

The Senate Committee System: Historical Perspectives

CHAIR (Mr REID) — Ladies and gentlemen, good morning. I am Acting Clerk Assistant (Committees) in the Department of the Senate and I will be chairing this morning's first session. We have two presenters to kick off the proceedings: Dr Rosemary Laing, the Clerk of the Senate, and Professor John Uhr, who is Professor of Public Policy and also a director at the ANU Crawford School of Economics and Government.

Dr LAING — Thank you very much, Chris, and good morning everybody. It is wonderful to see such a good crowd here to celebrate the 40th anniversary of the Senate committee system. My role this morning is to set the scene and, together with John Uhr, provide some historical perspectives on the current system and the state of play. There will be a paper available at morning tea, and attached to that paper is a chronology of procedural developments affecting committees and a list of our earlier select committees, which is quite interesting.

The events of 11 June 1970 marked a watershed in the history of the Senate. By the narrowest of margins the Senate found itself with not one but two new sets of committees, the legislative and general purpose standing committees and the estimates committees. How it arrived at that point is my first focus, and then I will take up the story from 1970. Of course we know that committees were not invented in 1970 and, as in any other house, committees were always an essential part of the Senate landscape. The usual range of domestic committees were set up within the first few days, and the first select committee of the Senate on that perennial topic of steamship communication between the mainland and Tasmania, which the Senate, being a good states' house, has revisited on a number of occasions, was its earliest select committee. It was that select committee that brought the first witnesses before Senate committees within the first few months of its commencement. As early as 1904, the first bill was referred to a standing committee, only one of a very few before the 1990s.

When I look at that list of early select committees, what strikes me is the number of committees that were concerned with individual cases, the cases of particular veterans or public service employees who had suffered some kind of mistreatment or maladministration. I am also struck by the relatively small number of policy inquiries, which is an indication that perhaps we now take for granted the modern system of administrative review—the existence of bodies like the Ombudsman, for example. Back then, that function was still being performed by parliaments, and it recalls a time when petitions actually meant something and had a purpose.

I briefly mention in the paper the Federal Parliamentary War Committee, which operated during the First World War. It was purely an advisory committee. It had a very high-level membership and it had some particular focuses, particularly on ways that the Parliament could assist the war effort through promotion of recruitment campaigns and, very importantly, through looking after the welfare of returned soldiers. It was also a conduit to the Parliament from the executive about the conduct of the war. But the potential of committees for this new style of upper house was something that was very much in the minds of the senators of the 1920s, and in December 1929 the Senate established a select committee into the advisability or otherwise of having standing committees in a number of areas in order to improve the legislative work of the Senate and to increase the participation of senators in that work.

A focus of the Senate's legislative work was the scrutiny of delegated legislation. The President mentioned that the early 1930s were the time of the infamous dispute between the Senate and the Scullin Government over the waterside transport regulations. On a dozen occasions over 1930 and 1931 the government made and immediately remade regulations which the Senate repeatedly disallowed. So it is not surprising that one of the select committee's recommendations was for a mechanism for formal scrutiny of delegated legislation. So we had the Standing Committee on Regulations and Ordinances established in 1932. Shortly afterwards, the Acts Interpretation Act was amended to prevent governments in the future engaging in such perfidious acts of defiance of the Parliament and the Scullin Government was out of office by December 1931.

That select committee looking into a Senate committee system also recommended changes to the standing orders to facilitate the referral of bills to committees, which from this distance seems quite a surprising thing. But there was a contemporary context to this as well. In July 1930 a select committee was established to examine the recently controversial Central Reserve Bank Bill and ask, 'Should we have an independent central bank?' It was a committee that ran into trouble fairly early on because government members appointed to the committee declined to participate and resigned from the committee. They were replaced by Opposition members, so it was an exclusively Opposition committee. The committee's report was not supportive of the bill and the bill was actually defeated shortly after the committee reported. So it is little wonder that at the time governments regarded referral of bills to committees as a fairly hostile act. Although the standing orders were amended in 1932 to facilitate referral of bills, it would take many decades before that early stigma was neutralised.

A third recommendation of the select committee in 1929 was also ahead of its time because it recommended that a committee be established in the area of foreign affairs. This caused such consternation that the Senate sent the committee back to the drawing board to try again and come back with more sensible recommendations. Why was a committee on foreign affairs such an outrageous thought at the time? I guess it was because Australia's foreign policy then was dictated from dear old Mother England. It would be at least another decade before Australia adopted the Statute of Westminster and accepted legislative independence conferred by that Act on dominion parliaments and governments. But, like the referral of bills to committees, a parliamentary committee on foreign affairs was an idea whose time would come eventually.

During World War II some joint committees were established—again, largely of an advisory nature—but they really played no significant role and, according to Robert Menzies, were simply a way of keeping parliamentarians in the loop at a time when the Parliament itself was meeting much less frequently.

After the war, I think the single most important event for the future development of the Senate was the increase in the size of the Senate from 36 to 60 senators and the adoption of a system of proportional representation from 1949. More senators meant more backbenchers with more time and possibly looking for a greater role. Proportional representation also led to a greater diversity of membership and the ultimate emergence of minor parties.

In 1955 the newly promoted Clerk Assistant J.R. Odgers won a study grant to travel to the United States to study the congressional committee system. His report recommending that the Senate adopt a similar system was tabled in May 1956, but it was met with an exhortation for patience: 'All in good time, my son; all in good time'. But, at a time when most parliamentary officers automatically made a pilgrimage to Westminster, the fact that Odgers travelled to Washington to study the different model was really quite significant. We also have to bear in mind that he had recently completed the first edition of *Australian Senate Practice* and had therefore studied the constitutional foundations of the Senate and its partial basis in the United States institutions.

In the meantime, during the 1950s, select committee activity recommenced. Some less-than-model experiences were experienced during the 1950s, and perhaps the early select committees were not encouraging, but the select committees established in the 1960s could be said to have heralded the dawn of a new era by showing how careful, bipartisan inquiries could highlight directions for policy development. Reports of select committees on such topics as road safety, the encouragement of Australian production for television, the container method of handling cargo, the metric system

of weights and measures, offshore petroleum resources and later inquiries into water and air pollution were well received and were influential in the development of policy in these areas. Most importantly, they tapped into sources that had hitherto been largely ignored in government policy-making efforts.

At the 20th anniversary conference in 1990 the late Senator Gordon Davidson recounted the opposition of Prime Minister Menzies to this spate of select committees in the 1960s. ‘Backbench senators’, Menzies is reported to have said, ‘will have access to matters not meant for them and to material which is inappropriate for their role in Parliament’. To the Senate’s benefit, backbench senators ignored this assessment. They participated enthusiastically in what came to be seen as work of fundamental importance to their role as senators.

Estimates committees also had their origins in the early 1960s, when the Senate began to examine the estimates of proposed expenditure in the committee of the whole—in other words, in the chamber—before the appropriation bills themselves were received from the House of Representatives, therefore giving senators the maximum amount of time to explore the government’s expenditure proposals. At the time, this was a pretty radical move. It was alleged that it was a subversion of bicameralism, it evaded the spirit of the Constitution and it contravened numerous standing orders. This alleged abomination was, however, the kernel of the estimates process as we know it today.

The particulars of proposed expenditure—in other words, the details of expenditure—were examined in the chamber, line by line, and senators could ask questions of Senate ministers about the proposals for expenditure. You can imagine that it was a fairly frustrating process, with senators asking questions and ministers trotting over to the advisers’ benches, getting the detailed information from the advisers, coming back to the microphone and giving the information, but the potential for future development was apparent. By the end of the decade it had developed into proposals for estimates committees covering the various departments of state and in which senators would have face-to-face access to public servants in order to question them directly about financial and administrative matters.

Of course, individuals also played their part in promoting committee work, and it is well known that Senator Lionel Murphy, then Leader of the Opposition in the Senate, was a great fan of the US congressional committees and the work that they were doing in exposing what was happening in the conduct of the Vietnam War. At his behest the Standing Orders Committee produced several reports on various options for committee systems for the Senate, but no particular recommendations were made.

There were three proposals before the Senate on 11 June 1970. There was Murphy's motion to establish legislative and general purpose standing committees. There was government leader Senator Anderson's motion to establish estimates committees, which would only be part-time bodies and therefore containable—which is something that governments like to do with committees. And then there was DLP leader Senator Vince Gair's motion for a hybrid system, that combined features of the two, together with some statutory oversight committees. Only this last committee failed to get majority support, but the voting was very, very close.

The system started out slowly and incrementally, with only two committees established at first and the others joining in later. The first reports started being presented from May 1971. Estimates committees met as required supported by staff drawn from all over the department on an ad hoc basis and early reviews suggested that expectations for committees were being met. The pattern of committee work throughout the 1970s and 1980s was similar. Legislative and general purpose standing committees undertook reasonably lengthy inquiries by today's standards and they inquired into significant policy areas, usually on a bi- or multi-partisan basis, usually involving extensive travelling around Australia—taking Parliament to the people—and reports were often the subject of lengthy deliberation in committees. Very few bills were referred but those that were were significant ones.

Those involved in the operations of committees today would be very surprised to hear that committees almost never met while the Senate was sitting, and motions to authorise them to do so were relatively rare. There were senators then who would argue on principle that it was wrong to allow such practices because senators could not be in two places at once, and their first duty was to the Senate. To place this in context, however, the sitting day then used to include things that are unknown today, like meal breaks during which committees could hold meetings.

Another indication of changing times is early versions of the Committee Office manual, which advised secretariats to set aside three weeks for the printing of a report. That is a far cry from today, when sometimes whole inquiries are completed in less time than that, and anything other than camera-ready copy churned out of the secretariat computers is absolutely unheard of.

As well as holding inquiries into policy matters, committees also gradually expanded their accountability work, and in the paper I mention the groundbreaking work of the Senate Standing Committee on Finance and Government Operations. I also mention the growing assertiveness of the Senate in requiring statutory bodies to be accountable.

It was important that the daily routine of business in the chamber should provide adequate opportunities for committee reports to be considered in the chamber and there is a bit of a history about how those opportunities developed. But equally important was what happened to reports afterwards. Efforts to encourage governments to produce timely responses to committee reports began in 1973 and have continued more or less continuously. The President's report on government responses that are outstanding after three months is another mechanism that dates from that time, which assists the Senate to keep tabs on overdue responses.

Despite the legislative and general purpose standing committees providing apparently comprehensive subject area coverage, select committees also continued to be established for other purposes. Some of these were on controversial subjects, such as those on the Human Embryo Experimentation Bill 1985, two committees on the conduct of a judge, the airline pilots' dispute in 1989, and the infamous political ad ban bill. Others were long-term inquiries that did not fit readily into the portfolio structure of the existing committees. One of these was the Senate Select Committee on Animal Welfare, which ran for many years and eventually metamorphosed into the present Senate Standing Committee on Rural Affairs and Transport. It was famous for undertaking an inquiry into the welfare of animals in the thoroughbred racing industry, and just happening to arrange a field trip to Melbourne in the first week of November.

The system was never a static one. Adjustments were made over time to adapt to changing requirements. A particular challenge occurred after the double dissolution election in 1987 when a system of standing committees was also proposed for the House of Representatives. A government caucus committee developed a scheme for parallel standing committees in each house that would be empowered to meet as joint committees. However, canny senators saw through this and amendments moved in the Senate to the resolution ensured that joint meetings could occur only in accordance with a resolution of the Senate in each case. So in practice the idea of joint legislative and general purpose standing committees has never taken off, although there are now plenty of joint committees in other areas.

There is no doubt that the biggest impact on the committee system in recent times was the decision in 1989 to put the referral of bills to committees on a more systematic basis. Twenty years later it is now commonplace and an absolute staple of the committee system. It is so entrenched that ministers in the House of Representatives frequently refer to the work done by Senate committees in improving bills. We are even seeing second reading amendments moved in the House calling for further consideration of the bill in the House to be delayed until the Senate committee has reported. I think bicameral purists would be choking, but I am sure I will not be the

last person during this conference to refer to the new paradigm—not, as the President mentioned, that there is anything new about it for the Senate in most respects.

Although detailed scrutiny of individual bills has become a hallmark of Senate committee operations, in its early days the referral of bills did expose some strains in the system. In the first instance, committee workloads increased dramatically and there was correspondingly less time to spend on the longer term inquiries into matters of policy and accountability. Examination of government bills also led to much higher incidence of minority and dissenting reports, leading to some cracks in the hitherto highly collegiate operations of committees.

But, while committees remained as fact-finding bodies, there appeared to be general acceptance of the idea that they should be chaired by government senators. Their engagement in more partisan work, however, caused this assumption to be questioned. By 1994 there were concerns that the existing committee structure was not delivering optimal outcomes. Multiple select committees were being established to carry out particular inquiries, often with non-government chairs. There was pressure from the Opposition for a share of the chairs of standing committees, and all of this resulted in the Procedure Committee being tasked with a major reference to redesign the committee system. I know that will be the subject of a later paper, so I will not go into the redesign, except to say that we now have a system of paired committees, one half with non-government chairs undertaking inquiries into matters referred by the Senate and the other with government chairs inquiring into bills, estimates, scrutiny of annual reports and a number of other matters.

As the President mentioned, that system endured until 2006, when a government majority in the Senate saw it returned to the unitary system. We have a session tomorrow on the impact of the government majority in the Senate on committees during that time. To conclude, the system has now returned to what could be called normal practice and I look forward to the analysis of this practice during the course of the conference and future directions that will unfold over the next couple of days.

Prof. UHR — It is a great honour to be part of this two-day event. It is a matter of professional pride for me to be here on the opening panel with Rosemary. These are just remarks. There is no formal paper so I apologise for that. It is the end of the academic year, as some of you will know. If you are not writing papers ready to be examined, you are examining papers that have just been written or sort of written. There are all sorts of academic processes that are not as important as parliamentary processes but have their own urgency that I have had to pay attention to.

Lots of names of senators have already come forward, and I want to add to that list. My first job in Parliament House was working with the Parliamentary Library as a research officer holding a parliamentary fellowship. The selection committee included two senators—Senator Harradine and Senator Colston. I knew something about Senator Colston from my home state of Queensland and I knew something about Senator Harradine. They were both quiet and studious and were almost silent during the selection process but they had formal power over my appointments. My first job here in Canberra goes back to those two remarkable senators, each distinctive in his own way.

I then joined the Parliamentary Library after a while going to work with the Joint House Department. It is probably news to some of you that it housed the Joint Committee of Public Accounts and the Public Works Committee. I worked with the Joint Public Accounts Committee, which had Senator George Georges. He was the deputy chair at the time, again from Queensland so that is worth remarking upon. Why was that committee with the Joint House Department? The Joint Public Accounts Committee and the Public Works Committee ran away from the power of the Clerks. They decided to find a zone of independence and autonomy within the parliamentary bureaucracy. They took their own procedural advice from other quarters in Canberra and they had a kind of flowering of independence and creativity there for some time until, I guess, in the mid-eighties they were mainstreamed back into the parliamentary bureaucracy.

It was a kind of unusual orientation for me to be entering the parliamentary committee system and never to see a Clerk at all. I then joined the Senate and worked with the Scrutiny of Bills Committee. Alan Missen was then the chair of the committee, this was under the Fraser Government, at a time when he was trying to be the ginger within the governing party to make the committee a permanent committee. He had a real battle on his hands because the Fraser Government was prepared to tolerate the experiment of the Scrutiny of Bills Committee but not to keep it as a permanent feature of the Senate committee system for fear that it would deliver all of the kind of evils that Rosemary has just identified—a kind of continuous scrutiny of legislative policy in relation to the drafting and composition of bills. Michael Tate then succeeded Alan Missen as the chair of that committee and I had the pleasure of working with Michael as a new member. Robert Hill, who is on the program today or tomorrow I notice, was also an incoming senator working then with the committee. He looks as young today as he was then because he has returned to his natural niche in the university sector. That is good.

My work was supervised by Harry Evans and Anne Lynch, who were then the heads of the Procedure Office, so I had good training. I worked then with the Regulations

and Ordinances Committee as well. Austin Lewis was the chair of that, again under the last years of the Fraser Government, and then John Coates, known to some of you, was the first Labor chair. I worked with Estimates Committee A and I cannot remember who the Labor chair of that was after the Hawke Government was elected but Peter Rae was the traditional chair under the Fraser Government. These were wonderful training grounds for a kind of dumb academic coming into the system, who had been warehoused in a part of Joint House where you were not getting proper supervision and then suddenly to be working with talented parliamentary officials like Harry and Anne and wonderful gifted politicians on both sides of the House. I am looking forward to Helen Coonan and Amanda Vanstone this afternoon telling us more about legislative scrutiny committees because that is where my story began—my engagement with Parliament.

I have three comments and then some concluding predictions of where I think I would like to see the Senate committees go. My three comments are all historical, one going back to the constitutional origins, one, again, the 1930s story about the origins of the committee system and its first tentative steps during the 1930s and then a comment about the 1970s—the establishment of the committee system that we are now celebrating—and then my daring concluding comment. The first comment is really the historical one that there are no Senate committees without the Senate and somebody has to make the comment that there is a Senate and that is a remarkable achievement. The constitutional system that we have owes a lot to constitutional pioneers who historically innovated in ways that we can truly admire. They were kind of global innovators in constitutional government to establish the Senate, the like of which we now have, which is almost the legislative equal in powers with the House of Representatives and fully elected.

There was no model. They could not take a model off the shelf. They had the United Kingdom to look at and that was not what they were choosing. The United Kingdom certainly had a bicameral parliament but the House of Lords was not the model that the Senate was based upon by any means. They had the United States to look at and that is where the name of the Senate came from. They were, as Rosemary indicated, empowered and emboldened by a kind of envy of the power of the United States Senate. They had the Canadian Senate to look at as a kind of model to learn from but again it was not an elected chamber and they wanted something that was equal to the House of Representatives in its public legitimacy and they chose that. Only with that as a remarkable, bold, innovative choice do we get to the topic that we are now looking at—the committees. First of all we have to have a Senate.

I have two comments about that original design. The pioneers who established the Senate in the constitutional system had a kind of anticipation that the electoral basis

for that chamber at some stage would take on proportional representation. It was anticipated right at Federation and in lots of debates in the early years of the Senate that it should not simply replicate the House of Representatives in its electoral system; it should complement it and bring to it certain qualities that the House does not bring. Proportional representation was eventually delivered, as Rosemary said, in 1949 but the anticipations, the expectations, the kinds of original hopes, go right back to the constitutional foundation.

The implication for us that comes out of that is that they were welcoming not just proportionality to come into the Senate but parties—the more parties the better. The expectation was not that the Senate would be a non-party house. Some people have that as a kind of model for what an effective house of review is. In fact, the choice for proportional representation was to spread the parties around—to have more rather than fewer. Independents are good too, but the diversity of representation included an embrace of partisanship and a blending of it in a kind of balance or proportionality. We should take note of that.

The second historical component of the design of the Senate that I think we should reflect upon because it is really significant is the welcoming of ministers in the Senate. Over the last 20 years or so we have had about a third of the ministry drawn from the Senate. It is not by accident. It was part of the original design. Again there is a view of the Senate as a house of review that says it would do its job much more effectively if there were no parties and no ministers. I disagree. I think parties are wonderful and I think government ministers in the Senate are wonderful. They add value to the Senate because they give a kind of edge to the ambition of senators that it is a house of government and not just a house of review. Also then in opposition they have the experience and the detailed understanding of the processes of government that lead into the review process. So I am all for the retention of government ministers in the Senate. I do not want to see that pale, anaemic image of the Senate as a house of review of all independence and no government ministers to take over. I am happy to debate that.

I will turn to the second point about the 1930s. The President has made a very useful contribution to this, as has Rosemary. The only point I want to add is that the Regulations and Ordinances Committee is really the foundation stone of the system that was expanded in the 1970s. There is still a component of the regulations and ordinances story that I think we should observe. The Regulations and Ordinances Committee helps advise the Senate on disallowance processes. It looks at proposed regulations and has a standard or a template against which it assesses or evaluates regulations issued by government and then advises the Senate as to whether they should be left in process or whether the Senate should move to disallow them,

basically on civil liberties grounds, when the government is accumulating to itself too much unfettered power to interfere with the civil liberties of ordinary citizens.

The disallowance power itself had to be fought for. It is not in the Constitution. It is not in the rules established in the Senate Regulations and Ordinances Committee. As part of that early struggle in the first three years of the Commonwealth Parliament senators had to identify a role for themselves, monitoring the increased use of regulation—the understandable and important use of regulation—by governments. Robert Walsh and I looked at the history of this many years ago. Robert was a colleague of mine working in the Senate who then went to work as Senator Sibraa’s chief of staff I think. We tried to track through the origins of the disallowance procedure and we found that it was a kind of year by year, month by month struggle in the first life of the Commonwealth Parliament to work out ways in which the Senate could monitor and, if necessary, amend or disallow government regulations. First of all, by amending the Customs Act to provide a provision within the Customs Act that allowed ministers to issue regulations to implement and give effect to the customs law but to allow either house of Parliament to disallow. The original provision was for both houses of Parliament to disallow. The Senate in its curious wisdom decided that either house should be sufficient, which then empowered the Senate, gave it the power.

These are political struggles. It took forgotten senators with the courage to give themselves power and to recognise the power that is required of executive government but have that balanced somewhere within the system. The Regulations and Ordinances Committee, which is quite rightly the foundation stone and the model of the committee system that we are now celebrating, itself depends upon that power being entrenched and embedded in the law and the Acts Interpretation Act, which is where the Senate finally put this systemic power to disallow government regulations. That itself is a reflection of the kind of capacity building that goes on when people whose names we can no longer recall did something important for us by committing themselves to a kind of open government model.

After the establishment of the Regulations and Ordinances Committee, it became a kind of pioneer, similar to the kind of global innovation spirit that established the Senate in the first place, having the power to disallow and having an institution within a parliamentary chamber to professionally advise a parliamentary chamber on when to press the disallowance button. It has taken the rest of the parliamentary world 50, 60, 70 years to put together the packages that were quietly innovated at Old Parliament House, way down here in the forgotten part of the globe.

On the 1970s and the establishment of the committee system that we are now celebrating, just think of the unintended consequences attached to that. Think of the establishment of the Senate estimates committees. Think of the kind of gameness of a Senate saying that it will actually engage in legislative review of a government's Budget. Where could this possibly lead? One of the places it has led to, identified by Rosemary, is absolutely increased public service accountability. It was not necessarily part of the original design, which was to allow senators an opportunity to sit with their Senate government ministers to examine more closely the proposals in a government's Budget. But opening up the public service to much greater direct parliamentary accountability possibly was a kind of faint hope of those early years and it has become part of the unintended consequence which is now locked in. Again, it was a kind of innovation for the rest of the world—for public servants to acknowledge direct parliamentary accountability, to sit with somebody who was not their minister and who may know nothing about them and for they themselves, the public servants, to answer directly to the estimates committees on matters relating to the government's Budget.

It does not stop there. The innovation that has come out of this unintended consequence of establishing the estimates committees and putting so much of the burden of accountability onto public servants has been, over the last decade, the remarkable focus of Senate estimates committees on the accountability of public servants for the provision of policy advice. Nowhere else in the world has there been a parliamentary body with the kind of dare and willingness to actually open up policy-advising processes as an aspect of parliamentary accountability. Typically you can imagine the government's response: 'The advisory processes are confidential to government; the advice comes to us as a government and it is up to us to divulge as we see fit any public consequences or public matter that might come from that advice'. With regard to Senate estimates committees, you go and sit and just watch and listen to them and look at their reports. They have another agenda that they are working to, which is the public accountability of public servants in their advisory capacity—in the advice they give to ministers and the quality of that advice. This is astonishing; it is a kind of global innovation. It is understandable that the public servants are reluctant. It is understandable that ministers are sometimes reluctant, sometimes actually quite open. They would like to see it on the record as well, because they have inherited these wonderful officials from times gone by.

A connection with Regulations and Ordinances: when that was established the evidence that the select committee was taking on the likely public benefits of having a Regulations and Ordinances Committee included wonderful early promotion of the committee by Robert Menzies, about which we have heard some reservations in his later career. There was lots of public endorsement from Maurice Blackburn for the

Labor Party. The negative view was put by the public service: ‘Why would the Senate want to look at government regulations? They are matters of advice that we give to government. There is no public mischief at work there at all, no public downside’. Robert Garran himself went out of his way to say the Senate would have no interest in it—that it was subterranean stuff, of no public significance all. ‘Just leave it to the public service’. Robert Menzies and Maurice Blackburn knew better.

My last comment is about where the committee system should go, not just after the next two days but now. My first comment about the future is that we really have to acknowledge the limits. The Senate began as a tiny chamber of 36 members—there are limits to what 36 people can do—and left Old Parliament House with 60 or 64 senators, so it was still very small. Now what do we have? We have 76 senators, which is still tiny. Give them credit for what they do. Don’t ask them to do too much. It is remarkable that we get so much from it.

I have two observations where I would like to kind of nudge and press the system to see it do a little more, but of course it will come at a cost and something would have to be dropped. One of my observations regards federalism. Rosemary mentioned that the Senate is a state house. There is no Senate committee on federalism. If I were a senator, Senator Hogg, I would say, ‘Well, federalism is mainstream; it operates in every Senate committee. It’s part of the ethos of the Senate; it’s always there’. But I think we could do more. We could have a Senate committee on COAG (Council of Australian Governments). COAG is where the heads of government for Australia all meet. It is a public process—sort of. It would be wonderful to see a Senate committee monitoring the COAG process.

This is my very last comment. Internationally, the Prime Minister is away now, she was away last week and she is away again this week. Senate committees really have an important story in the international contribution to parliamentary cooperation and parliamentary strengthening. Lots of senators do lots of international cooperation. It would be nice to have a Senate committee working in a dedicated way on parliamentary strengthening. The Senate is already a kind of international model on power sharing. The Senate committees have so much to contribute to other parliamentary bodies in the region—the Pacific and countries to the north of us—and there is so much for us to learn. It would be nice to have a parliamentary committee acting as a bridge. Thank you so much.

CHAIR — Rosemary and John, that is food for thought, certainly. I invite anybody from the floor or the gallery to pose a question to either of our presenters.

QUESTION — I am Kris Klugman from Civil Liberties Australia. My question picks up on the last point that Professor Uhr made in the historical perspective. How do you see the Senate committees relating to the increasing rise and influence of the 40-plus ministerial councils, including COAG and the Standing Committee of Attorneys-General (SCAG)? From the community point of view there seems to be a change in the governance—the way in which Australia is being governed—and it is of concern to some community groups. I wonder if either of the speakers could elaborate on that.

Prof. UHR — Rosemary has just pointed out to me that there is a Senate committee on the future of the Australian federation. Is that a select committee or a standing committee?

Dr LAING — Select committee.

Prof. UHR — What I would like to see is a standing committee that has a kind of continuous watch over COAG and ministerial councils. COAG of course is heads of government; ministerial councils are all the other ministers who quietly engage in national cooperation—Commonwealth and state. You are absolutely right: it is absolutely central to the way Australia governs itself. I am thinking of the early days of uniform legislation, when Australian governments decided to use their parliaments as fast tracks in order to get uniform legislation on a whole range of important social activities. Community groups suddenly felt: ‘Things are happening too quickly. Once you get uniform legislation there is no way any one parliament can adapt and change so it suits our circumstances’. Executive government said: ‘Don’t worry, we’ll look after that. We’ll have it suitably flexible so that ministers can work out where the adaptations should take place’. So we have already had a kind of rehearsal of the downside risks of this new form of governance, which started with the embrace of national uniform legislation. But, as you quite rightly point out, ministerial councils are now a kind of habitual component of government—not just ministers at the Commonwealth level working with ministers at the state level but also bureaucrats at the Commonwealth level working with bureaucrats at the state level. None of that is transparent to either state or Commonwealth parliaments, so, if there is anything the Senate can do to build upon this interest in the federation to establish a kind of COAG-monitoring process that also looks at ministerial councils, great! But there are limits to what 76 senators can do.

Dr LAING — I agree that there is a growing black hole in accountability in relation to ministerial councils and cross-jurisdictional decisions. We see it all the time in the Senate when senators move amendments to bills and the response is: ‘Oh, no, we can’t change it; it’s been agreed with the states’. It is an area to watch and one of growing concern.

QUESTION — I am Peter Consandine of the Republican Party of Australia. My question is to John Uhr. I take issue with the viewpoint you espoused about the fact that we have ministers in the Senate and that by virtue of having ministers in the Senate Parliament works better. I posit the view that the Senate as a states' house properly would work better as a house of review and there could be contributions from all the parties that make up, with proportional representation, the componentry of the Senate. I wonder if you could expand on why you think we get more value from our senators when some of them are ministers and they are acting as reviewers of policy and legislation. I would really like to hear why you really believe that to be a great outcome.

Prof. UHR — Part of the evidence is having worked on the inside and having seen the value that Senate inquiries get from having people who are former ministers, who are now working maybe in government or maybe not in government, and from the detailed knowledge they have of the process. You are right that there is a danger that these processes then become hijacked by people whose ambition is solely to be in government and that the independence that you might expect from a house that had no government representation is lost. To me it is a kind of balance that there is more to be gained by having ministers here—partly as hostages, partly as experienced elders—than there is to be gained by not having them here at all.

You are right: my position is compromised. I am endorsing proportional representation and endorsing the Senate as a house of government or a house involved in government. I am sure there is a purity that can be attached to separating those two: either have it as a house of government with no review or have it as a house of review with no government. My knowledge of the history is that compromised balance provides more benefits than losses. I would not want to see the Senate walk away from having that government presence in it.