

The Power of Select Committees

CHAIR (Dr LARKIN) — I am from the University of Canberra and it was supposed to be my great pleasure to introduce both Cheryl Kernot and Margaret Reynolds. However, we are one down. While we wait with bated breath for Margaret's arrival it gives me very great pleasure to introduce Associate Professor Cheryl Kernot.

Prof. KERNOT — Thank you. I feel extraordinarily disoriented; I have not been back here for so long. When I was coming in the Senate door and I had to sign in because I do not have a pass that is up to date, I saw Dee Margetts talking on the monitor and I had this instant sense of 'Oh, my God, I should be in the chamber. Something is happening that I don't know about'. I was certainly here when Dee and Christabel made lots of speeches and contributions. And there is Robert Ray, sitting in the front row. I feel like I am at Senate estimates, ready for the inquisition.

I have been asked to focus on the power of Senate select committees and their place in the system. I noticed that in 1990 the Department of the Senate had a conference celebrating the 20th anniversary of the Senate committee system. They discussed the revolutionary proposal in 1970, which was in fact the establishment of the committee system. They also asked the provocative question: 'Can Senate committees halt the decline of Parliament?' Well, here we are, another 20 years down the track. The Parliament as we knew it 20 years ago is, in my view, certainly quite different from today's Parliament, and it is about to be tested in ways in which we do not know what will emerge from that.

For those of you who do not know, a select committee is distinct from a standing committee because it is created as required, not at the beginning of each new parliament. It is empowered to inquire into and to report upon a specific matter. It can be established at any time by resolution of the Senate—but that ignores the reality that resolutions of the Senate have to be by majority vote. That resolution usually involves a lot of haggling around the committee's terms of reference and that resolution also specifies the committee's composition. The committee usually has a limited lifespan. So you have an issue, you look into it and you table a report. I think it is true to say that select committees are very often a political response and sometimes a political opportunity to inquire into non-controversial or politically sensitive issues. It is usually initiated by non-government parties of the day, when often they think the issue is not being given sufficient in-depth analysis; or, dare I say, a party might have a strategic desire to prolong a focus on and an exposure of a controversial issue, just to keep it alive in the media and public domain.

Minor parties, smaller parties, alone cannot set up select committees. They have to have the votes of one of the other major or bigger parties, as we call them. It has required a combined vote to see select committees in recent times on the Lucas Heights reactor contract; uranium, mining and milling; the new tax system; children overboard, which Andrew referred to; the administration of Indigenous affairs—what a huge subject; mental health; and climate policy. I do not know how many of those issues you would put in the non-controversial basket. A current select committee, which is a joint one and managed by the Senate, is the Joint Select Committee on Gambling Reform. It will be very interesting to see what report that committee brings down.

Of the Senate select committees in existence at the moment, what about this one? Reform of the Australian Federation. That is an easy task, isn't it! Then there is scrutiny of new taxes, carbon tax pricing mechanisms, and national mining tax 2010. Where a particular policy area is considered really important and it merits a longer examination than a select committee can, by vote, have an extended life. I now realise that I was on the longest running Senate select committee in the history of the Senate—on superannuation. It was first appointed in 1991 and it has been reappointed successively over several parliaments with a few little adjustments to name. But it has had the same functions and powers over 12 years. I know when I turned up for that first meeting I certainly had no idea at that committee's work would continue over a 12-year period. I was not there for 12 years. But Nick Sherry and John Watson were around for most of it. Before ceasing in 2003—it is just an astonishing thing to note—it tabled 58 reports and background papers. That is an awful amount of work; we had to read them as well as the secretariat write them. That is extraordinary. How come this particular policy issue merited this attention over such a long period of time?

When the committee was first established in June 1991, I had only been in the Senate for one year and so had Nick Sherry. We were rookies, really. The Democrats were interested in focusing on what we saw as inadequate policy responses to the long-term issue of adequate retirement income. The Senate select committee was established to inquire into and report on a really wide range of matters related to superannuation. Back in 1991—some of you are young and may not know this—the environment was about low returns and high charges from the old life insurance offices. There was a profound lack of knowledge about superannuation systems—why save for retirement?—and also the impending generational numbers imbalances. So on the one hand you have got a genuine policy issue; on the other hand you have got Nick Sherry's account of Paul Keating's role in this.

Even though it was the Democrats driving this long-term policy goal, in fact it coincided with a government agenda. It just had not been an explicitly articulated one. Nick tells the story about how he was sitting in the Labor Party caucus room and he had only been there one year and Paul Keating was sitting next to him, which he thought was pretty amazing anyway, when Paul said to him: ‘Nick, those Democrats are at it again. They want a select committee on superannuation. I understand you have some knowledge of superannuation issues. How about being chair of a committee?’ This is a select committee, one year into a Senate term. Nick said he was a little taken aback at that approach and that he did think at the time that the government regarded the prospect of this particular select committee as a bit of a nuisance and maybe even a political hindrance, not a help. Keating told Nick at the time, ‘But, behind all of this, I’ve got big plans for superannuation’. They were unspecified but big plans. I am reliably informed, also by Nick, that once he got over his initial concern about another committee being driven by the Democrats, and through a series of ongoing conversations with Paul Keating and John Dawkins, there seemed to be a change of view about the committee, and the committee was regarded as more of a help than a hindrance. There was a lot of interaction between the committee and Treasury, for example.

Interestingly, when it started the committee had absolute *carte blanche*. Imagine that! It was almost a blank slate. On that slate was the general framework of huge social and economic policy matters, not just a little narrow window of retirement income, because any decisions that would be recommended by this committee would affect the lives of 10 million working Australians. So we had to think about whether this should be a compulsory system or not. What would be the economic effects if it were made compulsory? We would have this huge growth in private-sector investment and funds-management companies. We, the Democrats, wanted a national portable superannuation scheme and I am still slightly attracted to that. Look at all the lost super. But that is history. If you have this huge investment, you have to ask what regulatory tools and mechanisms are required to protect this enormous pool of national savings. Then there is that big-picture question: what actually should be the level of savings in the economy as a whole?

Something has been written on this particular committee and its effectiveness. It was the subject of a special paper and, I think, a whole day, or at least a big workshop, of discussion here. I think it was around 2005. I was living in the UK and could not contribute, so I want to make some observations but infer through that some potential application for the current committee system. If a select committee’s origins come from that coincidence of policy drivers of two players, does that spell a greater likelihood of success than if it is a political response to a situation which can be exploited?

Membership of a select committee is often completely accidental, but there was a chemistry around that membership which was really interesting. I do not know whether it was because so many of us were rookies. Nick was new, I was new and even the committee secretary had never been a committee secretary before. The deputy chair was Richard Alston. As I look back at my observations of him over 10 or 11 years on this committee, I think he might have been in touch with his small-l liberal roots, because he was quite happy to say it should not be compulsory but then be open to the evidence and to the committee's conversations and input into the writing of the reports.

It was said that everyone who served on this particular superannuation committee wanted to be on it. Goodness knows why now. It had at times the most extraordinarily technical content that I have had to grapple with on any committee. But a comparison is often made with other committees: sometimes the government of the day has to conscript some of its members to make up the numbers. Maybe we as rookies were all untainted by a long experience of that partisan point-scoring. Maybe we had genuinely open minds. Maybe, for once in the history of this nation, we were all focused on designing a really good retirement income system.

I think the third thing about the committee's success was the expertise. Sometimes I think matching individual senators' expertise to chairing of committees is really useful. In this one we had Nick Sherry and John Watson, who became the chair later. They were really deeply experienced in superannuation and accounting, and that was extremely useful. We had an extremely competent and hardworking secretariat. Imagine having to sit up till two or three in the morning, as I know they did for some of those 58 reports. I think we should always note that in 1994 this particular Senate select committee set the record as having the first all-woman secretariat in the Senate. Maybe that contributed to its success as well.

The fourth thing, I think, is that it had unusual and sometimes pioneering processes and operations. It seemed to surprise people that working together in the public interest could also be a very powerful tool for scrutiny and good policy outcomes, and a really unusual thing happened. Bills that were relevant started being referred to the Senate select committee for dissection, analysis and the calling of witnesses about them. This was particularly unusual, but I think it was because the expertise was recognised. So too was the need for policy cohesion and the opportunity to review—because this committee had the opportunity to review how a piece of legislation designed on its recommendations was actually working in practice. I think that is a very positive, coherent sequence of events.

Although the committee ceased in 2003, in 2010 this government has announced that we are at last going from nine per cent, as was set way back then, to 14 per cent. I think this says something about longevity of good design and policy need. The committee kept for the first time a really close eye—because of the need for appropriate regulation—on the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission and the tax office. I would go so far as to say that its first and second reports on prudential supervision and consumer protection have lasted right through as a protection in the global financial crisis, in Australia's best interests. These are the things you do not know at the time. Whenever I see Paul Keating, we talk about superannuation and we celebrate that it is being increased from nine to 14 per cent, because the evidence at the time showed that it would be needed.

The superannuation select committee also pioneered many processes which I think enhance scrutiny, enhance public participation, lead to better informed legislation and hold the government accountable. Some of these processes you might not notice because they are more commonplace today, but early in the committee's life we decided that instead of waiting X years—how long is a piece of string?—to have a weighty tome of a report, it would be quite a good idea to hand down a stream of reports in specialist areas. I think that worked really well.

The second thing is that the committee decided to publish submissions when they received them rather than waiting, so you had a really interactive process where, when witnesses came, they had already had the opportunity to read what had been said. They had an opportunity to answer questions: 'This submission said this; what do you think about that?' I think that was a really excellent way to promote public input into policy making.

The third thing we did which I think was unusual for a Senate committee of any sort was that we had a brokerage round-table process that we put in place. At the end of an inquiry, when the committee had identified certain issues that it wanted to test out, it would hold a round table. It would say, 'Look, this is where we think the evidence is leading; what do you think about that?' We would be able to test out solutions and gather all the interested parties in one room. Instead of just making political recommendations, I think we endeavoured to consolidate the evidence differently.

I think history does record that this has been an excellent select committee, and it did have a really big influence on shaping policy of both Labor and coalition governments. It was instrumental in achieving some quite dramatic reforms, even right down to retirement income product design. But it also, I think, played a vital role in public confidence and public education. I understand that some of its reports

became textbooks at university level. I am not sure that too many of our committees have had that happen.

So today at a time when we are being told more and more that whole-of-government responses are required to fix all the really serious issues that confront us, I would like to suggest that we could emulate the capacity of Senate select committees to deliver a whole-of-government perspective. I would like to propose a new Senate select committee—Claire Moore, you are here—on intergenerational equity. I really think a whole-of-government policy response for planning for improving the quality of what we hand on to future generations is urgently required—everything from plastic bags and disposal nappies clogging landfill, to fair and flexible distribution of working hours, to childcare policy and right through to ongoing retirement income.

I would like it to be the case that there can be other committees of which it was said by a witness to this Senate select committee:

The committee has been a light of reason over the years ... it is a matter of significant regret that the committee's term is coming to an end.

This committee showed that it is possible to have a really long, enduring select committee which can make political points but still design, shape and inform and work with governments—of both persuasions, as it has been—for a good national interest policy outcome. And I am really thrilled that I was part of it, even though I did not know when I started that that is what it would be.

CHAIR — In the continuing absence of Margaret Reynolds, Andrew Bartlett has kindly agreed to say a few words.

Mr BARTLETT — I will just make a few reflections. As I mentioned before, the perfect demonstration of how significant and important select committees can be is the very fact that, when the former Howard Government had control of the Senate for a brief period, that was the sole period of time that corresponded with no Senate select committees being set up. That is a pretty good example of how valuable and important a role Senate select committees can play in allowing scrutiny and encouraging debate about ideas.

I will make a couple of reflections about select committees more broadly. Again, I mentioned before the abomination of the failure to properly scrutinise the Northern Territory intervention and the refusal to allow the Parliament to hear from the authors of the *Little Children Are Sacred Report* when the intervention was purportedly a response to that report. Part of the recognition of that failure, in my view, is reflected

in the fact that there is now a Senate select committee, established in the previous Parliament but continuing, to monitor what is happening in this area. Some of these select committees—most of them not, but some of them—really have an understanding that they have a long-term job to monitor, in the case of that particular committee, the reality for Aboriginal people in remote communities. Once you shift things out of the heat of that political moment and people from all political parties have to examine the reality—not the facts of how you position each other against the nightly news, but the facts presented by people from the real world coming and telling you about their reality—you are forced to really confront that stuff. That is the value of long-term Senate committees.

Since we are talking about history here today, I suppose we should really note that my initial engagement in politics was 20 years ago when Cheryl, wisely or unwisely, allowed me to work on her staff when she first started. As some of you know, I then followed in her footsteps in somewhat unexpected circumstances by filling her vacancy in the Senate. With her going to another party and me also subsequently going to another party, there are a few other curious synergies. To her credit, Cheryl was one of the few senators who, when deciding to resign from their party and either become independent or go to another party, did not keep their seat. That is a bit of an aside.

I want to mention just a few select committees by way of examples of the importance of the role they play—sometimes inadvertently. Superannuation was going to be one, but Cheryl has detailed that very effectively so I will not reflect on it more, beyond saying this. While by no means saying that this was part of the intent at all, I would say that I think it was a key factor in public and media awareness of just how effective a senator Cheryl Kernot was. I think it played a key part in her subsequently being seen as a really good potential leader of the Democrats, because she was able to engage not just with all that flaky environmental, social justice, cuddly stuff that the Democrats were, unfairly, renowned for, but also with hard-nosed economic stuff. So being able to perform well can also have consequences in all sorts of ways. I think the initial secretary of that committee was Richard Gilbert who—again, probably not deliberately—went on to become an extremely effective lobbyist for the superannuation industry, and probably still is.

There are two other select committees I wanted to mention by way of example. Another that is still quoted today by people who I mix with—people in animal welfare and animal rights circles—is the Senate Select Committee on Animal Welfare, now long extinguished, sadly. It was set up in about 1984. It went through, over about three or four parliaments, to 1991. It was established by a motion of Don Chipp. I know that, when that was put up, it was like—at least, this is how it was told

to me by Don afterwards; I was not here, though Robert Ray may have been—‘Oh God. Bloody Democrats. Animal welfare!’ All the Nationals wanted to get on to it to make sure they could keep an eye on Democrats coming up with nutty animal-rights ideas.

Again, the process was of actually putting all that to one side and having to look at the evidence, the facts and the reality. One of the amazing things about that committee, frankly, was the number of unanimous reports that it came up with, given the divergence of people who were on it. Another amazing thing is that it is still relied on today by people who are active in the animal welfare area—not just activists—because of some of the information and evidence, and also partly because the Senate since then, sadly, has not really gone any further with that because there has not been a committee dedicated to it.

The only other example I would use—because I think it had a historic, though perhaps unintended, consequence—was the Senate select committee on tax. Someone mentioned it. I cannot remember the proper title. It was part of what was probably the most scrutinised piece of legislation ever: that for the GST. Three Senate committees were established and given the opportunity to look at aspects of the legislation, and there was the select committee on top of those. So there were four Senate committees all going around the country. That provided the opportunity to find ways in which the legislation needed amending, and also provided lots of opportunities to point out all the flaws in the legislation. Then, when that all wound up, we had Brian Harradine making his decision that actually this was not something he could support, which nobody expected. That left the Democrats deciding whether to support it, which, up until that moment, the Democrats had not expected either! Anyway, the Democrats are not around anymore—which probably bears no relationship whatsoever to this—but that was a select committee with its own impact on and role and place in history. I will leave it there.

CHAIR — Thank you very much. We have still got some time left for questions.

QUESTION — My name is Dee Margetts; I am a former senator. Cheryl, I must confess there were some issues about the Senate Select Committee on Superannuation that always perplexed me. One of them was: did the committee ever properly discuss whether or not there was a possible option for having people participating in government-funded pension additions which were like or the same as the UK? I was always amazed that there were particular people in the Australian Council of Trade Unions who were pushing for private superannuation. Then with the change of government that became very problematic and a lot of people lost all their money. I am just wondering whether there was ever a realistic discussion about the

option of having people participating in government-funded pensions to add to a normal pension amount?

Prof. KERNOT — Yes, Dee, there was a brief window at the beginning, and many witnesses raised it along the way. But, in fact, the government's proposed design was pretty much what we started with—and that is where we are today. I was one vote.

QUESTION (Mr TUNNECLIFFE) — The experience that we have had with select committees in recent years has been considerably different to that of the Senate. The only select committees that have been appointed have been those set up to look at what are highly contentious political issues, usually opposed by the government. On one occasion, two parliaments ago, the government even refused to provide members to a select committee. So our experience is quite different to your select committees, such as the superannuation committee.

Prof. KERNOT — Although that was unusual.

QUESTION (Mr TUNNECLIFFE) — That was unusual?

Prof. KERNOT — Yes.

QUESTION (Mr TUNNECLIFFE) — I guess that gets me to my question: do you think that it is an appropriate role of select committees to look at politically contentious matters, simply because of the inevitability of the numbers in the House, or is it really a missed opportunity to conduct a thorough, in-depth inquiry into an important public policy issue?

Prof. KERNOT — I think it is both. I do not think you can avoid the reality of the politics of the day and the fact that an Opposition might see a window for greater exposure of a particular aspect of policy. I think that is the reality of politics, but it would be good if we could have, alongside that, long-term policy outcomes. That is not to say that some of the select committees did not make recommendations which governments may or may not have responded to, but I think it is unrealistic, unless we change the entire way that committees operate. It is unrealistic to think that they will all have a confluence or a convergence of policy needs at the same time. We still do have some ideological differences. Richard Alston would say at every hearing, 'It shouldn't be compulsory', and we would say, 'Yes, Richard', and keep going. That was a particular opposing policy view, but in this case it did not get in the way and it was not used for point scoring. But, honestly, people—citizens—feel emotionally about many issues on the current agenda as well.

Mr BARTLETT — If I could add another point to that, with every committee you can have good and bad inquiries. Select committees are the same as legislative and references committees: some of them will work; some of them will not, given the chemistry, a different chair and all sorts of other things. The reason I made that point a couple of times was not just that the previous government, when it controlled the Senate, would not set up select committees; it was more the change in culture that applied alongside that. I described it earlier on as an unacceptable level of contempt for the Senate and processes in general. When those four committees were set up on the very first day of the new Labor government by the Liberal-controlled Senate, they were Liberal-controlled committees with Liberal chairs and they were very much driven by that. They were starting from that politicised process; they were starting from a committee make-up where the one party—the Opposition in this case—had the numbers and the chair. You are more likely to be politicised if you have a committee like that. I actually do not know the make-up of the current joint committee which I think is on gambling, but I suspect that neither the government nor any other party has a majority. There is a range of different views, and I think that will be a very constructive committee. People will still have political points to make, but it will not be a politicised process.

Prof. KERNOT — There was always a revolutionary proposal to make the Senate completely a house of committees. Now that the House of Representatives is copying some of the Senate committee functions, that might be a long-term evolving role for the Senate. Who knows?

CHAIR — More committees?

Prof. KERNOT — That is their whole focus!

Dr LARKIN — I would ask everyone to thank Cheryl for carrying the bulk of the session by herself and thank Andrew for stepping in for Margaret Reynolds.