

Parliament and People

Senator the Hon. Peter Durack, QC

As you will be aware, the topic I have chosen for my lecture today is 'Parliament and People'. I stress that it is 'Parliament and People', not 'Parliament and the People'. I was asked to draw on my experiences and recollections of what is now nearly twenty-two years as a senator and prior to that, three years as a member of the State Parliament of Western Australia. I certainly think the most rewarding aspect of my career has been the contact that I have had with individuals of all ages, interests and types. In this day and age there is such a great deal of concern being expressed about the Parliament. For that reason I choose a topic that relates to the fundamental issue of what the Parliament is about — that is, representing people.

I preface my remarks with a quote from a judgment of Sir Anthony Mason, the Chief Justice of the High Court. The judgment was from a recent decision — and one that will be considered one of the most famous High Court decisions ever — namely, the political broadcasts case; at least that is what I call it. As I am not addressing lawyers today, I will not quote the full title of the case. I am sure you will know the case that I am referring to. Sir Anthony said: 'The point is that the representatives who are Members of Parliament and Ministers of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act.' I have chosen this quotation to begin my address because, I believe, it is a classic statement of our system of democratic government.

However, I want to concentrate on one particular aspect of the system which I also believe is fundamental to it; that is, the role of the Parliament in furthering individual rights. In a general sense it is about the rights of individuals but it is also about the individual and his or her rights, claims and remedies. The performance of any parliament will no doubt vary considerably and its concentration on such issues will be determined by the major preoccupation of the community it represents. However, the perceived failure of Australian parliaments in recent times to perform this historic role has given rise to widespread concern and cynicism.

I believe there are good reasons for that prevailing concern. In my opinion, the major reasons for that concern are the size and complexity of modern government and the strength of the party system in the Parliament. Both these phenomena indicate a preference for corporatist solutions to political problems rather than the encouragement of individual expression and initiative by both the people and their representatives.

I also think that the isolation of the Federal Parliament in Canberra adds to the concerns of people that it is out of touch with them and cannot be influenced by them. Federal members represent large numbers of people. In many cases they are spread over wide distances, and there is little opportunity for personal contact. Modern systems of communication — although far better and indeed revolutionary

compared with the past — replace personal contact and create an unreality about the work of the Parliament.

There is undoubtedly a strong backlash to these dominant features of modern political life and a clear obligation for members of Parliament to address this growing concern. Let there be no mistake by governments and party organisations of the ultimate responsibility of members of Parliament to their electors. That is why the judgment of Sir Anthony Mason is fundamentally important.

Under our system of universal suffrage and one vote one value, in the House of Representatives, that responsibility is ruthlessly judged in the ballot box. If governments ever forget this, they are regularly reminded of it. Recent political history is replete with such examples: the demise of Churchill in 1945, Whitlam in 1975 and Bush only a few weeks ago, to name the most notable examples. Even the threat of such judgments has been enough to topple powerful leaders — and seemingly in their prime — such as Margaret Thatcher and Bob Hawke.

If members of Parliament are doing their job, the concerns of the people they represent are rapidly conveyed to the most powerful of governments and party machines. The member's role is by no means confined to the parliamentary chamber. The party system, with regular formal meetings of its members together with numerous formal or informal committees, provides great opportunities for members to speak up on behalf of their constituents. In the end though, the system relies on the quality of the relationship between the representative and the people.

Another safety net in the system is that we have chanced upon a different electoral system for the Senate and the House of Representatives. This is not why the Senate was included in the Constitution but, with the adoption of proportional representation — and that occurred only in 1949 — governments are unlikely to be able to control the Senate. There has always been, to a varying extent on each side of politics, a tradition of greater independence for senators. This is unlikely to change given the current dissatisfaction with the party system. The double dissolution procedure with the availability of a joint sitting of both Houses of Parliament can resolve any major conflict, if it seems important enough to the government of the day — and, of course, if the people support the government in that special election.

Therefore, it seems highly probable that governments will have to negotiate with the Senate to obtain the legislation that they desire. This may be irksome for them, but it provides a most effective check on executive power. As a former minister, I can attest to the fact that the braking effect of the Senate can be a bit irksome. Incidentally, a Senate minister has a harder time than do his colleagues in the House of Representatives.

In recent times there have also been a number of improvements implemented or proposed in parliamentary procedures. These have been addressed in this lecture series. I do not want to devote much time in this lecture to canvassing the changes which have been made in the working of Parliament — and I go back over the last 20-odd years. However, I want to emphasise the point which has already been made by Harry Evans in this series that parliaments in Australia have responded to these modern challenges in a significant and effective way. There is not a great deal of additional reform which can be made, or needs to be made, on an institutional level. An outstanding example of that is the committee system that has been put in place. In this area the Senate was the leading light in Australia, but now the committee system has been adopted in other parliaments and, to an extent, in the House of Representatives.

The change which I have seen in my own parliamentary career has been most impressive. For example, when I was first elected to the Western Australian Parliament in 1965, that body sat for only one session of about four months each year. I was elected to it in February and did not take my seat in the Parliament until the end of July — nearly six months later. There was only one committee, namely a standing orders committee, which had not met for seven years. Now the Western Australian Parliament has two sessions a year and a number of effective committees — and I suppose there could be debate about how effective they are. Nevertheless, there has been remarkable reform in the Western Australian Parliament.

We have now come to the position in the Senate, as Senator Childs pointed out in a recent lecture, where senators are suffering severe indigestion from a surfeit of committee work. I generally agree with Senator Childs's comments about the working of the committee system. Fortunately, nobody is saying that it should be in any way abandoned. In 1981 the Senate set up a standing committee known as the Scrutiny of Bills Committee, which, with expert help, examines bills to check them against selected criteria for individual rights — that is, mainly the extent to which a bill may breach such rights. That Committee was modelled on a longstanding Senate committee which was set up in 1932 to perform the same responsibility in relation to subordinate legislation. It has had a very long and distinguished record.

The Senate Standing Committee on the Scrutiny of Bills, which is a little over ten years old, has performed a most useful function. Unfortunately however, senators and members pay insufficient attention to its reports in the course of committee debates on bills. I think this indicates that the Parliament has dominantly had other interests of a policy kind and has failed to give priority to the impact of a bill on individuals. This perhaps explains the current concern of the judiciary, which is called upon from time to time to enforce quite draconian legislation.

I recommend to you a report of a seminar held, probably in this room, in November 1991 — just a year ago — to mark the tenth anniversary of the Senate Committee on the Scrutiny of Bills and particularly the address given to that Committee by Mr Ian Turnbull, who was the First Parliamentary Counsel. He makes the very important point that the mere existence of the Committee and the guidelines within which it operates have meant that most of the problems that we had in the past with bills grossly breaching individual rights, imposing self-incrimination, retrospectivity and so on, have been headed off at the level of parliamentary counsel — not because parliamentary counsel themselves as such are independent of the executive, but because they have been able to point out to the instructing department that this or that provision will run foul of the Scrutiny of Bills Committee. Therefore, one reason the same attention has not been given to bills is that, as a result of the existence of this Committee, they are now drafted in a far more acceptable way.

If the Parliament fails to adequately protect individual rights in legislation, whether by neglect or intention — and I am afraid that some of it is quite intentional — it is not only accountable to the electorate; the High Court has now signalled that it may well intervene. In the recent landmark decision on the political broadcasts case, it has identified a major protection within the Constitution for free speech, at least in public affairs and in political discussion. There can be no doubt about the importance of this decision, which is based upon perfectly sound legal reasoning — implications from the words of the Constitution itself.

Although the High Court has in the past struck down major legislation, notably the banking case and the communist party dissolution case, it has always been very

cautious in drawing implications from the Constitution. But in the political broadcasts case, the judges have done precisely that, and by similar reasoning may do so in other situations.

Without going as far as Justice Toohey, it seems to me likely that the court will remain active in its protection of individual rights. Although the Parliament should not abandon its prime responsibility for this — and I stress that we should not just let things go because we think the High Court will fix it up — there is now a safety net in our constitutional structure without the uncertainties which would be created by a formal Bill of Rights. I greatly welcome this High Court decision and this development.

A wise and much respected former Premier of Western Australia, Sir David Brand — under whose leadership I first served as a backbencher — liked to point out that the representations that governments received were of two kinds: one to increase government expenditure and the other to reduce taxation. It is a pity that more parliamentarians did not ponder that dilemma over the last twenty-five years, because it is now clear that people are protesting more and more about the size, the cost and the intrusiveness of government. The volume of legislation required, or thought to be required, is mind-boggling. It is really beyond the capacity of the Parliament to deal with it adequately.

This volume of legislation with which the Parliament has to grapple — and we are told that in the last four weeks of the current sitting of the Senate we are to embark upon tomorrow we will have seventy bills — should and could be reduced. There is also no reason why it needs to be so complex. Again, I refer to Mr Turnbull, the First Parliamentary Counsel, who admits to the unnecessary complexity of a lot of legislation. He says that the complexity is due to the fact that they often are not given time to draft it. It is harder to write something short and succinct than something that goes on forever. The nature of the instructions they have received from the departments is another explanation for the complexity. Probably the best explanation lies with the members of Parliament giving way to pressure groups.

Parliament has already told the courts, by legislation of course, that they are to interpret legislation according to its purpose. There is no need for the legislation to try to spell out all the conceivable applications which it may have to individual cases; that can be done perfectly well by the courts on a case-by-case basis.

It is showing some signs of improvement. To illustrate my point, I include two tables (see pp. 109-10) showing the number of Acts passed over the last twenty years. It is up to date but this year is not completed; there are presumably at least seventy more Acts to be included in 1992. It shows very starkly this growing increase in the complexity and length of legislation, perhaps not so much in the number of bills, but in the length and the detail that is included in them. The number of pages of the Commonwealth statutes — going back to the early 1970s — seem to vary between 1,500 and 2,000 pages per year. We now have legislation which is running, on average, to more than 3,000 pages; some run to 6,500 pages a year. It is a very stark reminder of this major problem. We are talking about how we will protect individuals and individual rights. This is one of the major reasons for the problem. There is this volume of complex legislation. By and large, structures and policies are being implemented and no thought is given to how they affect each and every individual.

As I have acknowledged, despite reforms to the system over the last twenty years, there is a widespread feeling that representatives are not sufficiently responsive to the views of their electors. I have suggested some major reasons for that concern, but I am

not convinced that the charge is entirely justified, at least in relation to social and moral issues, which have become prominent over the last twenty years.

There is a strong case to be made that parliaments around Australia, particularly the federal Parliament, have taken up, debated and in many cases passed legislation on a wide range of social issues. A list that comes to mind includes the following: racial discrimination, sex discrimination, human rights, censorship, funding for abortion, rights of de facto spouses, family law, human embryo experimentation, rights to privacy, freedom of speech, freedom to advertise certain products and, in the last few weeks, disability discrimination legislation. The legislation relating to homosexual conduct between consenting males has been a major issue in State parliaments, although for obvious reasons it has not figured in the Federal Parliament.

In most of these cases legislation passed by the Parliament, such as the *Sex Discrimination Act 1984*, has greatly extended the individual rights of people who are targeted by it, but may to some extent restrict the rights of others. That, however, is a balance which has to be made in regard to all these issues. Censorship has been an interesting example. A revolutionary change of attitude was made by successive governments and parliaments in the early 1970s to affirm the principle that people should be free to choose what they read, see and hear. Interestingly, there have been recent debates about this, and proposed legislation has tended to place restrictions on this principle in response to the widespread availability of material depicting pornography and extreme violence. The point I wish to stress, however, is that Parliament, far from ignoring these issues, has given a great deal of attention to them. There will always be debate about the wisdom of its solutions, but it is certainly not fair to allege a lack of responsiveness by modern parliaments on these matters.

I now turn to another aspect of this lecture. My purpose is to discuss the role of the Parliament in protecting not only individual rights as such, but also in protecting the rights of particular individuals who complain about their treatment by government or by their fellow citizens. This question does not appear to receive much consideration in the current debate about making the Parliament more responsive to the people, or better securing their rights in legislation, or giving people better access to the Parliament through an improved committee system. It seems to be a fundamental problem in any society which sees itself as concerned about the individual, as we claim to be.

Responsive parliamentarians, concerned committees and fewer and better statutes do not of themselves solve the problem of citizen A, B or C who complains about the application of a particular decision under a particular law in so far as it affects him or her. You may well say that that is none of the business of the Parliament; that is for the courts to decide. In principle I agree. However, that depends on the availability of judicial remedies and the quality of access to them. Furthermore, my experience as both a lawyer and a politician has been that ordinary people are extremely loath to seek their day in court. They try to have their grievances resolved by less fearsome and costly methods.

All of this means that Ministers, members of Parliament and those who assist them have to be prepared to spend time and effort on the individual problem, as well as on the formulation and execution of policy with which we are more familiar and more competent. How should Parliament or parliamentarians tackle this question? We certainly cannot turn a blind eye to it because electors have become more and more demanding of attention. Nor do I think members of Parliament are reluctant to give them that attention.

We now operate under a very sophisticated system of government based on the theory of the separation of powers. This was formulated a couple of hundred years ago in the United Kingdom. It has been enshrined in the constitution of the United States and in our federal Constitution. Despite the fact that we and many others are said to follow the Westminster system, the history of parliament and of the government in the United Kingdom has never presented such a clear case of the separation of powers between legislature, executive and judiciary. Nor have we in Australia slavishly followed that theory, despite the framework of our Constitution.

Parliament is often called the highest court in the land. Why should that be so under our system of separation of powers? The practice of Westminster parliaments — and indeed in the United States — has revealed a concern for the problem of the individual as well as the more usual subjects of taxation, law making and public administration. There is a clear example of this in the United Kingdom, where the House of Lords, albeit now in a special judicial role since 1876, is in fact the final court of appeal in the United Kingdom. There was an old process known as impeachment: the trial of senior officials by Parliament for high crimes and misdemeanours. This was used particularly in the great struggles of the seventeenth century parliaments against ministers appointed by the King. It led to the nemesis of Charles I. This has now fallen into disuse but it is available in the United States, as President Nixon learned.

However, we do not have to rely on such exotic examples. Section 72 of our Constitution requires that Parliament should determine the capacity, incapacity or misbehaviour of federal judges. The New South Wales Parliament decides the fate of its police commissioners, as Mr Pickering and all of us found out recently. Breaches of privilege of parliament are also decided by Parliament and not by the courts.

Until comparatively recent times there has been a long history of private bills — not so common in the Federal Parliament as in State Parliaments (I myself moved one when in I was in the Western Australian Parliament) — the purpose of which was to grant an individual a right or concession. At one time, that in fact spawned a parliamentary bar in London. Until 1857, that was the only way you could get a divorce.

A more practical and immediate means by which individual cases can be brought before the Parliament — if not in fact decided by Parliament — is the adjournment debate. The adjournment debate has traditionally been a means by which a member can raise the grievance of an individual. The Senate was recently treated to a series of such speeches outlining in considerable detail the complaints of the customers of a leading Australian bank.

Question time is often mentioned as an opportunity for a member of Parliament to raise any matter affecting an individual constituent and to put pressure on a Minister to investigate the way in which he or she has been treated by the bureaucracy. However, it is rare for questions such as this to be asked these days because the daily question time has become a political battlefield. Nevertheless, questions on notice are a valuable means of requiring a minister to have regard to any of his responsibilities including grievances of an individual.

In the Senate, a new sessional order has given any individual who claims to have been defamed under parliamentary privilege by a senator's speech a right of reply to be printed in *Hansard*. This is a unique procedure developed by the Senate and it has been availed upon on a number of occasions. It is administered by the Privileges Committee. These are some very public examples of the role of the Parliament and

parliamentarians in at least giving recognition to the important demand by individual people that their grievance be heard and attended to. However, in a far less public way, but perhaps a more effective way, every senator and member of this Parliament —and no doubt every member of a state Parliament — through his or her staff, is at least daily listening to and making representations on behalf of his or her constituents. Furthermore, these representations are not always confined to complaints about people's treatment by government — although that is mainly the case.

The question that arises, therefore, is not whether there are means by which individuals can be heard and their grievances attended to, but whether these means are effective from the constituent's point of view. In many cases they are. In many other cases people are simply wanting to get something off their chest and are satisfied if they have been heard by somebody they perceive to be in a position to do something about it. In some cases, they are not even interested in following up what, if anything, has been done. Nevertheless, there still remains a hard core of cases which, for one reason or another, requires a more effective solution than any which can be provided by the means I have described.

I turn now to a remarkable series of initiatives taken in the Federal Parliament during the past twenty years which have squarely addressed this problem and which have operated more effectively than anywhere else, either in Australia or overseas, to solve this problem. The essential nature of these measures has been the provision of a less formal method than the judicial remedy, but one which observes basic rules of natural justice and provides a solution to the problem. These new remedies are contained in a series of Acts of the federal Parliament. I will deal only with those Acts of the Federal Parliament because it has been, outstandingly, the leading parliament in this development.

The Acts commence with the *Administrative Appeals Tribunal Act 1975* and follow with the *Ombudsman Act 1976*, the *Administrative Decisions Judicial Review Act 1977*, the *ASIO Act 1979*, the *Human Rights Commission Act 1981* — which was incorporated into the *Human Rights and Equal Opportunity Act 1986* — the *Complaints (Australian Federal Police) Act 1981*, and the *Freedom of Information Act 1982*. In this context, mention should be made of the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Privacy Act 1988*. Although these Acts have created new substantive rights, they have also provided administrative as well as judicial remedies and should be considered in this context.

In addition, the Parliament has recently made provision for the external review of decisions under the Migration Act. These matters were traditionally dealt with by ministerial discretion. Amendments have not only hugely limited that discretion by regulations, but have also led to the setting up of a Migration Review Panel. The Administrative Appeals Tribunal came into operation in 1976. It was the first tribunal to provide for an appeal against administrative decisions on their merits across a wide spectrum of the bureaucracy. Since then, numerous Acts of Parliament have added to its jurisdiction and it is now the major appeals tribunal with a general jurisdiction.

The Administrative Decisions Judicial Review Act, known commonly as the ADJR Act, modernised and expanded the opportunities for judicial review of administrative decisions, not on their merit but on legal grounds. Importantly, it also introduced the requirement for reasons to be given for most administrative decisions. A schedule to the Act provides exemptions from this requirement but, although there are probably too many of them, they are at least the exception rather than the rule.

The requirement of giving reasons for a decision is of enormous importance to the individual. For a start, it greatly concentrates the administrator's mind if he or she is rationally to justify a decision. It obviously gives greater satisfaction to the person concerned and it provides a means of challenging the decision both on its merits as well as on a legal basis. The ASIO Act, which for the first time introduced a charter for ASIO, also set up a security appeals tribunal to which people who were the subject of an adverse security assessment could appeal. Interestingly, this tribunal has had surprisingly little work to do.

The purpose of the Human Rights Commission, as originally structured, was to advise government and parliament about acts and practices of the Parliament, and Acts or a proposed Act of the Parliament, which might offend the International Covenant on Civil and Political Rights and several other international human rights instruments. It did not give any redress to individuals other than for them to complain and for the complaint to be investigated and conciliated. However, in 1986 the original Commission was replaced by the Human Rights and Equal Opportunity Commission, which does have jurisdiction to provide remedies to individuals subject to appeal to the courts.

The combined effect of this collage of legislation has been to greatly enhance the opportunities for individuals to seek consideration of and redress for their grievances about their treatment, largely by government but in some cases by others — for instance, under the Sex Discrimination Act. In some cases, new rights have been created which were not previously recognised by the law. But the main purpose of collecting them has been to exemplify the better remedies for redress which they provide.

My purpose in this lecture has been to examine the relationship between Parliament and the people who elect it and to assess its accountability to them. Our system of parliamentary democracy is not unique to Australia, but the development of our own model is something of which we should be proud. There are current criticisms of it and I have tried to assess the reasons for them and what has been done to improve the system. I do not say the system is perfect, but it is better than any other alternative.

I have not mentioned — nor of course have I had time to mention — any of the proposed structural changes to the Constitution which have been canvassed over the years, such as four-year parliaments, fixed term parliaments, simultaneous elections of the Senate and the House of Representatives, limiting the reserve powers of the head of state, abolishing or emasculating the Senate, or a bill of rights. These are all subjects on which a lecture could be given. However, I make only two comments about them. First, most of them have been debated in parliaments and at constitutional conventions since 1973. Some have been put to the people at referendums and have been rejected. I do not believe that the Australian electorate is so dissatisfied with our system that it is likely to pass any of them. Secondly, one feature running through all of these proposed structural changes is that they take power from the people and give more power to the executive and/or the judiciary.

The purpose of my lecture today has largely been to justify the workings of the system we have and to show that it is both resilient and responsive enough to change and adapt, and that we have an adequate safety valve with our highly democratic electoral system, which operates all too frequently as far as some people are concerned. I do not think Australians want to change this, nor should they.

Mr Harry Evans — Senator Durack has indicated that he will take some questions.

Questioner — At the beginning you talked about the strength of the political parties. You did not really get back to that. Could you comment on the positive or negative benefits to the people, as the political parties are so strong now. Also, could you specifically deal with the Australian government as opposed to the American system, possibly where the President is elected separately and the political parties do not have quite as much strength, I think.

Senator Durack — I specifically said that I have not had time to deal with this in the lecture — and it was not the lecture's purpose to deal with the structures, such as whether you had a Westminster-type system or a presidential-type system. The fact is there is a basic similarity between them, and that is that both systems are democratic; both systems rely on and give recognition to the rights of people to determine what the course of the government will be.

You raised the party system, and I mentioned it because it has, in a sense, become interposed between the people, the electors, the Parliament and the executive. Let me say straight away that I believe the party system, of some sort or another, is here to stay. I believe it is a workable system. It just had to have some safety valves in it. As I have said, this ultimately depends upon the strength of members of Parliament to be prepared to take a line against their party in certain cases — extreme cases maybe — but certainly the member has ultimate responsibility to his electors — not to his party and certainly not to his government.

The party system itself is a necessary feature of our system. In two hundred years the United States has had only two parties — the Democrats and the Republicans. They seem to be alive and well and operating quite successfully. In our system we have tended to have more than two parties. In fact, I suppose the average has been four, if you count the National Party, which has normally been in coalition with the Liberal Party. It would be quite unwise to say they are the same party. Our system has generally accommodated about four parties, and some independents have been elected from time to time.

I think, on the whole, looking back at our political history, we have had a fairly fluid system. This system is portrayed to the electorate — this is perhaps one of the reasons for the dissatisfaction — as hidebound and so on: people in straightjackets, no freedom, that sort of criticism. There is, of course, some justification for that.

But the fact is — and perhaps I have not developed it enough here because I have not had time — that the individual senator or member has many opportunities to express his, and his constituents', views; within the party forums you can have very rugged debates. Indeed, you have clear-cut factions in the Labor Party that have been established as well, all of which have added to the opportunities for the individual to stand up for his electors, his own beliefs and conscience. As I say, ultimately, there is a safety valve in that occasionally people do cross the floor or displease their party in what they say.

Questioner — Senator, my question is concerned with tenure of office. Do you feel that overall there would be an improvement or decline in the quality of government if an absolute cap of say four to eight years were to be placed on the holding of parliamentary office, whether member or senator?

Senator Durack — Having spent twenty-five years in Parliament, I can only say that I believe that is a very foolish idea. I think Harry Evans mentioned that I have been the senior senator now since the 1987 election. Anyway, I had been in the Senate for

sixteen years when I became the senior senator. When I first came into the Senate there were a number of senators who had been here for more than thirty years.

There is now a completely revolutionary change. That shows that there has been considerable responsiveness. The people themselves have indicated this responsiveness in how they have voted. Party organisations have responded to that. But I think it would be fairly foolish to say that people could stay for only four years or something — maybe a longer period could be justified. But being a politician is a profession in itself — whether it is an honourable one is another matter.

The longer you are here, the longer you are learning and, if you are still learning and still doing your job, I think you have something more to contribute than people who have just come in. As long as you have a balance between new people coming in and infusing the system with new ideas and those who have been around for too long who are being discarded or going voluntarily or whatever, I think it is working perfectly well. My philosophy is that when something is working, do not try to fix it.

Questioner — I am a former research political scientist from the ANU. It is not possible to sack a senator except in quite exceptional circumstances, such as in the last election when grey power sacked Senator Puplick. In an ordinary Senate election six out of seven voters have to put a senator last to be sure to get him out. However, in the House of Representatives, only half the voters plus one have to put an incumbent member last to put him out.

Senator Durack, do you consider that both the Liberal Party and the Labor Party are effete and tired and have run out of political creativeness and vigour? Do you consider that both parties should be eliminated from the House of Representatives by the actions of voters and by two or three vigorous, thinking, responsible independents standing in every electorate?

Both the Labor Party and the Liberal Party are creations of the Second World War, during which two independents destroyed the Menzies' United Australia Party on the floor of the House in 1941. The electorate then destroyed the United Australia Party in 1943. I suggest that this should be done with either party, or preferably both parties, in the coming election.

Senator Durack — That question indicates the sort of dissatisfaction that I have indicated I already know about. The viewpoint expressed was that we should get rid of all parties. I suppose you could get rid of the system as well. You were not too clear about that. I thought at one stage you were expressing dissatisfaction with the Senate voting system as well.

Basically, my response is that we have a highly democratic system. Every citizen over eighteen years of age has a vote and we have a good response to voting. Maybe it is because voting is compulsory, but I think that explanation is overdone. The UK has always had a very high voluntary turnout at elections. If the system is working, that will happen: people will vote for independents, new parties and so on. The views within the party system have changed quite considerably. You say that the Labor Party is a creature of post-Second World War. That hardly does justice — not that I am out to do a great deal of justice to my political opponents — to the Labor Party. It has been around for 100 years or so — it may now be a very different party. So it has changed. The Liberal Party's ability to greatly change its policy direction since its defeat in 1983 has been very considerable. That has been a result of the various pressures. That shows that our party system and our parliamentary system of representative

government has a very great capacity for changing under pressure. If people want the system to change, it will change.

Questioner — It is probable that you and I were both told by our mothers that it is rude to point. Does that not ring a bell with you? My mother certainly always told me, 'It is very rude to do that'. That, unfortunately, is now par for the course in the Parliament.

Do you ever watch question time? If so, are you proud of what you see? Do you think that you are conveying an image of public responsibility? Parliamentary committee hearings are praised, but how many of the committee hearings are nothing but squabbling that would not be allowed in a high school debating society? There is a serious point here. I am surprised that it is not being addressed — the importance of the Parliament and the public image which it itself is creating.

The pointing is regarded by the Parliament as nothing other than a joke, whereas to me it is symptomatic. If you are trying to tell your kids how important government is and how it ought to be carried on, the last thing you want to do is to give them a copy of *Hansard* or turn on the television. Could you comment on that and give an explanation for the public disregard of the Parliament?

Senator Durack — What you have said raises an important point. To my mind there is a ready explanation — whether it is the full one or not is another matter. Modern systems of communication, which I have mentioned, have impacted greatly on the perceptions people have about the Parliament as an institution. This has been with us in this country ever since the first radio broadcasts of the Parliament. I have noticed that people get very upset indeed when there is a big storm in the House of Representatives on some issue or other. When a lot of shouting and mud-slinging and so on goes on, people register their reactions to that very quickly. People ring up and make mention of it and so on. Television has compounded that problem.

I have a certain amount of personal distaste for the sort of slanging match that occurs in the Parliament from time to time. Certainly, it is not as big a problem in the Senate as it is in the House of Representatives, but then the political debate is perhaps not so willing in the Senate as it is at times in the House of Representatives.

However, the impression people get from the reporting of the Parliament — whether from what they see on television, from what they hear on the radio or from what they read in the paper — gives only a very limited perspective as to how the Parliament operates. One of the problems, as I have acknowledged, is that the reporting of the Parliament in the press tends to pick up, and highlight, some of the more dramatic events such as somebody being thrown out or some slanging match.

But the major impact of Parliament as a whole ought to be one of utter boredom. Most of the time Parliament is sitting — in the House of Representatives just as much as in the Senate — the debate would not interest people very much to stay and listen. That is the nature of the subject. I suppose people could improve the quality of their speeches. But again, I do not think people would listen very much. It is like going into a court or any other public institution where a lot of the time it is all fairly dull stuff.

It is a pity that the image of Parliament now obtained through television and radio is very slanted and skewed. I think parliamentarians should perhaps accommodate to that better than they have been and try to think in terms of what people are seeing. But the more difficult problem is this: how do people get a message about what their parliament is doing if they cannot see what is going on? This is one of the problems

about it being in Canberra; it is very difficult for people to pop in and see what is going on. Furthermore, with the party system, a lot of the important discussions take place in the Party or the Caucus meetings, not in the Parliament. Yes, I agree it is a problem. It is another problem that parliamentarians perhaps ought to address more.

Mr Harry Evans — Thank you, Senator Durack. We all appreciate your speaking before us today.

TABLES

Table 1. *Number of Acts assented to 1973-83 together with number of pages each year*

Year	Number of Acts	Number of pages
1973	221	1628
1974	166	1872
1975	121	1124
1976	209	1952
1977	161	1294
1978	211	1859
1979	191	1872
1980	177	1860
1981	182	2828
1982	158	2298
1983	147	2450

- Notes
1. The number of Acts was extracted from the Attorney-General's 'Table of Acts of the Commonwealth Parliament', 1992 edition.
 2. The total number of pages for each year has been calculated from the bound volumes of Commonwealth Acts.

Table 2. *Numbers of Acts assented to 1983-92 together with the number of pages each year*

Year	Number of Acts	Number of pages
1983	147	2450
1984	175	2840
1985	202	2747
1986	168	3463
1987	184	3635
1988	155	2941
1989	183	4832
1990	144	3029
1991	216	6586
1992	137	2734
totals	1711	35257

Notes

1. Figures exclude Constitutional Alterations (11 pages) not passed in the 1988 referendum.
2. Figures for 1992 include all Acts passed up to and including 11 November 1992 (*Act No.137 of 1992*).
3. Figures from 1983 to 1990 (inclusive) extracted from the bound volumes of Acts.
4. Figures for 1991 and 1992 were obtained from a manual count of pages of individual Acts assented to each year and the number of pages may differ from the bound volumes of Acts.
5. Figures from some bound volumes include Table of Contents pages whereas those from individual Acts do not.