communication to the author.

131 The sentiment has been attributed to Disraeli, but several compendia of political quotations credit Edward Stanley, the 14th Earl of Derby and sometime Prime Minister during the 1850s and 1860s. Of course, any Opposition leader is much more likely to echo the public sentiments of George Reid, the first Leader of the Opposition in the Commonwealth Parliament in 1901:

Our object should be, when Bills framed on sound principles are introduced, to help the Government as far as we can to make them as perfect as they can be made, and to reserve our opposition for matters of a serious character. I hope that this Opposition and those who succeed them will always avoid one serious evil in the working of our parliamentary institutions; and that is an attitude of obstructing measures, the principles of which are not objectionable. (*Commonwealth Parliamentary Debates*, 21 May 1901: 105)

combining with one or both minor parties or Independent Senators. And we found that the facts are not fully consistent with the notion that the Opposition always opposes and, for that matter, with the commonplace observation that the minor parties in the Senate hold the balance of power. But not all divisions are the same, of course. Some are more important than others, and some have more direct consequences than others for the content or the fate of legislation. In this chapter, we will look more closely at several of the most consequential kinds of divisions.

The Senate's consideration of a bill is divided into stages that are marked by the first, second, and third reading of that bill. At each stage, the question before the Senate is whether the bill shall be read a first (or second, or third) time. The Senate must vote on that question and decide it affirmatively if the bill is to proceed to the next stage of the process. Defeat of a motion for the second or third reading of a bill does not necessarily mean the defeat of the bill; the Senate can vote again on the same motion after having rejected it. Until the Senate agrees to the first and then the second reading of a bill, however, a motion cannot be made to read it for the third time, and thereby pass it.

The motion for the first reading of a bill normally is made at the time it is introduced, and it is agreed to immediately. 'The Senate has the opportunity to reject a bill at the first reading stage, but in practice the first reading is normally passed without objection and is regarded as a purely formal stage.' (*Odgers' Australian Senate Practice* 2001: 258) The motions for the second and third reading of the bill are equally essential but they also are far more consequential.

The motion for the second reading sets off a debate on the general principles and merits of the bill. By voting for this motion at the end of the debate, the Senate expresses its support for the concept of the bill. 'Passage by the Senate of the motion for the second reading indicates that the Senate has accepted the bill in principle, or at least has allowed the bill to proceed to a consideration of its details, and the bill then proceeds to that detailed consideration and a consideration of any amendments which senators wish to propose.' (*Odgers' Australian Senate Practice* 2001: 259) After the Senate acts on any such amendments (a subject to which we shall return), it then votes on a motion for the bill to be read for the third time. This is the Senate's final vote on a bill; there is no separate vote on passing the bill after third reading. 'When a bill has been read a third time, proceedings on it are completed and it has passed the Senate.' (*Odgers' Australian Senate Practice* 2001: 273)

So there are three hurdles that each bill must jump if it is to pass the Senate. The first is so low as to be virtually unnoticeable. However, the

motions for the second reading and for the third reading are the primary opportunities for a majority of the Senate to reject a bill.¹³² There are other ways in which bills can effectively be defeated (see below), but the votes on the second and third reading motions are essential moments of choice.

We might expect, therefore, that if ‘the role of the opposition is to oppose,’ it is at these stages that Opposition Senators assert themselves and that non-government majorities in the Senate halt government legislation in its tracks. If much of the government’s legislation is as ill-conceived and as potentially injurious to the Australian national interest as non-government parties often allege, they can prevent it from becoming law by standing together, like Horatio at the proverbial bridge, against motions that the legislation be read a second or third time. Yet readers may have anticipated by now that this is not exactly what happens in practice.

Table 7.1 brings together data on Senate divisions on second and third reading motions since 1996 and the beginning of the Howard Liberal-National Party Coalition Government. Note first that these are data on *divisions* only. For this reason, three points made in the preceding chapter merit reiteration here. First, most questions are decided not by division but ‘on the voices’ and without a formal record of how any party group or individual Senator voted. Second, however, it takes *only two Senators* to call a division, which is just about as minimal a requirement as the Senate in its standing orders could impose. And third, even controversial questions may be decided without a division, often because Senators on the losing side of a vote on the voices conclude that nothing useful would be accomplished by insisting on a division.

Turning now to Table 7.1, we find that the number of divisions on second and third reading motions combined has never exceeded a total of 21 in any of the six years between 1996 and 2001, even though the total numbers of bills that the Senate passed during these years ranged from a low of 85 to a high of 224. (The table also presents data

132 As already noted, a bill can survive even if a motion for its second reading is defeated. ‘The motion for the second reading is that this bill be *now* read a second time. The rejection of that motion is an indication that the Senate does not wish the bill to proceed at that particular time. Procedurally, therefore, the rejection of that motion is not an absolute rejection of the bill and does not prevent the Senate being asked subsequently to grant the bill a second reading. ... In practice, [however,] the Senate often indicates its disagreement with a bill by rejecting the motion for the second reading, and that action is taken to be an absolute rejection of the bill.’ (Odgers’ *Australian Senate Practice* 2001: 259; emphasis in original)

TABLE 7.1: Senate divisions on reading motions, 1996–2001

	1996	1997	1998	1999	2000	2001
Total number of bills passed	85	224	139	206	181	171
Second and third reading motions:						
Number of divisions	14	21	15	16	9 ¹	10
Number of divisions as percentage of all bills passed	16.5	9.4	10.8	7.8	5.0	5.8
Number of divisions that the government lost	0	4	2	2	5	5
Percentage of divisions that the government lost	0	19.0	13.3	13.0	55.6	50.0
Number of motions that the Opposition opposed	8	13	10	11	7	8
Percentage of motions that the Opposition opposed	57.1	61.9	66.7	68.8	77.8	80.0
Percentage of all bills passed that the Opposition opposed on second or third reading divisions ²	5.9	4.9	5.0	4.9	2.8	4.1
Number of motions that the Democrats opposed	8	13	14	9	6 ³	7 ⁴
Percentage of motions that the Democrats opposed	57.1	61.9	93.3	56.3	66.7	70.0
Number of motions that the Greens opposed	13	20	15	14	7	7 ⁵
Percentage of motions that the Greens opposed	92.9	95.2	100.0	87.5	77.8	70.0
Second reading motions:						
Number of divisions	8	10	9	9	5	9
Number of divisions as percentage of all bills passed	9.4	4.5	6.5	4.4	2.8	5.3
Number of divisions that the government lost	0	1	2	2	4	5
Percentage of divisions that the government lost	0	10.0	22.2	22.2	80.0	55.6
Number of motions that the Opposition opposed	5	5	7	7	5	7
Percentage of motions that the Opposition opposed	62.5	50.0	77.8	77.8	100.0	77.8
Percentage of all bills passed that the Opposition opposed on second reading divisions	5.9	2.2	4.3	3.4	2.8	4.1
Number of motions that the Democrats opposed	3	6	9	5 ⁵	4	7
Percentage of motions that the Democrats opposed	37.5	60.0	10.0	55.6	80.0	77.8
Number of motions that the Greens opposed	8	10	9	9	4	7 ⁵
Percentage of motions that the Greens opposed	100.0	100.0	100.0	100.0	80.0	77.8
Third reading motions:						
Number of divisions	6	11 ⁶	6	7	4	1
Number of divisions as percentage of all bills passed	7.1	5.0	4.3	3.4	2.2	0.6
Number of divisions that the government lost	0	3	0	0	1	0
Percentage of divisions that the government lost	0	27.3	0	0	25.0	0
Number of motions that the Opposition opposed	3	8	3	4	2	1
Percentage of motions that the Opposition opposed	50.0	72.7	50.0	57.1	50.0	100.0
Percentage of all bills passed that the Opposition opposed on third reading divisions	3.5	3.1	2.2	1.9	0.6	0.6
Number of motions that the Democrats opposed	5	7	5	4 ⁷	2 ⁸	0 ⁹
Percentage of motions that the Democrats opposed	83.3	63.6	83.3	57.1	50.0	0
Number of motions that the Greens opposed	5 ¹⁰	10	6	5 ¹⁰	3	0
Percentage of motions that the Greens opposed	83.3	90.9	100.0	71.4	75.0	0

1 Excludes two motions that the government opposed.

2 These percentages take account of instances in which there was more than one division on the same bill.

3 Split on two divisions.

4 Split on one division.

5 Not recorded on one division.

6 Excludes one free vote.

7 Split on one division.

8 Split on two divisions.

9 Split on the only division.

10 Not recorded on one division.

separately on second reading motions and third reading motions.) On average, there was one division on a second or third reading motion for every six bills that the Senate passed in 1996, and one such vote for every 20 bills passed in 2000. To make the same point somewhat differently, consider 1999 when the Senate passed 206 bills with only 16 divisions on reading motions. These 206 bills each gave rise to a second reading motion and a third reading motion, making a total of 412 opportunities for as few as two Senators to call divisions. They did so, however, on only 16 occasions, less than four per cent of the time.

Because all of the bills passed were government bills, we know that the government won every vote on reading motions that were decided on the voices.¹³³ So in every instance in which non-government Senators did not challenge a vote 'on the voices' that the President decided in the government's favor, they were acquiescing in a government victory. In the overwhelming majority of instances, they did just that; both the official Opposition and the other non-government parties did not force divisions, even though any two Senators always can do so.

There are several plausible explanations, all of which undoubtedly contain part of the truth, for the dearth of divisions on reading motions. First, one or more of the non-government parties may support the government's bill, and a division can be called only by Senators on the losing side of the voice vote. Second, the non-government parties may know beyond a doubt that one or more of them does support the government's bill, so there is little point in having a division because the certainty of strict party discipline ensures that the outcome of a division would be the same as the vote on the voices. (But even when the outcome of a division is a foregone conclusion, one party or another still may want a division in order to create a public record of each party's position on the bill.) And third, some bills simply are so inconsequential or non-contentious that a division is not worth the bother; even if not all of the parties support the bill, the bill's opponents may not care about enough about defeating it to try to mobilize their forces and prevail in a division.

The prevalence of the second and third motives is exceedingly difficult and probably impossible to measure. We can gain some purchase on the first argument, though, by looking at the outcomes and voting patterns on the divisions on reading motions that have taken

133 Unless there were instances in which the government chose not to try to prevent one or more of its own bills from being defeated, at least at that moment, by declining to require a division when a second or third reading motion, taken on the voices, was decided against it.

place. Returning to Table 7.1, in none of the six years examined did the government lose more than a total of five divisions on such motions. In percentage terms, however, the frequency of government defeats jumped from less than 20 per cent on both second and third reading motions during 1996–1999 to more than half of the divisions on the same motions during 2000 and 2001. The numbers involved are so small that this development (which is attributable largely to the results of divisions at second reading) must be approached with great caution. Perhaps, an observer has suggested to me, the 2000–2001 data reflect the fact that the government already had been in office for four years. In its fifth and sixth years, its legislative agenda may have included a disproportionate number of bills that it knew would face stiff opposition but that it still thought worth trying to pass.

During the Howard Ministry from 1996 to 2001, the government prevailed on almost 80 per cent (67 of 85) divisions on second and third reading motions. How often did any of the non-government parties contest these outcomes? We have seen that (1) there have been relatively few divisions to decide these motions; (2) in absolute terms, the government has failed to win few such motions, however they were decided; but (3) the government has a more checkered record when we look at the percentages of divisions on reading motions that the government has won and lost. What can we say about the positions that the non-government parties have taken on these divisions?¹³⁴

Not surprisingly, each of the three non-government parties (the Green Senators are treated as one party) usually have opposed a majority of these divisions, with one exception: the Democrats opposed only three of the eight second reading motions decided in 1996. (Also, neither the Democrats nor the Greens opposed the one third reading motion that was decided by division in 2001.) The most consistent opposition has come from the Greens; taking second and third reading motions together, the Greens opposed as few as 70 per cent of them in 2001 and as many as 100 per cent of them in 1998. Never during these years did the Democrats vote against a higher percentage of reading motions than the Greens, whether we look at second and third reading motions separately or together. The rate of Democrats' opposition to both motions combined ranged from slightly more than one-half (56.3 per cent) in 1999 to 93.3 per cent in the preceding year. Again, the numbers of motions are so small that the exact percentages are of questionable significance. The two findings that do stand out are, first, that the Democrats have been less likely to oppose government reading

134 As before, the one Senator representing One Nation is treated here as if he were an Independent.

motions than the Greens, and, second, that the Greens have a strong record of opposition, always exceeding 75 per cent on divisions on second reading motions.

These findings are consistent with the difference that some observers have noted in the respective stances of the Democrats and the Greens toward the Senate and the government, with the Democrats proclaiming more deference than have the Greens to the right of the government, in light of its electoral mandate,¹³⁵ to determine the general directions of government policy—and so by implication, the right to have its legislation proceed through the stages of consideration in the Senate, barring truly compelling reasons to oppose its movement from one reading to the next. From this perspective, it may be surprising that the Democrats have opposed second and third reading motions as frequently as they have.

These findings also may tell us something about the extent of the policy disagreements of each minor party with the Coalition Government. It is considerably more difficult to position the Australian Democrats than the Greens on a unidimensional left-right spectrum; recent disunity among Democrat Senators makes that clear. However, most observers probably would agree that the Greens have differed philosophically with the Coalition Government more consistently than have the Democrats, so we would expect the Greens to have opposed this government more often on reading motions. If there were a Labor Government instead, the pattern we observe might very well be reversed.

What of the official Opposition, which always must bear in mind that, if it succeeds in defeating a reading motion, it also may be giving the government a double dissolution trigger? When there have been divisions on reading motions, how consistently has the Opposition opposed? Although the data are mixed, what we can say is that the level of Opposition opposition to these motions has been no higher than that of the two much smaller parties. During 1996–1998, in fact, the Labor Opposition usually supported the government on second and third reading divisions as often or more often than did the Democrats or the Greens. Only in 2000 and 2001 did the Opposition vote against second and third reading motions on divisions at least as often as the other two parties.

The best indicator in Table 7.1 of the frequency with which the Opposition has attempted to defeat government bills at second or third reading is the percentage of all bills passed that the Opposition opposed

135 We will explore the matter of mandates in Chapter 9.

on either a second reading division, a third reading division, or both. By this measure, Opposition opposition was exceptional, not routine. During these six years, the Opposition never voted, on divisions on second or third reading motions, against as many as six per cent (in 1996) of the bills that the Senate passed. In 2000, the frequency of its opposition was cut in half, to less than three per cent.

Any Opposition always faces a choice. It can work with the government to improve its legislation by persuasion or amendment or both, and support government bills when those bills have merit and when there is no compelling reason not to support them. In this way, the Opposition can take satisfaction in playing a constructive role in lawmaking even when it is not in power. In the process, it also can demonstrate to the national electorate that it is a responsible Opposition that can be trusted to be made the government.

Alternatively, the Opposition can oppose, using whatever procedural leverage it has to impede enactment of government legislation, by blocking it when possible or, if not that, by delaying it to the point of obstruction. In this way, the Opposition can sharpen public perceptions of its policy differences with the government and try to convince voters that the government's inability to move its legislative program through the Parliament, or its difficulty in doing so, is proof positive that it does not deserve to be returned to office at the next election. In the long run, from this point of view, the Opposition and the nation are ill-served by an Opposition that is willing to support government bills if the government first accepts some Opposition amendments. First, the result is legislation that is only less bad than it might otherwise have been; and second, this approach allows the government to claim credit for enacting its bills—bills that the Opposition cannot effectively criticize because it voted for them.

The data presented in Table 7.1 offer only one glimpse into legislative strategies and decisions in the Senate. It always is dangerous to rely too heavily on such data, especially when the number of data points is so small, to reach conclusions about the workings of collectivities as complicated as parliaments and their party groups. Yet what stand out so dramatically in this table are, first, the dearth of divisions that any of the non-government parties has called on second and third reading motions, and second, the even smaller number of reading motions on which the Opposition has used divisions in attempts to prevent government bills from advancing to the next stage of the legislative process. These data certainly do not portray a Labor Opposition that has defined its role as trying to defeat government legislation whenever the opportunity arises.

It is possible, of course, that the Opposition only called divisions on reading motions when it thought that it had some possibility, even if no assurance, of winning. This may well have been true in some cases. However, I find three other inferences to be at least as plausible: first, that much of the legislation on which Parliament acts is not significant enough to provoke determined opposition; second, that the policy differences between government and Opposition are not as pervasive or as great in practice as their spokesmen often advertise them to be for electoral purposes; and third, that the Opposition has deliberately chosen not to fight the government to the bitter end on every bill that it cannot support. None of these inferences strikes me as particularly implausible or difficult to accept. It is not surprising that most of the legislation that Parliament considers does not separate the parties. Much of the work of government is routine and non-controversial; so is the legislation that makes it possible. By the same token, it is predictable enough that elected politicians will succumb to the temptation to exaggerate their policy differences with their partisan opponents in order to give the electorate compelling reasons to vote for them.

It also is not surprising that the Opposition has not chosen to try to block the second or third reading of all the bills it opposes. It is in the Opposition's interest to project an image of responsibility—to emphasize what it favours as much as what it opposes. If an Opposition is best known to the public for trying to defeat bill after bill after bill, voters would naturally have difficulty visualizing that Opposition as the government. Also, it can be costly for the Opposition to try to assemble majorities to defeat second or third reading motions. To construct a majority on such a motion, the Opposition, like the government, has to find support from other parties. If this support arises voluntarily, well and good. But if not, the Opposition has to pay a price for that support, perhaps by agreeing to support one or more minor parties on other issues or other motions. But there is a third reason that may be more compelling than the others. Members of the Opposition, as responsible public officials, often must believe that blocking legislation would not contribute to dealing with problems that members of both major parties recognize as real, serious, and requiring legislative action. Simply saying 'no' to government bills often is not the best sound for the Opposition to make, on either policy or partisan grounds.

What we may see in Table 7.1 is evidence of the Opposition as the Government-in-Waiting. As I shall have occasion to argue again, the parliamentary Opposition must see itself as being in Opposition only until after the next House election or, in the worst case, the election after that. Otherwise, its members may lapse into despondency. Especially in eras when the alternation of parties in government occurs

often enough so that neither party is labelled a permanent Opposition,¹³⁶ the Opposition of the day must always be asking itself whether the tactics that it employs today (or worse, the permanent institutional reforms that it supports) may come back to haunt it when it once again holds the positions of power that it so richly deserves. As a result, the Labor Opposition during our recent six-year period, as the once and (it assumed) future government, may have chosen not to oppose the Coalition government on reading motions, or to call divisions on those motions, unless powerful policy differences compelled it to do so, out of a calculation that if it made determined and consistent efforts to block the progress of Coalition legislation through the Senate, the Coalition would have every reason to do the same when their positions are reversed.

Instead, the Opposition as well as the other non-government parties may concentrate not on blocking a government bill but on making it better—making it more palatable or at least less objectionable. Especially if the non-government parties want to avoid being accused of preventing the Commonwealth from addressing a widely recognized need, or if they believe that there are no realistic prospects for blocking a bill by defeating a reading motion, the non-government parties may focus their energies not on preventing the bill from passing but on amending the bill before it does pass. To take our inquiry further, therefore, we need to look beyond divisions on second and third reading motions, however important they are, to the amendments that are proposed in the Senate chamber.

Three opportunities to amend

Senators have three primary opportunities to offer amendments in the chamber in relation to each bill that the Senate eventually passes. During the debate on the motion that the bill now be read a second time, Senators can propose amendments to that motion. Then, if and when the Senate agrees to the motion, it proceeds to consider the bill's text in the committee of the whole, a process that can (but usually does not) involve considering each clause of the bill in sequence, and during which Senators can offer amendments to make changes in the text of the bill. (The committee of the whole is a committee on which all Senators serve and that meets in the Senate chamber. It is a parliamentary device that permits a process of debating and amending a

136 As the Republicans in the US House of Representatives were labelled the 'permanent minority' after losing control of the House in the 1954 election and not regaining it until the 1994 election.

bill that is more flexible and that gives more Senators more chances to participate than if the Senate were acting under its normal rules of procedure.) Finally, when the motion is made that a bill now be read a third time, Senators can move amendments to that motion. At each of these stages, Senators can offer amendments in relation to the bill it is considering,¹³⁷ but only amendments in committee of the whole, to which I shall refer as committee amendments, can actually change the text of a bill and, therefore, have the possibility of becoming law.

When the Senate is debating the motion for second reading, Senators can propose amendments *to the motion*, but not to the bill, because at that moment the Senate is considering only the motion; it is not yet considering the bill itself. That can happen only after the Senate passes the second reading motion. So each second reading amendment can propose only to make some change in the text of the motion, and that motion simply proposes that the bill be now read for a second time. Under these circumstances, most second reading amendments are devices for Opposition and other non-government Senators to express their opinion of the bill and to give their reasons, often with rhetorical bravado, why the bill should be opposed or how it will need to be amended when the opportunity for doing so arises in committee of the whole. Similarly, when the Senate is considering the motion for third reading, the text of the bill is no longer before the Senate for amendment. The Senate already has agreed to the bill in principle and already has disposed of all amendments to it, so an amendment to a third reading motion is unusual and is likely to deal only with questions such as when the third reading is to take place (see below).

Second reading amendments take two primary forms. One form proposes to add something—usually a statement of opinion—at the end of the motion. (We shall look at the other form in a few paragraphs.) The reason why these amendments sometimes are called ‘pious amendments’ may become clear if we look at a reasonably typical second reading amendment that was proposed to a tax bill. As always, the motion before the Senate was that the bill be now read a second time, and a Senator moved that the motion be amended by adding to it the following:

137 There is at least one other opportunity that can be used to offer amendments affecting a bill. After the Senate completes its consideration of a bill in committee of the whole, an amendment can be offered to the motion that the report of the committee be adopted. When offered, such amendments often propose that bills be referred to committee, but not that they be prevented from proceeding further through the remaining stages of the legislative process.

but, in respect of the Taxation Laws Amendment Bill (No. 3) 1986, the Senate condemns the Government for—

- (a) its failure to control Government spending to the point where it has broken its 'Trilogy' commitment to hold taxation to no more than 25 per cent of gross domestic product and proceeded to tax Australians to the highest point in our history;
- (b) its contempt for ordinary taxpayers, illustrated by its decision to charge a \$200 fee for appeals against the Tax Commissioner's rulings regardless of the size or complexity of the claim;
- (c) its incompetent handling of the withholding tax issue, whereby the Government changed the tax rules, caused a run on the dollar, and retreated 27 days later; and
- (d) its disgraceful treatment of the Defence Forces Reserves, by withdrawing the tax free status of reservists' pay, thereby causing a grave rundown of reserve forces and damage to their morale and effectiveness, and belatedly restoring the concession. (*Journals of the Senate*, 23 October 1986: 1354)

It is hard to imagine that a group of men and women capable of doing so many deplorable things in a single bill would be allowed within the city limits of Canberra, much less have the government of the Commonwealth placed in their hands. Yet such often is the tenor of second reading amendments, which propose, for instance, that the Senate 'notes with concern ...' or 'condemns the government for ...' or 'deplores the Government's decision to ...' or 'expresses its concern at ...', or all of the above, and so on.

The rhetorical flourishes aside, the key points are two. First, such an amendment does not actually propose to change the text of the bill in question, nor could it do so at this stage of the proceedings. And second, such an amendment does not even oppose the second reading of the bill; the amendment would amend the motion to state that the bill shall now be read a second time but, by the way, the government's policy embodied in the bill is misguided and offers proof positive of its lack of fitness to continue governing. Less often, this form of second reading amendment can be used to try to postpone the next stage of a bill's consideration until, for instance, a certain date arrives, or until a minister makes a certain document available or something else happens. But even in these instances, the purpose and effect of the amendment, if it wins, is not to stop the bill indefinitely by preventing it from being read for the second time.

By contrast, committee amendments are very different parliamentary creatures. Like most second reading amendments, they may be offered with political motives in mind; but unlike all second reading amendments, committee amendments propose to amend the text of the bill and, if passed, could well become part of the laws of Australia. In

general, second reading amendments are part of the political-electoral process; committee amendments are much more part of the law-making process. Our interest, therefore, is almost exclusively in committee amendments and not second reading amendments (or rare third reading amendments), but not entirely so because there are some second and third reading amendments that, if passed, would have real parliamentary effects on the fate of bills, if not their content.

For example, there is a charmingly arcane device which, to the regret of those who appreciate parliamentary nuance, now rarely is used. The Senate can amend the motion that a bill be now read a second time or a third time by replacing 'now' with 'this day six months' (in other words, six months from the date of the vote). In fact, this is the only amendment that can be moved to a motion for the third reading of a bill. On its face, the amendment would seem to do nothing more than defer the date of the second or third reading and so might not do irreparable damage to the bill's prospects for enactment. But not so. 'If this amendment is carried the bill is disposed of with an indication of finality greater than if the motion for the [second or] third reading is simply rejected.' (*Odgers' Australian Senate Practice* 2001: 259–260, 272) This, then, is an example of a reading amendment with teeth; it proposes to kill a bill.¹³⁸

The other form of a second reading amendment also can affect the progress or even the fate of a bill, not just express an opinion about it or about the government that is advocating its enactment. The difference between the two forms of second reading amendments derives, first, from how they are drafted. Instead of proposing to add something to the motion, which already provides for the bill to be read a second time, a second reading amendment can propose to replace the text of the motion. If such an amendment wins, therefore, the amended motion no longer provides for second reading. So if the Senate approves the motion, it will have an entirely different effect on the bill and its fate. A second reading amendment in this second form proposes to prevent the bill from being read for the second time and, therefore, halts its legislative progress unless and until the Senate considers and adopts another second reading motion for that same bill.¹³⁹

138 In 1996, Senator Brown of the Australian Greens offered such an amendment to the third reading motion for the Euthanasia Laws Bill 1996; and Senator Harris of Pauline Hanson's One Nation moved the same kind of amendment to the Defence Legislation Amendment (Aid to the Civilian Authorities) Bill 2000.

139 It also is possible, though much less common, for a second reading amendment in the first form to have procedural consequences. My thanks to Cleaver Elliott, Clerk Assistant for the Senate Procedure Office, and Rosemary Laing, Clerk Assistant for the Senate Table Office, for alerting me to these possibilities, and to Kerry West of

I cannot report exactly how often Senators have offered second reading amendments in recent years that proposed to affect the progress of bills in significant ways, not just express opinions about them and the government. Since 1975, however, there have been at least 165 second reading amendments moved that proposed to strike from the motion the words that authorized second reading and to replace those words with different provisions that proposed to affect the bill adversely. Not surprisingly, each and every one of these motions was moved by a non-government Senator.

The Senate agreed to 21 (or 12.7 per cent) of these motions and thereby derailed at least that many bills, some temporarily and others permanently. Of the 21, one had the effect of defeating a bill¹⁴⁰ and two others called for bills to be withdrawn and redrafted in ways that the motions specified. The remaining 18 successful motions affected bills in ways that inflicted less direct and lasting damage: eight referred bills to committee, seven precluded further consideration of bills until certain events had taken place, and the other three delayed further consideration until specific dates. With one exception, therefore, these winning motions did not actually cause the defeat of legislation. In principle at least, each of them left open the possibility of the bill in question receiving a second reading at some later time—for example, after having been rewritten in the ways specified by the amendment—if the government was willing to pay the Senate's price.

Perhaps the most famous, or infamous, of such amendments in recent memory were those offered in October and November 1975, amendments that were soon to lead to the dismissal of the Whitlam Government. With regard to each of several bills, including the essential appropriation bills, there was a motion before the Senate stating 'that this Bill be now read a second time.' In each case, an Opposition Senator moved to 'Leave out all words after 'That'', insert 'this Bill be not further proceeded with until the Government agrees to

the Procedure Office for her assistance in identifying the kinds of second reading amendments discussed here.

140 On 26 February 1985, an amendment was made to replace the text of a motion for second reading. When considering such an amendment, the Senate first voted on whether to leave out the words already in the motion. Then, when that question was resolved in the affirmative, the Senate next voted on whether to insert the words that had been proposed to replace the words it had just voted to omit. In this case, the Senate agreed to leave out the words of the motion but then rejected two versions of the words proposed in their place. The *Journals* reports that 'The President drew attention to the fact that all that was left of Senator Chipp's motion was the word 'That' which, by itself, was not acceptable as a motion.' (*Journals of the Senate*, 26 February 1985: 57) The standing orders have since been amended to preclude this absurdity.

submit itself to the judgment of the people, the Senate being of the opinion that the Prime Minister and his Government no longer have the trust and confidence of the Australian people' for reasons each amendment proceeded to enumerate. In each case also, the Senate agreed to the motion as amended, which no longer authorized second reading. After Whitlam's dismissal, however, the bills that were necessary to ensure the availability of supply during the coming election period were quickly revived and passed the Senate.

Amendments in committee of the whole

The best opportunity for Senators to affect the content of new laws arises when bills are subject to amendment during the process of considering them in committee of the whole.¹⁴¹ Table 7.2 presents a general picture of how often Senators have availed themselves of this opportunity in recent years, and with what success.¹⁴²

As we observed earlier, the number of bills that the Senate passed has varied from year to year and, not surprisingly, so too has the number of bills to which amendments were moved as well as the number of bills to which amendments were agreed. On the other hand, what is striking about the data in Table 7.2 is the stability of the percentages of bills passed that were subject to one or more amendments. During five of the six years between 1996 and 2001, Senators proposed at least one change in no fewer than 43.5 per cent and no more than 45 per cent of the bills that the Senate ultimately approved. In the world of social science, and especially political

141 This discussion treats amendments and Senate requests for amendments as if they were the same, and references in the text to amendments should be understood to encompass requests as well. Constitutionally, amendments and requests are not the same, as advocates of the primacy of the House would be quick to point out. My reasons for taking them together are threefold. First, amendments and requests for amendments are not alternatives; depending on the nature of the bill being considered, each is the only means available to the Senate if it wants to change the text of that bill. Second, advocates of the Senate's powers argue that the difference between amendments and requests is essentially one of form and procedure, not a difference of kind. If the Senate is determined to have the text of a money bill changed, the House must take account of the Senate's request for that change just as it must take account of a Senate amendment to some other bill, because a money bill cannot be enacted so long as the Senate request remains unresolved. And third, not irrelevantly, taking amendments and requests together greatly simplifies both the analysis and the presentation.

142 Previous inquiries into this subject have been few and far between. Helpful exceptions are O'Keeffe (1996) and Elliott (1997), both officials of the Senate, and Lovell (1994) and Uhr (1997, 1998). Annual reports of the Department of the Senate include statistics.

science, and legislative research even more so, greater variability is the norm. Fortunately, the dip to 35.3 per cent in 1998 provides an exception to what otherwise would be a disconcerting regularity.

Whatever changes may have been taking place in Parliament or in Australian politics more generally, in most years Senators sought to amend (directly or by request) more than 40 per cent of the bills they passed. Nor are we finding a scattering of amendments that amounted, on average, to just about one for every two bills. The total number of amendments that Senators proposed also varied from year to year, but resulted in an average of no less than 7.5 amendments that were moved per bill, and more than 10 per bill in three of the six years. This calculation includes all the bills that Senators did not attempt to amend at all. If we ask instead how many amendments Senators offered, on average, to those bills that were subject to any such attempts, we find that the average number of amendments exceeded 20 per bill during 1996–99 before declining to 16 per bill in 2000 and 2001.¹⁴³

These data by themselves would seem to put paid to any thought that Senators (or, more aptly, parties in the Senate) do not perceive the Senate chamber as a forum in which to at least attempt to legislate, or perhaps to use amendments as a procedural device for formulating and publicizing important policy differences among the parties. By their nature, however, averages can disguise as much as they reveal, and that certainly is true in this instance. In fact, amendment activity in the committee of the whole was quite concentrated. For each of the six years, ten bills accounted for more than 60 per cent of all the amendments moved and voted on, and more than 70 per cent in 1999 and 80 per cent in 1996. If we were to eliminate these bills from the calculations, the average numbers of amendments in Table 7.2 would drop precipitously. The averages in the table certainly would be a poor basis for predicting the number of amendments moved during consideration of any individual bill.

What we need to ask next, of course, is how often efforts to amend bills have succeeded. Turning again to Table 7.2, we find that, over the entire period, the Senate agreed to at least one amendment or request to more than one-third of the bills it passed. The annual percentages again are quite consistent, varying from roughly 33 per cent to roughly 39 per

143 This analysis is unable to take account of motions to amend bills simply by striking provisions from them. When such a motion is made, the Senate does not vote on whether to remove the provision in question from the bill. Instead, the Senate votes on whether the provision should ‘stand as printed.’ Therefore, a majority of at least 39 votes is required to preserve the provision. If the outcome is a tie vote instead, the provision has failed to receive majority support and so it is stricken from the bill.

TABLE 7.2: Frequency of winning amendments moved in committee of the whole, 1996–2001¹

	1996	1997	1998	1999	2000	2001
Number of bills passed by the Senate	85	224	139	206	181	171
Number of bills to which amendments were moved	37	101	49	90	80	77
Percentage of bills passed to which amendments were moved	43.5	45.0	35.3	43.7	44.2	45.0
Number of bills to which amendments were agreed	31	81	46	80	71	50
Percentage of bills passed to which amendments were agreed	36.5	36.2	33.1	38.8	39.2	29.2
Total number of amendments moved	879	2151	1454	2136	1383	1288
Total number of amendments agreed	390	1337	780	1605	866	1013
Percentage of amendments agreed	44.4	62.2	53.6	75.1	62.6	78.6
Average number of amendments moved per bill passed	10.3	9.6	10.5	10.4	7.6	7.5
Average number of amendments agreed per bill passed	4.6	6.0	5.6	7.8	4.8	5.9

Source: *Business of the Senate*, editions for 1996–2001, produced by the Senate Table Office.

1. Includes requests for amendments; excludes amendments on which free votes were permitted, and amendments to amendments and amendments moved but then withdrawn or left pending; excludes divisions on whether matter in a bill, proposed to be stricken or replaced, should stand as printed; treats two or more amendments considered together as one amendment.

cent. Only in 2001, the last year covered by this study, did this percentage slip to just below 30 per cent. Over the entire six-year period, the Senate agreed to an average of slightly less than six amendments to every bill that it passed, the annual rate varying from a low of 4.6 in 1996 to a high of 7.8 in 1999. (Again, however, the same caveat about these averages applies.) Furthermore, the Senate approved considerably more than half of the amendments that Senators proposed. Only in 1996 did the percentage of amendments agreed to fall below the 50 per cent level (44.4 per cent in 1996). In 1997 and 2000, the Senate agreed to more than three of every five amendments; and in 1999 and 2001, the success rate of amendments exceeded 75 per cent. In quantitative terms, the Senate chamber has been a hotbed of policy change: more than a thousand amendments were offered in most years; in some years, more than a thousand were approved; almost half of the

bills passed were subject to amendment; more than a third of those bills were amended; and on average, the Senate approved more than half of the amendments that Senators proposed, and more than six amendments for each bill that the Senate passed.

This is only part of the story, however, because not all amendments are the same. For one thing, some are of greater significance than others, just as some bills are more significant than others. In fact, it can be argued that, as a general though not invariable rule, the most significant bills are the ones that Senators are likely to be most interested in amending. If so, the number of amendments proposed to different bills can be taken as a measure, albeit an imprecise one, of the relative importance of those bills or at least the controversy they inspired. At a minimum, we need to be cautious about averages, such as the average numbers of amendments moved or approved per bill, because such averages conceal considerable variation. While Table 7.2 shows that Senators proposed at least one amendment to almost half the bills they passed, the other side of that coin is that a majority of bills was passed without any formal procedural effort being made to change them.

A smaller number of bills were subjected to large numbers of amendments that the Senate approved. To choose just one example from each year, the Senate agreed to 167 amendments¹⁴⁴ in the committee of the whole to the Workplace Relations and Other Legislation Amendment Bill 1996; 277 to the Telecommunications Bill 1996 that the Senate passed in 1997; 198 to the Native Title Amendment Bill 1997 [No. 2], passed in 1998; 173 to the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998, passed in 1999; a mere 59 to the Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Bill 2000; and 176 to the Financial Services Reform Bill 2001. If these and a handful of other bills were excluded from the calculations, that average of more than six amendments approved for each bill the Senate passed would be much, much lower.

Equally important, there are different reasons for Senators to propose amendments and for the Senate to agree to them. If we apply a dichotomy familiar to students of Congress, we can suppose that Senators will propose some amendments with the hope or even expectation of changing the bill and thereby affecting public policy; but we also can expect that Senators will offer other amendments for purposes of position-taking—to clearly differentiate the positions of

144 These numbers exclude amendments to amendments and amendments that were withdrawn.

their party from the other parties on the subjects those amendments address—even though they do not expect the amendments to prevail. Furthermore, of course, the consideration of amendments, like almost everything else in Parliament House, takes place in a partisan context. Senators, except the handful of Independents, normally do not propose amendments solely at their own initiative; they act on behalf of their parties. So it is essential to distinguish between amendments that are offered by non-government Senators to change or challenge government policy from those that are offered by government Senators to improve or correct government bills or to embody the policy compromises to which the government has agreed in order to construct its winning majority coalition.

In 1948, a spirited ‘case for the defence’ of the Senate was published by J.R. Odgers, later to become the Clerk of the Senate and the original author of *Australian Senate Practice* (later named in his honour). In his article, Odgers (1948: 91–92) sought to show that the Senate had been successful as ‘a House of review’ (a concept, as I have argued, of recurring and profound fuzziness) by pointing out that, between 1937 and 1948, the Senate had made 173 amendments or requests for amendments that became law to 47 bills from the House. However, Odgers acknowledged a possibility that Fusaro later confirmed:

A check of the Senate debates, however, reveals that of the amendments and requests Odgers writes about, some were made by Opposition-controlled Senates, and the great majority were sponsored by the Government itself and usually introduced by a Minister or other Government representative in the chamber. Thus, Odgers’ ‘defence’ may show a certain usefulness on the part of the Senate in that it affords a Government a second chance to perfect its own legislation; but it does not demonstrate any tendency for the Senate to act independently, save when the Government has controlled only the lower house. (Fusaro 1967: 333)

In fact, the one Senate amendment to which Odgers specifically referred was one that the government evidently proposed to correct ‘an important flaw’ in the measure that was discovered during the Senate’s consideration of the bill.

The moral is that the sheer numbers of Senate amendments tell us something, but not nearly as much as we would like to know. By looking a little more closely at the six bills that the Senate amended in so many respects, we can glimpse some of the different patterns and dynamics that can underlie the numbers. In some instances, the amendment process is dominated by the government for its own purposes. In the case of the 1996 workplace relations bill and the 1997 telecommunications bill, 98 per cent of the winning amendments to

each bill were government amendments, as were 89 per cent of successful amendments to the 2001 financial services bill.¹⁴⁵ However, the Opposition offered almost as many winning amendments as did the government to the 1998 native title bill; amendments to the family and community services bill of 2000 also were just as likely to come from the Opposition as from the government. By contrast, the Opposition and the Democrats joined together to propose all but one of the 173 amendments that the Senate approved to the Aboriginal and Torres Strait Islander Heritage Protection Bill passed by the Senate in 1999; only one government amendment to the bill prevailed.

Even when presented with such stark differences in outcomes, we have to be careful about the inferences we draw. Government amendments may win in the face of opposition from some non-government parties; however, such amendments also may be technical amendments that fail to embody policy differences that divide the parties, or they may constitute compromises that the government has negotiated with non-government parties—or all of the above, depending on the amendment. Similarly, when the government and the Opposition share amendment victories evenly, that could reflect a very closely divided Senate in which the minor parties and Independents support the government on one amendment and then vote with the Opposition on the next. On the other hand, it could reflect a harmonious situation in which government and Opposition have worked out their differences and, perhaps for purposes of public presentation, have agreed to share credit for offering the amendments that implement their agreement. The same might even be true when the Opposition offers most of the winning amendments; it may do so with the acquiescence of the government; such an understanding even might be an element of the agreement that the government and Opposition reached with each other.¹⁴⁶

One way to differentiate among such possibilities is to look not only at which parties offered the winning amendments, but which of them

145 Few things in parliaments are as simple as they may seem. A helpful reader kindly pointed out in a personal communication that the telecommunications bill had been examined in detail by one of the Senate's legislative committees. 'The majority report [of the committee] made 64 broad recommendations for amendments. Non-government senators also made additional recommendations in minority reports but, given the shortcomings found by the committee (which had a government majority), the government would have been foolish to ignore them. *All the government amendments are attributable to the committee's report.*' (emphasis added)

146 Some amendments are circulated and offered jointly, as the notes accompanying some of the tables in this chapter indicate.

offered amendments that did not win—amendments that were negatived, in the unfortunate parlance of the Senate. The Senate did not reject any amendments to either the 2000 family and community services bill or the 2001 financial services bill. On the other hand, there were 239 losing non-government amendments (204 from the Opposition) to the 1996 workplace relations bill, compared with 167 amendments (164 from the government) that won; and the 1997 telecommunications bill, to which 271 government amendments were made, also was subject to six winning and 76 losing non-government amendments. In the case of the 1998 native title bill, which saw 89 government amendments and 86 Opposition amendments passed, 262 non-government amendments (but only seven Opposition) amendments were defeated, compared with only five government amendments.

We can infer with confidence that there are serious party differences over bills to which many amendments are offered and negatived. However, we need to be somewhat more cautious about our inferences regarding bills that were subject to few losing amendments or none at all. That record could reflect consensus in the Senate. However, it also could reflect a deliberate decision by one or more non-government parties simply to oppose the government's legislation, not to try to ameliorate its evils by amendment or to offer their own policy alternatives (which would involve having to formulate them with precision and defend them in the chamber). Or consider the Aboriginal and Torres Strait Islander bill that the Senate passed in 1999. The ALP and the Democrats jointly proposed 172 amendments to the bill that the Senate approved; by contrast, the government offered only one winning amendment and two losing amendments. Perhaps the government, recognizing that it lacked 'the numbers' on this bill at that time, saw no useful purpose in offering more amendments that it knew would be defeated, especially since the government always knows that it will have a second bite at the proverbial apple when the House either amends any Senate amendments that the government cannot accept without change, or when the House simply rejects those amendments, returning them to the Senate in either case for renewed consideration.

The legislative process in any truly democratic assembly is a complicated business; there often may be more than one reason why something does or does not happen, which is precisely what makes studying it both interesting and challenging. By itself, knowing which parties have won and which parties have lost on amendments in the Senate chamber, and how often, tells us part of an interesting story. To understand the full story, we would need to know why each amendment was moved and how important or controversial, how good or bad, each party thought it to be. Even worse, we would need to know what other

amendments might have been offered but were not. That kind of rich and textured understanding cannot be achieved by any kind of quantitative analysis; each important bill has its own story, which is why case studies of ‘how a bill becomes a law’ can be so valuable. However, the fact that quantitative analysis has limits does not make it pointless, both because of the questions it can answer and the others which it can identify and specify.

So we turn next to the record of each party group in the Senate in proposing amendments (which, again, includes requests for amendments) in the committee of the whole. Table 7.3 presents data on the amendments moved on behalf of each party; Table 7.4 addresses the frequencies with which those amendments won and lost.

The clearest message of Table 7.3 is one we already have heard: that the opportunity to move amendments to bills in the committee of the whole is an opportunity for the government as well as for non-government parties. In fact, the government’s own drafting procedures recognize that amendments to a bill may need to be drafted while the Senate is considering it, and without a chance to subject them to the normal vetting process. The normal process, as described in the *Legislation Handbook*, by which the government prepares, reviews, and approves bills and amendments is impressively elaborate. In general, the same process that applies to bills also applies to amendments that the government contemplates proposing or accepting. However, the authors of the *Handbook* acknowledge that:

In the Senate, there will be situations where government amendments are negotiated and agreed during debate on a bill, or prepared in anticipation of their likely need during debate to ensure passage, and there will not be time for the formal approvals to be sought. In such situations, it is up to the relevant minister to clear any amendments with the Prime Minister, other ministers, and the relevant government members’ policy committee, as appropriate and as time permits.¹⁴⁷

In 1999 and again in 2001, the government accounted for more than half of the committee amendments on which the Senate voted. In the latter year, government Senators, almost always ministers, offered more than 3.5 times as many amendments as did Opposition Senators. In the other four years, the Opposition did move more amendments than the government but not by particularly wide margins, and in only one of the six years (1997) did the Opposition account for as much as 40 per cent of all the amendments moved. In part, this may reflect a difficulty that

¹⁴⁷ *Legislation Handbook*, Department of the Prime Minister and Cabinet, 2000: 53. [www.dpmc.gov.au/pdfs/LegislationHandbookMay00/pdf]

the ALP had in adjusting to being in Opposition after 13 years in government. It also may be that Labor sometimes made deliberate decisions not to worry about ‘fixing’ government bills; if there were problems in government bills that were going to pass, they were problems for the government to identify and solve. In addition, one close observer has suggested an additional reason:

Organisationally, the ALP in opposition has given firm authority over portfolio issues to its shadow ministers, most of whom are in the House of Representatives. They therefore do not understand how a legislative chamber works and do not appreciate how the Senate can be used. They also are electorally very sensitive, which sometimes has led them to decide that no action is better than action that could make the electorate nervous.¹⁴⁸

If we sum together the amendments moved by all ‘other’ Senators—all the non-government and non-Opposition Senators—they accounted for a majority of the amendments offered in 1998 but only one of every eight in the following year. It is fair to say that in three of the six years, one group of Senators dominated the amending process by offering most of the amendments—the minor party and Independent Senators in 1998 and the government in 1999 and in 2001—but not in the other three years in which the initiative in proposing amendments was more evenly distributed.¹⁴⁹

It would seem, then, that the stage of detailed consideration of bills in the committee of the whole which, it should be emphasized, takes place in the chamber on public view, is not a forum dominated by an Opposition party that is ready with amendment after amendment designed either to improve government legislation or pick it apart, clause by clause. As often as not, the other non-government parties and Independents have offered more amendments than the Opposition, notwithstanding their smaller numbers and more limited resources for developing amendments.¹⁵⁰ By and large, the Democrats have proposed more amendments than the Greens (putting aside the amendments they offered jointly), which is consistent with the notion that the Democrats are more likely than the Greens to find something worth trying to salvage in bills brought forth by a Liberal-National government.

148 Personal communication to the author from an officer of the Senate.

149 It also should be noted that these data are subject to sudden jolts that do not recur. Note particularly the 165 amendments that Senator Harris of the One Nation party moved in 2000 (108 of them to the Gene Technology Bill 2000), compared with seven in the preceding year and 19 in the following year.

150 In addition to needing resources to develop the policies expressed in amendments, non-government parties also need to have their amendments drafted. The government has its Office of Parliamentary Counsel; the Department of the Senate provides a drafting service for non-government Senators.

TABLE 7.3: Party activity in moving amendments in committee of the whole, 1996–2001¹

	1996	1997	1998	1999	2000	2001
Total number of amendments moved	879	2151	1454	2136	1383	1288
Amendments moved by:						
Government ²	282 (32.1%)	685 (31.8%)	355 (24.4%)	1243 (58.2%)	375 (27.1%)	709 (55.0%)
Opposition ²	312 (35.5%)	897 (41.7%)	356 (24.5%)	629 (29.4%)	489 (35.4%)	193 (14.9%)
Australian Democrats	126 (14.3%)	411 (19.1%)	436 (30.0%)	155 (7.3%)	206 (14.9%)	321 (24.9%)
Greens ³	150 (17.1%)	99 (4.6%)	135 (9.3%)	100 (4.7%)	142 (10.3%)	41 (3.2%)
National Party	0	0	1 (0.1%)	0	0	0
Australian Democrats and Greens jointly	0	33 (1.5%)	151 (10.4%)	0	0	0
One Nation	0	0	0	7 (0.3%)	165 (11.9%)	19 (1.5%)
Independents	9 (1.0%)	26 (1.2%)	20 (1.4%)	2 (0.1%)	6 (0.4%)	5 (0.4%)

Source: *Business of the Senate*, editions for 1996–2001, produced by the Senate Table Office.

1. Includes requests for amendments; excludes amendments on which free votes were permitted, and amendments to amendments and amendments moved but then withdrawn or left pending; excludes divisions on whether matter in a bill, proposed to be stricken or replaced, should stand as printed; treats two or more amendments considered together as one amendment.
2. Includes amendments moved jointly with one or more other parties.
3. Combines Australian Greens and the Greens (WA).

The data in Table 7.3 are frustrating in that they do not reveal obvious patterns or trends. What we can say is that, for each of the three groups of Senators (government, Opposition, and ‘other’), the percentage of amendments that each offered ranged roughly between the mid-20s and the mid-30s in four of the six years. However, the percentage of government amendments twice jumped to more than one-half; the percentage of Opposition amendments fell below 15 per cent and rose above 40 percent; and the percentage of amendments from the minor parties and Independents hit an even higher high and an even lower low. Furthermore, the exceptional years for each group fit no evident temporal pattern, nor are there any apparent relationships between the percentages of amendments that the government, Opposition, and minor parties offered and any changes that occurred in

the partisan composition of the Senate (see Table 6.2). Between July 1999 and September 2001, for example, the number of government (Liberal and National) Senators held constant at 35, while the percentage of government amendments fell from 58.2 per cent in 1999 to 27.1 per cent in 2000 before rising again to 55.0 per cent in 2001.

The Opposition always has needed the support of the Democrats to win in the chamber, as we have seen. So we might expect the Opposition alone, or those two parties together, to offer the largest share of amendments when they needed the fewest additional votes for victory. But if that is what we expected, we would be mistaken. Throughout 2000, the ALP and the Democrats together held 38 Senate seats compared with 35 for the government, and the two parties proposed 50.3 per cent of all committee amendments. Throughout all of 1997 and 1998, however, only 35 Senators belonged to the two largest non-government parties, and those parties moved 60.8 per cent of the amendments in 1997 and 54.5 per cent in the following year. The variations that Table 7.3 reveals are not associated, in any way that these data reveal, with changes in the ever-important and all-important 'numbers' in the Senate.

Ultimately, the numbers or percentages of amendments that each party has offered are far less important, especially in light of the diverse reasons why amendments may be offered, than how often its amendments have won or lost, either on the voices or by divisions, which is the subject of Table 7.4. The table speaks to two related questions. First, what are the sources of winning amendments? Of all the amendments to which the Senate agreed during 1996–2001, what share of them were offered on behalf of each party? And second, how successful was each party in having its amendments approved? Of all the amendments offered on behalf of each party, what share of those amendments did the Senate agree to?

With respect to the first question, the table shows that the government accounted for far more of the winning amendments than did the Opposition, even though it always must be remembered that neither the government nor the Opposition had a majority in the Senate. Throughout this period, the government held between six and nine more seats than the Opposition and, for this reason, the government had a wider array of possible winning coalitions that it could form. The government, for example, always could win just by joining forces with the Democrats while, for the Opposition, having the voting support of the Democrats never was enough. So perhaps we should expect to find that the government was the source of somewhat more winning amendments than the Opposition, but the magnitude of the differences is interesting.

TABLE 7.4: Success rates of amendments and requests moved in committee of the whole, by party, 1996–2001¹

	1996	1997 ²	1998 ³	1999	2000	2001
Percentage of all amendments agreed to that were moved by:⁴						
Government	72.1	50.5	44.9	77.0	43.2	69.9
Opposition	6.9	29.9	35.3	19.6	45.3	12.4
Australian Democrats	8.5	16.0	12.8	2.4	10.5	16.9
Greens	10.8	1.6	2.9	0.7	0.8	0.9
Independents	1.8	1.6	1.9	0.1	0	0
Frequency with which amendments were agreed to when moved by:⁵						
Government	99.6	98.5	98.6	99.4	99.7	99.9
Opposition	8.7	44.6	77.2	50.1	80.2	65.3
Australian Democrats	26.2	52.1	22.9	25.2	44.2	53.3
Greens	28.0	22.2	17.0	16.2	4.9	19.5
Independents	77.8	80.8	75.0	100.0	0	0

1. Includes requests for amendments; excludes amendments on which free votes were permitted, and amendments to amendments and amendments moved but then withdrawn or left pending; excludes divisions on whether matter in a bill, proposed to be stricken or replaced, should stand as printed; treats two or more amendments considered together as one amendment.

2. Percentages do not sum to 100 per cent because five successful amendments were moved jointly by the Australian Democrats and the Greens.

3. Percentages do not sum to 100 per cent because 16 successful amendments were moved jointly by the Australian Democrats and the Greens, and one moved by the National Party (but not for the Coalition government).

4. The number of all amendments and requests that were moved by each group of Senators and agreed to by the Senate as a percentage of all the amendments and requests *to which the Senate agreed*.

5. The number of all amendments and requests that were moved by each group of Senators and agreed to by the Senate as a percentage of all the amendments and requests *that group of Senators moved*.

In three of the six years, the government was the source of about 70 per cent of the amendments that the Senate approved, and never less than 40 per cent. The Opposition, by contrast, offered less than seven per cent of the winning amendments in one year (1996), and only once was the source of more than 40 per cent of those amendments. The exceptional year was 2000, when the Opposition accounted for a slightly greater percentage of winning amendments than the government, and in 1998 the figures for the government and Opposition are reasonably close. In 1996, however, the ratio of winning amendments moved by the government to those moved by the

Opposition was more than ten to one, and five years later, it was more than five to one.

Another way of approaching the same question is to compare the percentage of winning amendments that were moved by each party with the percentage of all amendments on which the Senate acted that were moved by each party; in other words, to compare the record of the government and Opposition from this table with their record from the preceding table. Consider 1996, which offers the most dramatic contrast. In that year, 32.1 per cent of all committee amendments were offered on behalf of the government, but 72.1 per cent of all the committee amendments that won were government amendments. In comparison, in the same year the Opposition proposed slightly more amendments, 35.5 per cent of the total, but originated less than seven per cent of the winning amendments. In all six years, the government offered a higher percentage of winning amendments than all amendments; in four of the six years, the opposite was true for the Opposition. The government was not the source of larger shares of the winning amendments simply because it offered larger proportions of all amendments.

When we look at the record of the two minor parties, we find that, after 1996, the Democrats accounted for a larger share of winning amendments each year than did the Greens, but the Democrats also offered higher percentages of all committee amendments than did the Greens. What is more interesting is to compare the Opposition with the two minor parties together as sources of winning amendments. In 1996 and 2001, the Democrats and Greens combined to propose a larger percentage of winning amendments than the Opposition. In four of the six years, however, considerably more of the amendments the Senate approved were moved by the Opposition than by the other two non-government parties combined.

With respect to the second question that Table 7.4 addresses, there is no question of the government's success in having the Senate agree to its amendments in the committee of the whole. When no less than 98.5 per cent of the government's amendments won each year, nothing more on the subject needs to be said. The track record of the non-government parties is far more varied and interesting. The Opposition's success rate ranged about as widely as possible, from 8.7 per cent in 1996 to 80.2 per cent in 2000. But the Opposition's dismal record in 1996 should not disguise the fact that, in the other five years, more than 40 per cent of its amendments won, with at least half of its amendments winning in three of those years. After 1996, the Democrats consistently enjoyed more success with their amendments than did the Greens, which may reflect the much greater experience that the Democrats have had in the

Senate. The same data also may tell us something about where each of the two minor parties usually has been situated, in policy terms, in relation to the governing Coalition and the Labor Opposition. By no means are the two possible explanations mutually exclusive.

In general, the government has been active and successful in using its opportunities to offer amendments to its own bills in the committee of the whole. It sometimes has accounted for a majority of all the amendments moved, although usually for something more like one-quarter or one-third of those amendments. More important, in four of the six years, it was the source of a greater percentage of the winning amendments than all the other parties combined, and in only one year did Opposition Senators move a larger share of the winning amendments. Most impressive of all, the government's amendments rarely have lost, even though it never has had its own numerical majority in the Senate.

How to account for these findings? There are two general reasons why the government would want to propose amendments to its own bills: either it wants to, or it needs to. The government may offer amendments to make improvements in its bills (as in the case to which Odgers referred in his 1948 article). The desirability of making certain improvements may come to the government's attention after its bill has been drafted and introduced in the House; or the wisdom of making those improvements may emerge while the House is acting on the bill, but the government may not have time to make them at that stage of the legislative process or it may prefer to make them in the Senate. By deferring its amendments until a bill has had its second reading in the Senate, the government gains time to assess its possible amendments and perfect the ones it decides to make. And by moving those amendments in the Senate instead of the House, the government is able to avoid any suggestion that it has had to make any compromises or concessions in the chamber where it enjoys unquestioned control. In the House, according to David Solomon:

Tight control over the government party or parties is maintained irrespective of the importance of the particular issue. The most trivial matter is deemed important to the prestige of the political parties. Even if an opposition discovers a patent error in a bill, an amendment in the House will not succeed unless the minister in charge of the bill decides to accept the amendment. Most ministers, faced with that situation, prefer to correct their errors by introducing their own amendments, generally when the bill reaches the Senate. They argue with backbench supporters who want to vote for an opposition improvement to a bill that the government and the Parliamentary Draftsman will need to look at the matter to see whether other clauses might also be affected. But the basic emotional argument, which so completely pervades Parliament House in Canberra that it rarely

has to be voiced, is that the government will somehow suffer damage if a vote goes against it—irrespective of the issue on which the vote is taken. (Solomon 1978: 39)

Alternatively, of course, the government may propose amendments in the Senate to its own bills because those amendments are the price it has to pay for the extra votes it always needs to win (which takes us back to the emphasis in the last chapter on successful coalition-building). So some ‘government amendments’ could equally well have been proposed by the other party with which they were negotiated. Unfortunately, Tables 7.3 and 7.4 do not enable us to determine how often the government has moved amendments out of choice and how often it has acted out of necessity. The fact that the government’s amendments almost always win is consistent with both generic explanations.

Many, perhaps most, of the government’s amendments probably are to make improvements in its bills in the form of minor adjustments or corrections of inadvertent errors and oversights—changes that none of the other parties has any reason to oppose. Consequently, those amendments always win. The remaining government amendments almost certainly are coalition-creating amendments. If there is an understanding with one or more non-government parties (or Independents) that they will join the government in supporting the amendments they have negotiated with the government, and that they then will support the bill as amended, those amendments also will win, except in the unlikely event of a misunderstanding or a collapse of the coalition agreement.

The tables also show that, taken together, the non-government parties usually, but not always, have offered more amendments in the committee of the whole than the government. Also in general, the Opposition usually, but not always, has offered more amendments than the Democrats and Greens combined. We can think of the government and Opposition as alternative cores of potentially winning coalitions, each trying to attract the additional votes it needs at the expense of the other (although we found in the last chapter that often this is not the case, and that the Opposition often has voted with the government on divisions). In such cases, both the government and the Opposition have incentives to move amendments that will attract the winning margin of additional votes or implement winning coalition agreements that already have been made. Unlike the government, though, the non-government parties do not have to propose amendments to make minor improvements or technical corrections in bills. Only if we could identify and set aside the government amendments offered for the latter purposes could we begin to make a true comparison of how often the

two major players in the Senate have used the amendment process for coalition-building purposes.

The government accounts for a large share of all winning amendments and almost all government amendments win because some of its amendments, the minor and technical ones as well as the negotiated ones, are certain to win. The Opposition accounts for a smaller percentage of winning amendments and its winning percentage is consistently lower than the government's because some of its amendments are almost as certain to lose. Like the government, the Opposition has more than one general reason for moving amendments. It may propose amendments that it thinks or at least hopes will win. Perhaps the government may not oppose them with the hope that the Opposition then will be satisfied with the amended bill and so will support it. Or perhaps the Opposition amendments will attract the support of the minor parties and so will defeat the government. There also are occasions, however, when the Opposition offers amendments, even knowing they will lose, because those amendments enable it to define and publicize its policy disagreements with the government (see, e.g., Young 1997: 97–99). As I already have observed, any Opposition has to balance its desire to win a vote today against its desire to win an election tomorrow. The Opposition sometimes will have a choice between moving an amendment that represents less than its optimal policy but that is likely to unite all (or a sufficient number of) non-government Senators against the government, and offering an amendment that presents its policy clearly though in a way that will not bring it the allies it needs to win. In those instances, sometimes it will choose one and sometimes the other, depending on the policy and electoral consequences it envisions.

There are other possibilities we have not considered and other implications of the data that we have not explored. But there is only so much that can be gleaned, and so much that can be inferred with any confidence, from data on the successes and failures of amendments when we lack information about which parties supported them and which opposed them. The data in Tables 7.2–7.4 encompass all the amendments in committee of the whole on which the Senate voted, including amendments decided on the voices as well as those decided by divisions. Only when there is the record on an amendment that a division provides can we delve further into why it won or lost. So just as we looked at all divisions in the last chapter and divisions on reading motions earlier in this chapter, we now turn to an examination of divisions on amendments moved in the committee of the whole.

Divisions on committee amendments

By focusing on committee amendments that the Senate decided by divisions, we can gain more purchase on the extent to which non-government parties have tried to use the process of considering legislation in committee of the whole for their own purposes and how successful they have been, and we can examine how often non-government parties have (or have not) joined with each other, or with the government, to pass or defeat amendments. Before doing so, however, three preliminary matters need to be addressed briefly.

First, and as I have emphasized before: not all amendments are the same. When we looked in the preceding chapter at all Senate divisions between 1996 and 2001, we were not mixing apples and oranges; we were mixing grapes and watermelons. Some of the issues those divisions settled obviously were far more important than others. The justification for examining them all together is that, in each case, one party or another saw some reason for insisting that question be decided by a division.¹⁵¹ Now when we look at all committee amendments on which the Senate voted during the same period, we confront the same fact and the same analytical problem it creates. Some of the amendments were much more important than others, but there is no manageable and ultimately satisfactory way to know which are which. For example, we supposed earlier in this chapter that some government amendments were of a minor or technical nature while others embodied important policy changes that the government needed to make in order to secure passage of its bills. Without examining each amendment, we can only guess at how many government amendments fell into each category. By looking at committee amendments that gave rise to divisions, not only do we gain access to more interesting information about each of them, we also can invoke a reasonable hope that we are looking at amendments that, more often than not but not always, were more important than the amendments that the Senate accepted or rejected on the voices.

151 In some cases, the reason for calling a division may have had nothing to do with the importance of the question to be decided. For example, the losers on the voices may refrain from calling a division, even though the question being decided is an important one. The losers may prefer not to document the composition of the winning coalition that defeated them, or they may want to save time and demonstrate a cooperative attitude. In other instances, a non-government party may call a division, which consumes valuable government time, when it wants to send a message to the government that it is angry or frustrated about something else that the government has or has not done.

Second, not all amendments are offered for the same reason. Earlier I offered a distinction that is familiar in American political science between policy-making and position-taking. The calculations of victory or defeat in the Senate are relatively simple; it suffices to be able to predict with confidence the voting intentions of a small number of disciplined party groups and a smaller number of Independents. So when a truly important amendment comes to a vote, party leaders who have done their homework often should know already whether they are about to win or lose. And, as we shall see, in some years, the winning percentages of some parties have been so high or so low that party leaders still could make informed guesses about the outcomes of votes on committee amendments even when they had only imperfect information about others' voting intentions.

So we have to assume that divisions were called on different amendments for different reasons. In some instances, divisions undoubtedly were called with the expectation of changing the outcomes of votes on amendments. If, for instance, the result of the first vote on an amendment, a vote taken by the voices, was not indicative of the known positions of the parties on that amendment, bringing in all Senators to participate in a division reasonably could be expected to produce a different result. In other instances, divisions probably were called because the fate of amendments truly was in doubt, and proponents or opponents who had been declared the losers when the votes were taken on the voices saw nothing to be lost and something possibly to be gained by calling divisions on the same amendments. But in still other instances, divisions certainly were called without any hope or expectation of winning, but for the purpose of position-taking: putting each party on the public record as favouring or opposing the policy position that an amendment embodied. In these cases, the divisions were less elements of the legislative process than they were elements of the ongoing electoral process, with each party using votes in Parliament to position itself favourably vis-a-vis the others.

And third, the undeniable facts that some amendments are more important than others and that some are offered for different reasons than others both can be adduced to sustain an argument that the kind of quantitative analysis in which we are engaged really is not very important or useful. It is quality not quantity that matters. The argument is easy to make: 'I, as a party leader, really don't care if I lose divisions on nine out of ten amendments so long as I win the tenth, because that tenth amendment is ten times more important to me and my party than all the others combined.' This may be absolutely true. In my judgment, though, what it implies is not that quantitative analysis is uninformative but that it only can tell part of the story. The work of legislatures is too

complex to be reduced satisfactorily to statistics. If that were not so, they would not be very interesting at all. But numbers and statistics can enable us to identify patterns and trends, help us to speculate about the reasons for them, and encourage us to seek answers for questions that otherwise might not have occurred to us.

TABLE 7.5: Amendments moved in committee of the whole, 1996–2001¹

	1996	1997	1998	1999	2000	2001
Total number of bills passed by the Senate	85	224	139	206	181	171
Total number of committee amendments	879	2151	1454	2136	1383	1288
Number of committee amendments decided by divisions	84	111	63	88	40	11
Percentage of committee amendments decided by divisions	9.6	5.2	4.3	4.1	2.9	0.9
Number of committee amendments decided by divisions, per bill passed	1.0	0.5	0.4	0.4	0.2	0.1
Total number of winning committee amendments	390	1337	780	1605	866	1013
Number of winning committee amendments decided by divisions	8	22	6	14	3	3
Percentage of committee amendments decided by divisions that won	9.5	19.8	9.5	15.9	7.5	27.3
Number of winning committee amendments decided by divisions, per bill passed	0.09	0.10	0.04	0.07	0.02	0.02

- 1 Includes requests for amendments; excludes amendments on which free votes were permitted, and amendments to amendments and amendments moved but then withdrawn or left pending; excludes divisions on whether matter in a bill, proposed to be stricken or replaced, should stand as printed; treats two or more amendments considered together as one amendment.

Now, finally, with these preliminaries having been addressed, let us turn to Table 7.5, which presents the ‘big picture’ on divisions on amendments that were moved in the committee of the whole. As in some of the other tables we already have examined, the ratios and percentages here are more interesting than the absolute numbers. Consider, for instance, how frequently Senators called divisions on amendments. In not one of the six years did even ten per cent of the committee amendments provoke divisions. What is more, the percentage of committee amendments that were decided by divisions declined steadily from the high-water mark of almost ten per cent to, remarkably enough, slightly less than one per cent. In 2001, the Senate acted on 1,288 committee amendments, but resorted to divisions only 11 times. If we ask how many divisions on committee amendments

there were, on average, on each bill the Senate passed, we find that the question is hardly worth answering because the answers range only from 0.1 to 1.0.

The most plausible conclusion to draw is that Senators usually saw no useful purpose served by calling divisions (which are not exactly costless because they do consume time and disrupt the activities of Senators engaged in activities outside the chamber).¹⁵² In the overwhelming majority of cases, the outcomes that divisions would have produced were foregone conclusions, so calling divisions would have been pointless except to put the positions of all parties formally on the public record. And the first half of Table 7.5 suggests that divisions on committee amendments are not very often thought to be useful for purposes of clarifying party differences on important policy questions—that is, position-taking.

There are at least three reasons why this might be so. First, the House passes most bills before they reach the Senate, and the Senate then engages in second reading debates on them before the opportunity arises to debate and vote on substantive amendments, so by then party positions usually have been fully elucidated. Second, there are other more visible and even theatrical opportunities, especially Question Time and media interviews, to define, loudly if not precisely, whatever party differences may not yet be well known. And third, there is only limited value in forcing each Senator to cast his or her individual vote on the public record because, at least for government and Opposition Senators, there is no suspense as to how each of them will vote. This is in marked contrast to the situation in the US Congress, where each Representative and Senator, by his or her votes, constructs a unique voting record that he or she has to defend at the next election.

Finally, and as a cautionary note, these data require us to bear in mind that, in the remainder of this chapter, we will be concerned with numbers that are quite small. As a result, any ratios or percentages derived from them, or trends or patterns apparent in them, must be treated gingerly.

152 Elliott (1997: 43) quotes a government Senator responsible for moving a tax bill through the committee of the whole in 1990 as observing that, because the legislative process is 'an uncertain and time consuming process ... the government has decided in the interests of getting legislation passed that will achieve its primary purpose, but not all of its purposes, and will not be in its preferred form but will be in a workable form, it will accept the amendments moved.' Perhaps if the government had been willing to invest the time and effort, it could have defeated the amendments or amended them to make them more acceptable, but perhaps it would have had to resort to divisions to do either. Sometimes, when time is short and much work remains to be done, a legislative half-loaf is satisfying enough.

The second half of the table addresses only committee amendments that won. Of greatest interest are the numbers of committee amendments that won by divisions as percentages of all the committee amendments that were decided by divisions. In other words, when there were divisions on amendments, how frequently did those amendments win? There is no obvious trend line over time in these percentages, but the key point is that in only one of the six years did more than one in five of the divisions on amendments produce a winner. Compare these data in Table 7.5 with the percentages, found in Table 7.2, of all committee amendments (including requests) to which the Senate agreed. As we have seen, over the entire period and in every year except 1996, the Senate agreed to most amendments, and to more than three-quarters of them in 1999 and 2001. The winning percentages of those committee amendments that were decided by divisions were far, far smaller. If the fate of an amendment could be decided by a vote on the voices, it stood a good chance of winning. But if an amendment could not win on the voices, a division was unlikely to rescue it from defeat.

This points to an implication to which I shall return in the conclusion to this chapter. An amendment from a non-government party is most likely to prevail after successful negotiations that result in it being approved on the voices. In such cases, a division on the amendment is unlikely, either because the government has agreed to accept it or because the government understands that there is a certain non-government majority in support of the amendment and chooses not to document that fact by a division. The poor success rates for amendments that were decided by divisions suggest that many of these divisions were called even though their outcomes were predictable. If inter-party negotiations fail to produce agreement on an amendment, the party proposing it still may decide that a division is worthwhile, either to create a public record of everyone's positions on the proposal even though it is doomed to defeat (that is, for position-taking purposes) or with the hope that a majority in support of the amendment somehow may appear when the division takes place. These are speculations, of course; the data tell us nothing about the reasons why divisions were called on amendments that then were defeated. What we can say is that the data certainly are consistent with the idea that requiring a division on a committee amendment sometimes is a last resort for a party when prior negotiations on one of its amendments have been unsuccessful. Most last resorts fail to produce the desired result, and these divisions have been no exception to that rule.

As we have done before, let us now differentiate among these divisions on the basis of party generally and the government and

Opposition more specifically. The next table, Table 7.6, distinguishes among divisions on committee amendments moved by the government,

TABLE 7.6: Senate divisions on committee amendments, 1996–2001¹

	1996	1997	1998	1999	2000	2001
Government amendments moved on which there were divisions	7	4	3	6	2	1
as a percentage of all amendments moved	8.3	3.6	4.8	6.8	5.0	9.1
Opposition amendments moved on which there were divisions	42	60	22	35	9	5
as a percentage of all amendments moved	50.0	54.1	34.9	39.8	22.5	45.5
Others' amendments moved on which there were divisions	35	47	38	47	29	5
as a percentage of all amendments moved	41.7	42.3	60.3	53.4	72.5	45.5
Amendments moved on which there were divisions, per bill passed						
Government	0.08	0.02	0.02	0.03	0.01	0.01
Opposition	0.49	0.27	0.16	0.17	0.05	0.03
Others'	0.41	0.21	0.27	0.23	0.16	0.03
Winning amendments opposed by the government in divisions	7	21	6	14	3	2
per bill passed	0.08	0.09	0.04	0.07	0.02	0.01
Success rate ² in divisions on						
Government amendments	85.7	100.0	100.0	100.0	100.0	100.0
Opposition amendments	7.1	26.7	13.6	34.3	33.3	40.0
Others' amendments	11.4	10.6	7.9	4.2	0	0

1 Includes requests for amendments; excludes amendments on which free votes were permitted, and amendments to amendments and amendments moved but then withdrawn or left pending; excludes divisions on whether matter in a bill, proposed to be stricken or replaced, should stand as printed; treats two or more amendments considered together as one amendment. Amendments moved by the government or the Opposition jointly with one of the minor parties are treated as government or Opposition amendments.

2 The percentage of all government (or Opposition or others') amendments decided by divisions to which the Committee agreed.

those moved by the Opposition, and those moved by 'others'—the two minor parties, the Independent Senators, and the sole Senator representing One Nation. The numbers presented in this table are the numbers of amendments in each category *on which there were divisions*. So, for instance, the 'number of government amendments moved' for each year is the number of all government amendments that were decided by divisions, and the accompanying percentage is the percentage of government amendments moved on which there were

divisions as a percentage of all amendments moved on which there were divisions.

Notice how few divisions there have been on government amendments. In absolute terms, it never required all ten fingers to count those government amendments on which divisions occurred. In percentage terms, divisions on the government's committee amendments never constituted as much as ten per cent of all such divisions. On the other hand, the government enjoyed an almost perfect success rate in the exceptional instances when its committee amendments were subject to divisions. And what of divisions on non-government committee amendments? The most striking finding is that most of the divisions on non-government amendments were not on committee amendments proposed by the Opposition. All told, there were fewer divisions (173 versus 201) on Opposition amendments than on those moved by other non-government Senators. In three of the six years, the Opposition was responsible for markedly smaller percentages of all divisions on committee amendments than were the minor party and Independent Senators.¹⁵³ In 2000, the Opposition moved less than one-quarter of the committee amendments on which divisions took place, and it never accounted for much more than half of those amendments. In absolute though not in percentage terms, we can discern a fairly steady decline in the frequency of such Opposition amendments, if we are prepared to pass over the exceptional year of 1997, but it is harder to see any trends in the numbers or percentages of divisions on amendments by other non-government Senators.

The last rows of the table tell what are perhaps more interesting stories. We observe here a steady decline in the rate at which the Senate agreed to committee amendments offered by minor party and Independent Senators when those amendments were decided by division. In fact, the Table Office lists of divisions fail to show even one such amendment in either 2000 or 2001. In each of the six years, these Senators moved no less than 40 per cent of the committee amendments on which divisions were held, but with low and decreasing rates of success. In 2000, the Democrat, Green and Independent Senators accounted for almost 75 per cent of the committee amendments on which there were divisions; yet not one of their amendments won.

By contrast, the success rate of the Opposition was much higher, though never approaching 50 per cent and far, far below the almost perfect record of victory that the government enjoyed. This is a classic

¹⁵³ As before, the One Nation Senator is grouped here with the Independents because he also accounts for a single vote in the chamber.

question of whether the proverbial glass is half-full or half-empty. The rate at which Opposition committee amendments won on divisions increased from seven per cent in 1996 to 40 per cent five years later; even so, when push came to shove, its amendments still lost more often than they won. Now compare the Opposition's track record when committee amendments were decided by divisions with its track record on all committee amendments—that is, the data in Table 7.4 on the frequency with which the Senate agreed to all the amendments (and requests) that the Opposition moved. The Opposition's winning percentage on all committee amendments, including those decided by divisions, was, except in 1996, far higher than its winning percentage when divisions took place. When the Senate held divisions on the Opposition's committee amendments, it never won more than 40 per cent of the time; from 1997 through 2001, in comparison, the Opposition never won less than 40 per cent of the time, and in one year won at twice that rate, when we add into the mix the far greater number of committee amendments decided on the voices.

The first thing to be said is that these data support the supposition offered earlier that the relatively low rates at which committee amendments won when they were decided by divisions are attributable primarily to defeats of amendments moved by non-government Senators. But of course, there is more to be said than that.

The success rate of Opposition amendments was consistently so much lower than that of the government because of the strong likelihood that most Opposition amendments on which there were divisions were amendments that the government actively opposed. It is perfectly reasonable to suppose that a considerable number of Opposition amendments were not actively opposed by the government because it saw no need to oppose them; the amendments either were constructive or insignificant. In other cases, the government must have supported Opposition amendments, either overtly or tacitly, because those amendments embodied compromises or concessions that the government had agreed to make, either in return for explicit assurances of Opposition support or with the hope that the amendments would suffice to elicit Opposition support. When it is evident that the government supports an Opposition amendment, any other party would have no reason other than position-taking to require a division on it. So we can expect that when there were divisions on Opposition committee amendments, it was because the government was on one side of the question and the Opposition was on the other. In those cases, the government was much more likely to prevail—more likely, in terms of the preceding chapter, to succeed in building winning coalitions.

There is an even more dramatic contrast between all votes on all committee amendments and division votes for those amendments moved by the Democrat, Green, and Independent Senators (again comparing Tables 7.4 and 7.6). On their committee amendments decided by divisions, their collective success rate was never more than 11 per cent and fell to zero in 2000 and 2001. On the other hand, the rates at which the Senate agreed to all of their committee amendments were, to understate the case seriously, consistently and significantly higher. When we look at the fate of all their committee amendments, the Greens' record only once fell below that 11 per cent high for amendments decided by divisions; the Democrats' record always was at least twice that high; and the success rates for Independents on all their committee amendments was astronomically higher, before collapsing to nothing in 2000.

The same argument adduced in the preceding paragraph with regard to Opposition amendments should apply with even greater force to divisions on Democrat, Green, and Independent amendments that the government is very likely to have opposed. Furthermore, the inference that Opposition amendments were more likely to prevail over government opposition than amendments of minor party and Independent Senators is consistent with the expectation that, psychologically at least, it is considerably easier (though still challenging) for the Opposition to build winning coalitions than for other non-government Senators to do so because the Opposition needs a much smaller additional increment of votes to win. Ultimately, though, it may be less important to know how often non-government parties (and Independents) won than to know how often the government lost. That number never exceed 21 per year and only two or three in the two most recent years. Even in 1997, when the government opposed 21 amendments that won on divisions, that number constituted roughly one per cent of the more than 2100 committee amendments offered that year, and about 1.5 per cent of those committee amendments that won.

We have returned, then, to the need to construct majority coalitions in the Senate where no party has a natural electoral majority. From the success rate that the government has enjoyed when its committee amendments have been subject to divisions, we can infer that it has had little difficulty in finding the few extra votes it has needed to build one of the possible winning coalitions that we explored in the previous chapter. As we also have seen, the non-government parties have been far less successful in assembling majorities to support their committee amendments on divisions. Table 7.7 helps us to understand why.

Because party representation in the Senate has not been constant during 1996–2001 (see Table 6.2), there is no single formula that

identifies the essential elements of any majority coalitions that the Opposition ALP or the Democrats or Greens could hope to build.¹⁵⁴ During some parts of the period, for example, the Opposition absolutely

TABLE 7.7: Party support for committee amendments moved by non-government parties and opposed by the government in the Senate, 1996–2001

	1996	1997 ¹	1998 ²	1999	2000	2001
Percentage of Opposition amendments supported by³:						
Australian Democrats only	0	3.3	0	0	11.1	0
Greens only	57.1	26.2	31.8	51.4	66.7	40.0
Both parties	42.9	63.9	68.2	48.6	22.2	40.0
Neither party	0	6.6	0	0	0	20.0
Percentage of Australian Democrat amendments supported by:						
Opposition only	0	4.0	0	0	0	0
Greens only	20.0	44.0	47.6	87.5	100.0	100.0
Both parties	80.0	52.0	52.4	4.2	0	0
Neither party	0	0	0	8.3	0	0
Percentage of Greens' amendments supported by:						
Opposition only	30.4	5.9	0	14.3	0	0
Australian Democrats only	21.7	29.4	60.0	47.6	100.0	100.0
Both parties	43.5	47.1	40.0	4.8	0	0
Neither party	4.3	17.6	0	33.3	0	0

1 One amendment was offered jointly by the Australian Democrats and the Greens and opposed by the Opposition.

2 Six amendments were offered jointly by the Australian Democrats and the Greens; the Opposition supported four and opposed two of them.

3 If an amendment is listed as having been offered jointly by the Opposition and one of the minor parties, it is treated here as an Opposition amendment.

needed the Greens' one or two votes; at other times, the Opposition could prevail without those votes if it had the support of the Independent Senator Harradine, or all Independents, or perhaps Senator Harris of the One Nation party as well. What we can say, however, is that Labor could never prevail over the government without the support of the Australian Democrats; the Democrats' support was always necessary though never sufficient. So it is interesting to discover from

¹⁵⁴ The number of votes required to win also depends on the number of votes actually cast. When Senators are absent from a division without being paired (to prevent their absence from affecting the outcome), the number of votes required to win that division changes accordingly.

the first section of Table 7.7 that the Opposition has had a checkered record in attracting the Australian Democrats to support its committee amendments on divisions. In only two of the six years (1997 and 1998) did the Democrats support Opposition amendments (either alone or with the Greens) so much as half the time; in 2000, the Opposition lost its essential coalition ally on two of every three divisions on committee amendments.

On the other hand, the Opposition had a wonderfully constant ally in the much smaller and, therefore, less pivotal Green delegation. During 1996–1999, the Greens (or the sole Green) voted with the Opposition (either alone or with the Democrats) on the latter’s amendments more than 90 per cent of the time each year, and still 80 per cent or more of the time during 2000–2001. The Table Office records do not show a single division on an Opposition committee amendment in 1996, 1998, or 1999 on which the Opposition lacked the support of the one or two Green Senators. The ALP’s problem was that its far more steadfast ally was its far less (numerically) valuable one. And here we reach the limits of what our data reveal, because we cannot infer from them how often the Opposition resolutely tried but failed to reach coalition agreements on its amendments with the Democrats, or how often it sat back, hoped for the best, and found, when the votes were cast, that its proposals were consistently more appealing to the Greens than to the Democrats. For that matter, the data cannot tell us how often the Democrats voted against the Opposition and with the government not so much because of alliances that the Opposition failed to strike with it, but because of the alliances with the Democrats that the government had succeeded in consummating.

The Democrats and Greens obviously face a steeper uphill climb in securing the adoption of their committee amendments on divisions. Without the support of the Opposition, the fate of their amendments is sealed unless they can reach agreement with the government. If the goal of the Democrats and Greens in moving a committee amendment is to win, notwithstanding the government’s opposition—in other words, policy-making, not position-taking—then their first and overriding concern must be attracting the Opposition into coalition with them on that vote. Interestingly, then, the second and third parts of Table 7.7 indicate that neither of the minor parties has been particularly successful in this regard, and that their rates of success have declined.

When we look at some of the numbers, we see that the Opposition (in alliance with the Greens) supported Democrats’ committee amendments on divisions 80 per cent of the time in 1996, but that rate dropped to less than 60 per cent during the next two years, and evaporated thereafter. The corresponding rates at which the Greens had

the support of the Opposition (again, either alone or with the Democrats) started at a slightly lower level, remained at or above 40 per cent for the next two years, and then remained on the radar screen in 1999 before crashing in the two most recent years. Both the Democrats and the Greens have demonstrated increasing and impressive rates of success in attracting the support of each other as their sole ally, but to what end? Again we are left with questions that the data cannot answer. Do these data reflect a change in strategy on the part of the minor parties? Have they become less interested in making what may be relatively marginal changes in legislation by devising amendments that are acceptable to the Opposition as well as to each other, and more interested in staking out positions that clearly distinguish them from the Opposition as well as the government? Or has the Opposition moved away from them, and increasingly spurned their efforts to form winning coalitions? We saw, especially in Table 6.3, how often the government and the Opposition came to vote together during 2000 and 2001. Perhaps it is the ALP that has been repositioning itself, vis-a-vis all the other parties, with the result that it has become easier for it to find common ground with the government than with the other non-government parties.

In brief conclusion

In reviewing the work of political scientists on the American Congress, I sometimes have thought that if the data they present contradict what my judgment and experience tell me is true, then I am prepared to believe that something is wrong with the data.

The data presented in this chapter and the last would seem to call into question two of the most commonplace assertions about the Australian political system. One is that the essential dynamic of Australian politics is the competition between the government and the Opposition. That competition is inherent in the structure of a parliamentary system, and reinforced in Australia by the historic differences between the Labor Party on the one hand and the primary non-Labor party or parties (now the Liberal-National Coalition) on the other. Geoffrey Brennan, for example, has observed that:

Liberal-Labor animosity has become one of the habits of Australian political discourse, and an explicit Liberal-Labor compromise on a matter of policy would be implausible (and perhaps electorally costly to both sides) except in circumstances that were widely regarded as 'exceptional'.

The patterns of relationship in the lower house are more or less replicated in the upper [E]xplicit Coalition/Labor Party negotiations over detailed aspects of proposed legislation are difficult to imagine: the

two major parties in the Senate are more or less locked into their assigned lower house roles. (Brennan 1998–99: 7)

Yet upon examining the voting record of the parties in the Senate, we have found, in this chapter and the last, that the Opposition has not been opposing the government very regularly or very aggressively, that the Opposition has frequently been voting with the government, and that the Opposition has had less than a stellar record of success in reaching agreement on committee amendments with the other non-government Senators whose support it needs to prevail over the government.

The second assertion, and one that we considered in the last chapter, is that the balance of power in the Senate is held by the minor parties and Independents. Yet in recent years, those cross-bench Senators have not had much success in securing the government's support on divisions for their committee amendments. And by the same token, the data do not present an impressive track record of accomplishment for either the Democrats or the Greens in securing the support of the Opposition for their amendments that the government has opposed. Among the most striking disparities we have found in our data are the large percentages of committee amendments (decided by divisions) moved by minor party and Independent Senators and the minimal levels of success their amendments have enjoyed.¹⁵⁵

The lesson to be drawn, I would argue, is not that either or both assertions is wrong, but that both need to be specified and clarified.

The data suggest that the competition between the government and the Opposition has manifested itself in recent years in intense disagreements over a select set of issues and bills (and, of course, a readiness to take advantage of any unexpected opportunity that comes along). These data are consistent with a conception of politics in Canberra operating on two tracks simultaneously. On one track, the government and the Opposition hammer away at each other for all each is worth, looking to exploit whatever chinks in each other's armour they can find. This is the track that, not surprisingly, attracts media coverage and, therefore, is most visible to the Australian public. At the same time, however, and on a second track, a much more cooperative process of governance is taking place, with the two parties managing to find common ground on the preponderance of legislative business. Australia

155 However, a caveat from the previous chapter needs to be reiterated here. The minor parties sometimes have called divisions, knowing that both the government and the Opposition were going to oppose them, precisely in order to differentiate themselves from the major parties.

would be well served if the public heard as much about this second track as it does about the first.

Referring to the period from mid-1996, the beginning of the Howard Ministry, through mid-1998, Senator Meg Lees (2000: 32), then Leader of the Australian Democrats, documented both the quantitative and qualitative side of the argument about the relations between the government, the Opposition, and the Senate: '[O]f 427 bills [the House passed], only two remain negated—the Workplace Relations Amendment Bill and the Telstra Privatisation Bill. ... That is, 99.54 per cent of bills have been passed.' Yet those two bills and the Senate's failure to pass them may have received more public and media attention than most of the other bills combined, and may have mattered more to the government than most of the other bills combined.

If our findings here seem inconsistent on their face with popular perceptions of the Senate, and especially government criticisms of the Senate, it is at least partly because of, first, the Opposition's natural inclination to look for ways to portray itself as an alternative to the government; second, the government's equally natural inclination to look for opportunities to berate the Opposition for opposing it, especially on matters near and dear to the government's collective heart; and third, the seemingly irresistible impulse of the media to concentrate its reporting on instances of conflict, not cooperation. All three participants (for surely in this regard, the media are participants) have mutually reinforcing tendencies that do not always serve the Australian public well.

Hugh Collins has offered the interesting, though counter-intuitive, argument that the intensity of public conflict between the parties reflects not how wide the gap is that separates their policy positions, but how narrow that gap has become. Writing in 1985 about the lack of substantive knowledge and opinion underlying voters' party preferences, he argued (1985:154) that:

partisanship can be habitual because there is so little to understand: the competitors are offering only slightly different brews of the same ideological ingredients. Because the basic values are so similar, the party competition characteristically focuses upon tactics and motives rather than upon strategies and goals. Since in practical operation the parties are so alike, the rhetoric used by each side typically strains to present the rival in the image of its most extreme and impotent faction.

By this logic, the degree of policy agreement, in quantitative terms, that we have seen reflected in Senate divisions actually gives the parties an added incentive to highlight and even exaggerate whatever policy disagreements do exist between them, if they are to be able to differentiate one from the other in the public mind.

With respect to the successes and failures of those holding the balance of power in the Senate, I think the data point to the Senate chamber as a venue of last resort for the minor parties. When decisions on their proposals are made by divisions, the preferred processes of collegial discussion and quiet negotiation evidently have failed, and so, as we have seen, their amendments are quite likely to fail. It would be a mistake, however, to measure their influence solely by this yardstick. First, the likely defeat of the minor parties' (and Independents') own amendments still leaves them with the power to decide the fate of amendments moved by both the government and the Opposition. To this extent, the influence of the minor parties is reflected not so much in the divisions on their own amendments, but in the divisions that determine the fate of amendments from the major parties. And second, the record of divisions on amendments cannot in any way capture the influence of the minor parties in securing adoption of other amendments without the need for divisions.

Senator Kernot, then Leader of the Democrats, illustrated this second point in proclaiming the influence that her party was able to have on the content of a workplace relations bill once it became clear to the Coalition government that the bill would not pass without Democrat support:

The Minister for Industrial Relations quickly made it clear he was prepared to negotiate, and 70 hours of face to face meetings between Senator Murray and myself for the Democrats and the minister ensued over the next two months. ... The culmination of those negotiations was an agreed position [The agreement reached] was formalised in a detailed 60 page ... document, which outlined some 170 amendments to be made to the Bill. (Kernot 1997: 34)

The government and the Democrats jointly moved 164 amendments of which only five provoked divisions. This compares with 33 divisions on Opposition or Green amendments to the same bill.

In other words, this was precisely the kind of legislative negotiation and compromise to which non-government control of the Senate can give rise. As is the case in every democratic capital, there is more to the legislative process in Canberra than meets the public eye. In this sense, the data presented here on the successes and failures of the minor parties on divisions are like the tip of the iceberg. They are important in their own right, because of what we see when we look at them. But they also are important because of what they tell us is there but we cannot see. They encourage us to look beneath the surface, at what is not recorded in *Hansard* or reported in tomorrow's newspaper, if we want to develop a more complete understanding of the legislative process in the Senate.