

Senate Committees and Legislation

CHAIR (Ms LE GUEN) — My name is Roxane Le Guen. Until very recently it was my privilege to serve committees every day. We have here to speak about Senate committees and legislation two distinguished panel members, Ms Sue Knowles and Ms Vicki Bourne. They both have served on committees for many years. Sue Knowles was a senator for more than 20 years. During that time she was the chair of the Senate Community Affairs Legislation Committee. She also served as deputy chair of that committee on many inquiries. As Deputy Opposition Whip in the Senate, she served on the Selection of Bills Committee, and she has a good understanding of how bills go to committees. She will also be able to talk to you about the effect of inquiries on the debate in the chamber.

Vicki Bourne has worked on both sides of the Senate process, as a research officer to former senators Colin Mason and Paul McLean and then entering the Senate herself. She has served on many committees. She was always an active participant on committees. She was also the Australian Democrats Whip and therefore served on the Selection of Bills Committee. She will also be able to talk about the process.

Please welcome Sue Knowles in the first instance.

Ms KNOWLES — Thank you, Roxane, for your very kind words and for the invitation to be here today. It is interesting to sit here as former senators and hear about Senate committees. As Roxane said, I served almost 21 years in the Senate, and I was a stickler for the Senate committee process and a bit of a traditionalist. I did not like to see some of the changes that were being made that I believed negatively impacted upon the Senate process.

One of the changes that was made in the late eighties and early nineties was the referral of bills to committee. Part of the reason for that was to overcome the logjam that was happening within the Senate chamber in the committee of the whole process. If anyone has sat through the debate of a controversial bill in the Senate chamber through the committee of the whole stage, they would know what I mean when I talk about sawing sawdust, because it can be a very long and exhaustive process that just goes around and around and around in circles.

So the reference of bills to committee was to take the more controversial bills and the parts thereof at the committee of the whole stage and look at them in a committee and look at the possible types of amendments that could be used back in the Senate chamber in the committee of the whole. Back in days gone by—in the Old Parliament

House and even when we moved up here—Friday was a sitting day for the Senate, and so it was decided to sacrifice Friday and make it a committee day, for the reference of bills to committee.

That worked exceptionally well for a period of time, because senators and ministers understood that the committee process was in lieu of a sitting day. It was usefully then put to the community. Those who were affected by various pieces of legislation could be called upon as witnesses, the departmental people could be called as witnesses and the committee had an opportunity to do that examination that would otherwise be done in the Senate. The senators would then draft potential amendments and they would be taken to the chamber. So it saved a considerable amount of time. I think everyone agreed that it was a terrific idea and worked exceptionally well.

Over a period of time, the change in senators became more rapid. When I came in, the new ones were with the old fossils, and then I became an old fossil myself and the change was minimal. But, during the early nineties and beyond, it was like a revolving door. Asking new senators to have Friday as a committee day at the end of the sitting week was just as though you were asking them to pull their teeth out. So they said, ‘No, no, I have more pressing engagements’. Ministers had more pressing engagements. The system slowly but surely started to fall apart.

It also started to fall apart because they became full-blooded inquiries on the bill not necessarily the controversial sections of the bill but the broader bill content itself. It then became a process whereby we would not just have the hearings in Canberra on a Friday of a sitting week; we would trot all around Australia and we would get submissions from every Tom, Dick and Harry wherever we went, and they started to draw out further and further. The whole thing degenerated into something of a farce. There were no draft amendments put together. It all came back to the chamber, and the committee of the whole in the chamber then became as long and as exhaustive as it ever was.

I think it is a good idea, but there needs to be goodwill on all sides. There needs to be a will and goodwill on all sides for it to work. I do not just say oppositions and governments because now, with more independents and minor parties, they all want to have their say. They are all very committed to various other committees and, if this is to ever happen again, it needs to be a formalised arrangement whereby people know that that is the day for that inquiry. It should not be a long drawn-out inquiry and there should be a given time by which people can make submissions, attend an inquiry and the committee report back to the Senate.

As has been said previously, the demand now on committee secretariats is absolutely enormous. When they have parallel inquiries going on, there is only so much the secretariats can do. They are wonderful, dedicated people who want to make sure that things are right. To make sure that this system works well, it probably needs to have a rethink as to the time frame. For example, I would suggest that if this were ever to come about again that there would not be a referral of a bill to a committee on a Tuesday or Wednesday—I think, Vicky, was it?—for an inquiry on a Friday. Therefore you would not only get senators in a flap; you would get the committee secretariat in a flat and witnesses in a flap because suddenly the various interested witnesses would get a call from the secretariat: do you want to attend to put your case on X, Y and Z parts of the legislation this coming Friday? You can imagine what that would do to various people's diaries.

Maybe if it were to work again, we would need a longer lead-in time to ensure that people had time to carefully consider the process—and I mean that from all parties concerned. Sometimes even the senators were not across the legislation. It might be their minister or shadow minister and their relevant staff and members of their backbench committee who would know the detail of the legislation. A longer lead time would give the party rooms a different time frame in which to consider those controversial elements of the legislation. It would also give them time to consider the viability and practicality of various amendments that might make the legislation better.

I focus on that part of making the legislation better because invariably with the original system it did in fact improve the legislation, and ultimately governments and Opposition alike would say that the upshot of the process has made the legislation and its intent better.

So if the process is to be reintroduced then maybe that lead-in time gives an opportunity to have more thoughtful consideration from all parties including those who wish to make submissions. It is important, I think, in this day and age to ensure that the community is involved as much as possible in the legislative process. People do appreciate being asked to attend committee hearings and they do appreciate their views being heard. While one might not agree with all their views, it is nonetheless important to hear them and to consider them. They invariably raise things that have not been considered before and they also raise the unintended consequences of a piece of legislation.

So I do think it is a very, very good process. It is an initiative that has worked well in the past. While it fell down, there needs to be an education process that makes sure that the various party leaders inform the members of committees that this is a process

that needs to be adhered to. It is a process that needs to be treated very seriously and it is a process that can work very, very effectively. But I think that when this started to fall apart there was a generational change and turnover of senators and there was no formal instruction, if you want to put it that way, for new senators that this was a part of their commitment to the Senate in lieu of sitting in the Senate on that given Friday. So senators who are genuinely interested in the legislation can have an opportunity to attend such inquiries and such hearings and sometimes throughout the process of the Senate they can also be committed to doing other things while the Senate is sitting—and they cannot be in 10 places at once.

All in all, I think the committee process is one that must be valued. It must be one where people take the blinkers off and look at it objectively and say, ‘This is a way in which we can enhance the system’. If senators looked at that process seriously from time to time to see how they can improve the Senate inquiry system or the scrutiny of the legislation, then I am sure that there are ways in which that can be achieved. There is no doubt at all that there is an intention by all senators to get the best out of legislation but sometimes the Senate is so focused on getting legislation through according to a timetable that some things are not considered probably as much in detail as they could otherwise be. This process enables that scrutiny to take place.

I would dearly like to see a system similar to that that was designed way back then reintroduced to give people a different opportunity to look at legislation, not one that makes a Senate committee travel all around the country—it is not that type of inquiry. I think the classic example was the reference of the GST bills to Senate committees. That ended up just a complete and utter circus, because all committees had their own little section and off they went all around Australia, listening to the most outrageous submissions at times. But once again, it is part of people’s rights to express their opinions to the Senate, but the process was not necessarily designed originally to take that type of inquiry on an Australia-wide tour. I do hope that it gives an opportunity for senators in the future to look at options and the way in which Senate committees can work effectively and efficiently and so contribute more time back into the Senate chamber in a constructive way as opposed to just consuming time going around and around in what can usefully be done in a committee environment.

Ms BOURNE — I thank Rosemary and the Committee Office for inviting me to this. I must say I am a major fan of the Senate. I always have been. I remember that when I left the Senate I said I could not understand why anyone in their right mind would want to go into the House of Representatives. What was wrong with all those people? Unfortunately, there were a couple of people from the House of Representatives who had come to listen to valedictories. They were a little unimpressed. But I still maintain that view. I am a big, big fan of the Senate committee system as well.

I was asked to have a look at the Senate committees and legislation from a minor party point of view. I did have quite a bit to do with that while I was in the Senate from 1990 to 2002, but I should tell you that from 2002 till now I have had very little activity, and I have not really kept up with any of the minutiae of what has been changing within the Senate. So I may be well out of date, but I can only tell you what has happened from my own experience. First of all, I have been on many, many committees as a Democrat, as someone from a minor party. I can see Dee Margetts is here. She will agree with me on this. It is remarkable how many committees you do have to get onto. There are not that many of you to go around. If you want to be a part of legislation then you are just going to have to do that. I always found that I could only handle two portfolios reasonably. I have absolutely no idea how, when Dee and Christabel were the only Greens in the Senate, they could handle everything. But I am sure Dee will be interesting about that when the time comes.

As far as I was always concerned, there were three basic types of bills. There were the very, very simple ones, and those are the ones that we used to do on Thursday lunchtime. They may still—yes. They were the ones like changing levies. It would happen every year. Everybody would agree on it. In fact, I can only think of one instance where a bill that I thought deserved a little more scrutiny was put on at Thursday lunchtime. That was the bill when East Timor became independent and we had to change our agreement on the gas fields in the Timor Sea. That came up on a Thursday lunchtime. I did not complain at the time but I did remember the first time that bill came around to put the agreement in place. It was not one of the first set of non-controversial bills, it was not one of my second set of bills, it was one of my third set of bills that sort of made your hair stand on fire, and fireworks went off everywhere when somebody mentioned it. It was a bill that was incredibly controversial. However, by the time we got to the second time around, everybody just got up and did five minutes on Thursday lunchtime—except me, I have to say. They were all saying, ‘Yes, this is perfectly reasonable’. I got up and said: ‘I think we’ve all forgotten what happened in the first place with this. You were all telling me how silly I was and that this would never happen. Guess what? It has. And here we are changing it now’.

So that is the first type of bill. The second type is more complex usually. I think these are the ones that Sue was talking about. They are the types that have some amendments or some controversial aspect to them that people will want to talk about but they are not hugely important basic changes to legislation. That is the third type that you come across. The one set of inquiries I can think of on the third type of bill—the really basic changes—was when we had two Senate inquiries into the legislation to change the broadcasting legislation to go over to digital, to bring in pay TV. They

were huge. They were absolutely enormous. They could not possibly have been handled in a very minor way. They had to be handled in a very big way.

I think the one thing that came out of my being on those two committees was that I learnt that it is such a technical area. It is such a complex area. John Hogg was talking about the jargon earlier. It was something I had never heard of before in my life. It was something you really had to get used to and you really had to have experts telling you about it, starting from scratch. The attitude was: 'Here I am in kindergarten on broadcasting and digitisation. Tell me what it is all about'. If I had not had all the submissions to the committees and had not been able to question all those witnesses—and we had witnesses coming in on that from all over the world—there is no way on the face of this earth I would have been able to handle those bills as I did. I am sure it was exactly the same for everybody else who was handling them in the chamber. It was not just the Democrats; it would have been the same for all the parties. They were immensely useful committees to have into what turned out to be immensely complex bills that nobody got right. I should say the government did not get them right. I am sure I got most of them right! I think the pay TV bill was the one time a minister got up in the chamber and said, 'I would just like to say that I should have listened to Senator Bourne when she brought this amendment up'. I thought, 'Thank you! Thank you!' And it was true; he should have, and so should all the rest of them.

I think committees hold a very, very important place, although I take what Sue says too. It can be very frustrating—or it could be when I was in the Senate—that where we had meant to do all the committee stage of a bill on that Friday all you got really was an extra committee stage because you would get back to the Senate and do another committee stage. The amendments had been written, but they had usually been written by that Friday anyway. It was two discussions: one with people from outside the Senate and one inside the Senate. I think there is a lot of value to that because you get that democratisation of legislation, where anybody who is interested can come in and tell you. However, the three-day reference was very difficult for anybody who was interested who was not in Canberra. I do not know how the Senate committee system is working now, but it may be that it is worthwhile just having another look at it and seeing if it can be better suited by some small changes.

The other thing that I wanted to talk about from a minor party point of view is the changes of 1994, when we changed the Senate committee system. I was asked on a radio program after I left in 2002 what was the thing I was most proud of in the Senate and I said the 1994 changes to the Senate committee system. Much as I would like to tell everybody they were all my own idea, they were not, sadly. There was a lot of discussion. There was a lot of unease. That is probably not the right word. But many people in the Senate were thinking by that stage, 'We've got a house here that

has so much more input than you have in the House of Reps', where there were two main parties and some independents. We had a couple of other smaller parties and we had Senator Harradine as the independent. We did have a very useful and very comprehensive Senate system at that stage. One of the main things that used to frustrate me hugely—I know it frustrated Christabel and Dee as well and it certainly frustrated Senator Harradine—was that if you were a Democrat then you probably had one person on a committee that was looking into anything. But if you were not then you were very lucky to get onto any committee at all. You were very lucky to have any input at all.

The change that we made to the rule as far as that goes was that we brought in participating members. That meant that any senator, not just the ones who could not be on the other committees but any senator from any party who had a particular interest in a bill or in any other inquiry, could nominate themselves as being a participating member of that inquiry. They would have all the rights of the normal members of that inquiry, of the ones who would have been there before, except for the technical aspects like 'when will we meet next' and 'when will we finish this off'. That did not really matter because you were able to put in a dissenting report, you got all the submissions and you were able to ask questions of witnesses, so you had pretty well all the rights of the ordinary members of that committee. I note that, even when other things were changed, that system of participating members never changed. It has been in place from 1994 until now. I hope it never changes. I think it is one of the best things we have done.

I remember having a discussion with Senator Hill at the time, and others, about this next point. We had a Senate that had about equal numbers of government and Opposition senators, and on top of that it had the Democrats—I cannot remember how many of us there were at the time; about eight—there were Greens and there was Senator Harradine. It seemed to us that we were not the House of Representatives and it was only reasonable that half the chairs of committees would be government and half would be Opposition, and the ones that had government chairs would have government majorities and the ones that had Opposition chairs would have Opposition majorities.

I put forward a motion to the Procedure Committee, which was accepted, and then we formed a subcommittee of the Procedure Committee. 'Reasonable' might not be the term people thought of for Senator Faulkner and Senator Ray but as far as I was concerned they were very reasonable on that subcommittee and they were prepared to talk about anything; they were prepared to consider everything. There was Senator Ray, Senator Faulkner, Senator Reid, who was the President at the time, Senator Kemp and me. We had really reasonable discussions. We came up with a set of

amendments for coordinated committees, estimates would be put in with legislative committees and the general purpose committees would stand by themselves.

I wanted to have, purely thinking from a completely independent point of view, half of the general purpose committees and half of the legislative committees to have Opposition chairs. In fact, Senator Ray talked me over on that one. He was very concerned about oppositions manipulating legislative committees, in particular estimates. He and the Labor Party were in government at the time. It was the end of 1994 and we knew the election would be fairly soon. The general consensus at the time was that Labor was not going to get back—but you never know. It looked like everybody had something to win after the next election. Whether you were in government or in opposition you would have half the chairs; whether you were in government or opposition you would have half the majorities; and no matter who you were in the Senate you would be able to nominate yourself for a place on a committee. We talked it all through, and Senator Ray eventually convinced the rest of us that his point of view was very reasonable. I still think it actually was—that you should have legislative committees with government chairs and general purpose committees with Opposition chairs.

That system remained in place until the government took over the numbers in the Senate, which I think was 2005. Then it changed. It went back to virtually what it had been before 1994, except that there were still participating members. The chairs all went back to where they had been. Then, I am very pleased to say, in 2008 the system changed back to virtually the 1994 system. I still think it is a much better system. It gives the government the ability to look after the legislative side and non-government—all the Opposition parties—the ability to look after the general purpose side. I think it was a real breakthrough for the Senate and it made the Senate into not only a much more democratic institution but also a much more inclusive institution where, if you did not belong to Labor or Liberal, there was not a problem with you being on a committee.

I would just make one more point: as a Democrats senator I had a terrible time getting information out to the voters—if the press did not want your views to get out, they did not get out—unless people were listening to the Parliament on the television. An astonishing number of people actually did at the time and an astonishing number of people listened to Senate question time when it came on at midnight or 1 am or something. I could not believe it.

As an aside, I once went to the Philippines and there were clubs of people who got together and watched Senate question time on the international television. They could not have cared less about the House of Representatives question time. There was a

Bronwyn Bishop cheer group and a Gareth Evans cheer group—the rest of us were sort of by the bye. But they would get together and yell and scream at each other when one of these two made a point. It was the most bizarre thing. But that is beside the point.

Unless you were one of those people who watched the Senate, unless the media were interested, you would not know anything about what the Democrats were doing. We could put out press releases, we could advertise, but we could not afford it. We could have public meetings and 15 people would work out what we were on about. But one of the main things we could do was be really effective on a committee. If you were the chair of a committee then you were the one who was asked what the committee was up to now. If you were just on a committee, especially the big inquiries, many of the big inquiries were covered by the media and your point of view would get out there. I found that was one of the best ways to let the voters know what I was doing, where I was going, what was happening. I would be surprised if it were not the same now for the Greens. I think the Senate committee system is really worthwhile evolving constantly. I do not want to see any of my changes changed again, so do not change any of them. They are brilliant and will last till the end of time. But everything else is open.

I think we should all be looking at where things can get better. I would love to see a new evolution of where the Senate committee system is going, just to make it better. I agree with the other speakers who said, ‘We do not want it too much bigger, because it is very hard for everybody to cope’. But with the eight paired committees—I assume we still have those; we always thought three or four select committees was what we could cope with—I think we have a committee system that is well and truly the envy of many other parts of the world and it is something that we can be really proud of. Thank you.

QUESTION (Mr TUNNECLIFFE) — In the last sitting week before the dissolution, prior to the election, the Legislative Council of Victoria voted to establish a standing committee system, based wholly and solely on that of the Senate—and unashamedly so. In fact, our new standing orders look remarkably similar to those of the Senate. I did warn the Standing Orders Committee against plagiarism, but it did not seem to care.

I think our biggest challenge in getting the new system up and running will be the legislation committees, which, like the Senate committees, will be chaired by the government. I say that because, in our parliament we trialled a stand-alone legislation committee but it was rarely used, principally because the two sides of the house had different views about how it should be used. For example, the Opposition saw it as an

opportunity to have a wide-ranging inquiry into a bill, whereas the government saw it principally as a substitute for the committee of the whole. In fact, they took the view that if we had a bill referred to a legislation committee then it should not go to the committee of the whole at all. So I guess a number of us are very fortunate to have had 40 years of Senate committee experience to draw on; hence, this conference is very timely.

I would like to ask both the presenters: in relation to making our legislation committee system work, what do we need to do? For example, should there be minimum or maximum times for inquiries? Should there be parameters for the inquiries? Should the government modify its legislative program so that it brings in bills earlier in order to have them introduced at the time they would otherwise have wanted to? Based on your experiences, what are the sorts of things we should do?

Ms BOURNE — I think that is a really keen question. It is one that the Senate is still looking at. You have a problem, which I am sure you are aware of, in that whatever you bring in, the government of the day, if they have the numbers—or whoever has the numbers—can override it. That has happened in the Senate several times I can think of. When we started off I looked at three types of bills. There was the type of bill that you did not need to refer; there were the middling ones, where there was one complex area, a couple of complex areas or a couple of controversial areas; and then there were the really big earth-shattering bills. You will probably end up with earth-shattering ones having a big committee inquiry anyway and going around all over the place to lots and lots of people. There will be many people interested and many experts who can give you lots of good information.

They are the middling bills that you have to watch because, as Sue said, they can blow out of all proportion, particularly if you have an interest group who really want to either stop the bill or change it to their advantage. If we ever had a bill to do with family law and it went to a committee you would know that you would have a huge influx of submissions. The first one we had I remember that all the submissions said exactly the same thing with exactly the same wording on exactly the same paper but with different signatures. Of course they did not all go out to you because that would have been silly. You were given one and then instead of giving you another 400 the next day, you would be told ‘There are 400 more of A’. That kept going and made no impression on us whatsoever.

Then they thought better of that and said, ‘Say in your own words something like this’. Most people just wrote whatever it was that was ‘something like this’. Then those people will ask to speak and that can really take a huge amount of time. It is incredibly stressful. It is incredibly time consuming—unbelievably time consuming—

for the staff. You know what those types of bills are, of course, but you really have to watch them. In my opinion you do not need a long time for those hearings. It is very difficult not to put a long time on them, and you will get into trouble from the people who want you to put up a long time, but they are always in a minority.

There is a problem, though, with bills that do have some complexities or some controversy in them, where there are differing points of view from differing experts. You will have to leave more time for those sorts of bills. If you get this area right I hope that the Senate looks at what you do because I think it is one area where the Senate can—it would be very valuable to the Senate—have another look at what sorts of bills need what time and how far you should go.

When we first brought in those Friday sittings for committees the main idea was not that you would get people from around the country, but that you would look at the low level of the medium bills. All you really needed were people who were in Canberra anyway. You needed the public servants and the minister to come and talk. You would have all the parties in the room and if there was anybody else around in Canberra who had a view on it then they could come and speak. They have just blown out of all proportion.

Ms KNOWLES — I think that one of the main things you would need to consider is making sure that you have a time frame established by the chamber. It is as simple as that, in many respects. The chamber then decides what the reporting date is and the committee has to work within that, and as long as that is established in a reasonable, bipartisan fashion then it generally works all right. If the bill does tend to attract more attention, then they can always go back to the chamber and seek an extension of time for reporting. Vicki said that governments can always override it. I would just say that they do that at their own risk. Just listen to what Robert Ray was saying earlier on: ‘There is payback’. If a government decides, ‘No, we are not going to have an inquiry on this’, then watch this space because it will take an eternity in the chamber. So it is better to have that communication going and to make sure that there is a priority given to the length of time that the bills need for proper scrutiny. I do not know whether or not it would be necessary for them to do anything other than make sure that there is enough communication between all parties within the chamber, to make it work. If that communication is established right from the beginning, it is better than trying to patch it up as it all unravels.

QUESTION (Ms MARGETTS) — I was interested in what you were saying about the necessity to work out how legislation can and should be looked at in committees, and I will be talking about that in some of my presentation. I thought I would give you an interesting example. Having been an upper house member in the Senate and also an

upper house member in the Western Australian state parliament, one of the things that was really interesting was that state agreement Acts in Western Australia were major Acts, giving government support to major corporations—which potentially should not have been accepted under competition policy—but there was an agreement within the legislative council that there should have been a proper assessment of the public interest of how those agreements were put together. Nearly every time such agreements were put together, at the last minute, when they finally made the agreements between the industry and the government, they told us it was so quick they had to just shove it through—so there was virtually no means by which we had the ability to properly assess public interest. To me there were some serious problems there, so it is going to be a really interesting process to work out how better to do that from legislative levels.

Ms BOURNE — That must have reminded you of Christmas in the Senate, where many bills came up for debate over two days—

QUESTION (Ms MARGETTS) — To give you no time to look at them properly.

Ms KNOWLES — That goes to our previous questioner, in terms of scheduling the legislative process to make sure that it is a reasonable legislative process and not one that just cannot be achieved without this cramming. Many a time I drove home from here at seven o'clock in the morning and turned around after a shower and change and came back again. That is just ridiculous. People cannot operate under that system.

CHAIR — Will you join me in thanking our panel members for their contribution, their interest and the light they have thrown on this.