Australian Senate Select Committees: Senate composition, party partisanship and democracy

JACQUELINE DEWAR

Senate committees play a valuable role in the development of policy and the scrutiny of executive government. However, over the past decade Senate committees, and particularly Senate select committees have become increasingly politicised. After each election, as the composition and control of the Senate has changed, Senate majorities have been assembled to establish select committees for partisan political advantage undermining their value to democracy.

Committees in the Australian parliament have increasingly played a valuable role in the development of policy, legislation and in the accountability of executive power. In particular, Senate committees, whose members are less restricted by the pressing requirements of electorates and are more frequently hostile to the government, play a crucial role in the process of parliamentary democracy. However over the past decade, changes to the Senate’s composition following elections have resulted in the development of a political climate within the Australian parliament that undermines the operation and value of Senate committees. Senate select committees are particularly symptomatic of this shift and decline.

In September 2014, the Palmer United Party was successful in establishing a Senate select committee and parliamentary inquiry into Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs (Select Committee on Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs, 2014). The establishment of this select committee drew wide media attention and public criticism that parliamentary committees were more about party partisanship and personal vendettas than effective and informed government. The inquiry into the administration of a state government raised important questions as to how Senate select committees are established and what impact the Senate composition had on these usually little known Senate entities.

Academic inquiry has focused on standing committees within the Senate because of their longevity, high public profile, and demonstrations of parliamentary accountability and scrutiny. However, alongside standing committees, the Senate has the capacity to establish ad hoc select committees in response to contemporary, often highly politically charged issues. Little consideration has been given to select committees and in particular the way after each election, the changes to the political composition of the Senate shapes the function, characteristics and effectiveness of these ad hoc entities. The Senate elections of 2004, 2007 and 2013 produced three distinct periods of Senate control. Each has had major implications in the establishment of Senate select committees and the types of inquiries they undertook.

The election of 2004 resulted in government control of the Senate. During this Parliament, the government used their numbers in the Senate to block the establishment of any select committees. The election of November 2007 resulted in a change of government but also an extended period in which the previous coalition government controlled the Senate. During this time, three highly political select committees were established. The election of 2013 delivered the greatest number of independent, minor and micro-party senators. Hence, the crossbench in the Senate became a powerful space. In this Parliament, the establishment of select committees became a form of political currency that could be traded for political support.

Senate Committees

The Senate committee system is an important aspect of modern parliamentary practice because it is both a mechanism for democratic participation by citizens in the parliamentary process and for scrutiny of government (Holland 2009; Grant 2009). As Stanley Bach has argued:

The Senate is proud of its committee system, and justifiably so ... The importance of these
Committees can’t be over-stated. In fact, it may not be an exaggeration to say that no parliamentary body can be taken seriously unless it has a functioning committee system that’s well-designed for the constitutional and political context in which the committees operate (2009: 15).

The modern Senate committee system, established in 1970, underwent major restructure in 1994 to establish eight paired standing committees in the current portfolio areas of:

- Community Affairs
- Economics
- Education and Employment
- Environment and Communications
- Finance and Public Administration
- Foreign Affairs, Defence and Trade Legislation
- Legal and Constitutional Affairs
- Rural and Regional Affairs and Transport

Senate parliamentary committees act as an extension of the chamber undertaking detailed examination of both policy issues and legislation, which the chamber in its totality would be unable to discharge efficiently. Committees are valuable institutions for any parliamentary body ’… because they create a system of division of labour. Instead of all the senators having to meet together to do everything, they have created a collection of workgroups that can take up different tasks at the same time’ (Bach 2009: 18).

Established at the beginning of each Parliament these committees undertake ‘inquiries into specific matters, related to development or scrutiny of policy, proposed legislation or Bills and public administration’ (Evans and Laing 2012: 443). This is done by inviting interested parties or witnesses to appear before the committee at public hearings and/or via written submissions. At the conclusion of an inquiry, a report is written and the findings are tabled in the Senate. The production and tabling of these findings assists the Senate more broadly in the acquisition of specialist knowledge to inform debate and decision making. These reports also provide authoritative information for journalists, scholars and the general public.

However, Senate committees also serve a number of important secondary roles. For example, they facilitate access for wider participation by citizens and interest groups, beyond the immediate parliament, in law making and policy review. They also allow individuals or interest groups to air grievances about, or to, government (Marinac 2004: 2). Committee involvement provides the opportunity for senators to develop special interests and build up expertise in aspects of public policy, which may effectively enhance the quality of debate and provide a grounding for backbenchers who may go on to more senior roles within the parliament (Evans and Laing 2012: 444). Parliamentary committees bring together political opponents and require negotiation at every stage of a committee’s inquiry in order to maximise the political outcomes (Marinac 2004: 2).

Select Committees

As standing committees are established for the life of a Parliament, they develop both expertise in subject areas and in the conduct of the inquiry itself (Monk 2012). While the political nature of Senate parliamentary committees is well recognised (Holmes 1966, Weller 2006), greater multi-partisan approach to the inquiry is possible. In contrast, Senate select committees often emerge as a result of a ‘hot’ political issue, or as the result of perceived political gain (Kernot and Bartlett 2010: 79). Examples include: Senate Select Committee for an Inquiry into a Certain Maritime Incident 2002; Senate Select Committee on Ministerial Discretion in Migration Matters 2004; Senate Select Committee into the Abbott Government’s Commission of Audit 2014.

Select committees differ from standing committees, as they are ad hoc bodies established by resolution of the Senate at any time during a Parliament, but which cease to exist at the completion of the inquiry. The formation of any select committee is never guaranteed. It requires significant negotiation by political parties and interested senators around the terms of reference, the timeframe, its membership and a motion passed in the Senate for establishment. Therefore, it is the political composition and ‘will’ of the chamber that ultimately determines the establishment of any Senate select committee.

Select committees can be nimble vehicles in the democratic process by pulling together a small group of interested senators to investigate an issue or event of importance to the Senate, such as the Senate Select Committee on Cyber Safety (2013). In this regard they are valuable tools to democracy. However, evidence suggests that they have been increasingly used to corrode democratic principles (Capling and Nossal 2003: 850) and are now a means by which senators promote their own political agendas. Central to this process is the composition and control of the Senate. The elections of 2004, 2007 and 2013 demonstrate how different Senate compositions affect what select committees are established and why.

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in the Senate to block the establishment of any select committees during this period. The election of November 2007 resulted in a change of government. However the previous coalition government controlled the Senate for a further seven months, during which time three highly political select committees were established. The election of 2013 was notable as it delivered the greatest number of independent, minor and micro-party senators. Both government and opposition require the support of the crossbench to pass legislation and therefore, in the current Senate, the crossbench has become a powerful group. In this Parliament, the establishment of select committees has become a form of political currency that can be traded for political support.

After each federal election control of the Senate was used, often with alarming speed, to shut down Senate select committees with their possibility of scrutinising the Executive or to prevent their establishment, motivated by purely political intent and with limited or no readily identifiable democratic outcome.

**When the Government Controls the Senate**

In October 2004, the Howard Liberal/National Party Coalition was returned to government. Significantly, in the Senate, the coalition won 38 of the 76 seats, winning control of the chamber for the first time since 1980 (Barber and Johnson 2014: 13). After the election victory, Prime Minister Howard said that the Senate outcome was good for his government, and that his government would not abuse the privilege to undermine parliamentary democracy:

… I want to assure the Australian people that the government will use its majority in the new Senate very carefully, very wisely and not provocatively … We certainly won’t be abusing our newfound position (The Age 2004).

However, after gaining a Senate majority on 1 July 2005, the Howard government moved to control inquiries by Senate committees and in particular the establishment of select committees:

During the Parliament of 2001 to 2004, seven select committees were employed. After the government gained its majority, no select committees were appointed. In effect, the government did not permit any special inquiries by the Senate into matters of public interest. It is difficult to believe that there were no matters worthy of such inquiries (Evans 2008: 5).

Opposition and minor parties were reluctant to seek to establish committees under the Senate composition during this period, as such proposals would not receive a majority vote:

Of course, there were not a lot of motions put forward to establish select committees, so in that sense I suppose the coalition might try the furphy that there was [sic] only a few actually proposed: ‘You didn’t try.’ But the reason why people did not try is that they knew it would not succeed. We could not even get references up to the existing standing committees half the time, let alone set up select committees (Bartlett 2008: 359).

The lack of government support to set up select committees during this period denied the Senate the opportunity to undertake inquiries that might ‘cause political difficulty or embarrassment for the government’ (Evans 2008: 6). During this period, the mandatory detention of asylum seekers was a key policy of the government. The policy was widely criticised following the wrongful detention of over 30 people and that of Cornelia Rau, a German citizen holding Australian permanent residency, who had been unlawfully detained for 11 months. However, the Senate was unable to inquire into these and other matters that were highly embarrassing to the government. It was prevented from any degree of scrutiny or the ability to ‘throw light into dark corners’ (Ludwig 2008: 368).

The Australian Labor Party was elected to office on 24 November 2007 for the first time since 1996. In the House of Representatives, Labor won 83 seats, the Liberal Party 55 and the Nationals secured 10 seats. ‘The Coalition lost control of the Senate, but still held 37 seats – five more than the Senate. The Australian Greens increased its seats to five, though it lost a seat in New South Wales. Independent South Australian senator, Nick Xenophon, won a seat. The last four Australian Democrats left the Senate’ (Barber and Johnson 2014: 13).

These changes to the composition of the Senate did not come into effect until 1 July the following year. Therefore, for a period of seven months after the November 2007 election, the Coalition still maintained control of the Senate. While no Senate select committees had been established under the previous Coalition government, Coalition senators now moved to establish three select committees on the first full sitting day after the election. These select committees had both Coalition chairs and majorities. Significantly, two of these committees inquired directly into the affairs of ALP State governments. These were the Senate Select Committee on Housing Affordability in Australia and the Senate Select Committee on State Government Financial Management. Senator Chris Ellison sought and gained the Senate’s approval for the establishment of these committees. The senator...
argued that an inquiry into state government financial management was urgently needed:

This is an extremely important issue for the economy of this country. We have state governments around this country racking up debt and affecting this nation’s economy. No matter what good policies there may be at a federal level, we have state governments which are running up debt and mismanaging their finances to such an extent that this requires particular scrutiny from this chamber (Ellison 2008: 355).

The highly political nature and the timing of these inquiries raise questions as to the underlying intent of establishing these committees. The Australian Democrats senator, Andrew Bartlett, saw it as ‘an exercise in state government bashing’ (2008: 363) because it gave the Commonwealth government quasi-authority to investigate a state government with the sole intention of highlighting administrative and political failures of an opposition party. Labor Senator Ray challenged the entire committee selection process and timing, questioning why Coalition Senators sought to establish these committees when in the previous parliament they opposed their establishment altogether:

Every time we put up a proposal for a select committee it got smashed by the government majority of the time … And here we are two days into the sitting and … the coalition are demanding that three committees be set up (2008: 358).

Central to the Labor government’s opposition was even the perceived financial advantage non-government senators would receive for chairing these committees. As Senator Ray argued:

‘This is a matter of Senate scrutiny’: nonsense it is! Nonsense it is a matter of Senate scrutiny. It is a ruthless exercise in the numbers to line your own pockets (2008: 359).

Coalition Senators maintained the seeming hypocrisy of the new government who previously had managed to oppose the committee establishment (Ronaldson 2008: 364). However, both the ALP and Australian Greens Senators argued that the establishment of these select committees by the Coalition, just prior to the new Senate, was motivated primarily by political malice (Forshaw and Polley 2008: 336).

I feel as if I am in the twilight zone – truly! It is as if the last 2½ years did not happen. This morning I went into my concerns about the coalition having amnesia. They have forgotten how they opposed virtually every committee that we tried to get up last year … All of a sudden they have a road to Damascus experience, over the last couple of months … (Siewart 2008: 366).

It must be noted that not all select committees established during this period were established for the same reason. While only two other select committees were created, these sought to address public interest issues, such as the Senate Select Committee on Regional and Remote Indigenous Communities.

Majority control of the Senate following the 2004 election effectively constrained the establishment of Senate select committees. This did not allow any scrutiny of the executive and government on ad hoc political issues. In contrast, during a brief period after the 2007 election, Senate control was used to establish a number of Senate select committees whose task was exclusively to embarrass and highlight political and administrative failings of their opponents. This was significant as it occurred in a period when ‘nearly half the Senate … have no recollection and no corporate memory of the long history and tradition behind the Senate committee processes and why it often works so well’ (Bartlett 2008: 360).

In this period select committees were used as a political tool that fell well short of the useful democratic functions these committees were intended to fulfil.

A Senate of Independents, Minor and Micro-parties

The election of November 2013 was notable for, among other things, the preference deals between many of the minor and micro parties for Senate seats. The strategy of ‘gaming’ votes for this group was successful, with numbers on the crossbench reaching a record high of 18 (Barber and Johnson 2014: 14).²

A hostile Senate is nothing new in Australian politics, and governments are used to having to negotiate with the Senate crossbench (Weller 2006). However, the increased number of independents and micro-parties with diverse political agendas has resulted in a less predictable Senate, where major parties cannot be guaranteed consistent support. In this new Senate environment, select committees have become a form of political currency, whereby both major parties are supporting micro-party and independent senators’ select committee formation and control in exchange for political support.

In September 2014, the Palmer United Party (PUP) successfully established a Senate select committee and
parliamentary inquiry into *Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs*. The select committee and inquiry was driven by Clive Palmer MP, leader of the PUP, who was involved in a long running personal feud with the LNP Government in Queensland over Palmer’s business and political interests in Queensland. Like the earlier inquiries into state governments, the inquiry was seen by the media and the Queensland LNP as an attempt to ‘embarrass Queensland Premier, Campbell Newman, and his LNP government in the lead up to the 2015 Queensland state election’ (Grattan 2014: 1). Liberal Senator George Brandis argued:

> We know it comes from the member for Fairfax’s vendetta against the Queensland government and we know the commercial interests he seeks to protect. And we must wonder why it is that he has put up those senators, whom he controls, to perpetrate upon the Senate the imposition of creating a constitutionally improper inquiry to serve his commercial interests and to prosecute his political vendettas (2014: 6817).

In seeking to have the select committee established, PUP senators negotiated with both the Greens and ALP. This process ran for over a month, during which time the motion for the inquiry was deferred and required several amendments. PUP Senator Lazarus argued that there was a need for this select committee inquiry because

> ... serious issues have been raised across the community regarding Queensland government appointments, judicial appointments, project approvals, use of funds, policies and practices, environmental degradation and various other matters (2014: 6817).

Debate to oppose the motion in the Senate was fierce. Coalition heavy weights Senators Abetz, Brandis and MacDonald all argued against the motion in that it was

> ... unlike any motion that has ever been moved in the 113-year history of the Senate ... The reason is that the motion is a gross abuse of the process of the Senate, is probably unlawful and is likely to attract a constitutional challenge in the High Court (Brandis 2014: 6818).

This was an argument that was highly questionable given the actions of the Senate in February 2008.

PUP secured the support of both the Greens and the ALP, Senator Lazarus was appointed chair of the committee with an ALP and Green majority, with only one government senator appointed. Committee membership was contested by the government as it did not reflect the proportional composition of the Senate (MacDonald 2015: 47), thereby reducing government influence on the committee.

On 24 November 2014, the Senate resolved to establish a second select committee. This select committee was tasked to inquire into the regulatory governance and economic impact of wind turbines. The inquiry was unusual, as ordinarily this topic would be referred to the Senate’s Environment and Communications References Committee. Additionally, this inquiry was moved by independent and micro-party senators and proposed that both chair and deputy chair be nominated by the minor parties and independent senators (*Senate Select Committee on Wind Turbines 2014*). The government supported the establishment of the committee. No member of the Australian Greens was appointed.

The proposal for this select committee was uncommon because establishing a select committee has financial implications for the Senate and because the major parties in the Senate prefer to refer inquiries to an established standing committee over which they have control. The ALP and Green senators voted against the select committee; however, the motion was passed by a majority of one with the support of Coalition and cross-bench senators.

The political calculation involved in the establishment of this committee was criticised. Like the Inquiry into *Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs*, the inquiry into Wind Turbines was established to exercise malicious political damage (Urquhart and Marshall 2015: 13-19). In particular, the terms of reference for the inquiry were premised upon the assumption that wind turbines had a significant detrimental effect on human health and the inquiry chose not to consider the broader environmental or economic benefits of wind energy. Further, the majority interim report gave significant weight to evidence provided by those parties opposed to wind farms, and little to peer-reviewed scientific evidence which found no negative health implication against wind farms (Urquhart and Marshall 2015: 14).

In light of the two select committees established in the current Senate, the ability of micro-party and independent senators to carry significant influence has caused concern. However, as Patrick Weller reminds us:

> Some question the democratic credentials of a system that allows a small number of senators with limited electoral support to determine the future
legislation. But the response to that is that power can only be exercised by a minority if combined with the major political bloc (Weller 2006: 16).

Nonetheless, in the current climate where select committee establishment and control appear to be the ‘gift’ of major parties to senators with narrow political agendas, this influence is problematic. The use of power by the major parties is based upon a political patronage that does not challenge or seek to establish the democratic benefit of such political favour.

Conclusion

This paper has argued that the past decade has seen the establishment and effectiveness of Senate select committees undermined. The composition of the Senate during this period has provided the environment in which this corrosion has occurred, resulting in a changing parliamentary culture and a weakening of democratic scrutiny. The election of 2004 was a catalyst for the decline in select committees, under a government that chose to use its majority to minimise scrutiny. The election of 2007 allowed the politically malicious use of select committees. In a Senate in which half the members were new, a void in knowledge of corporate history allowed a diminished opinion of select committees to be formed (Bartlett 2008: 360).

It is apparent in the current parliament that Senate select committees are political currency paid for the support of micro-party and independent senators. In addition the lack of a historical understanding of the role of these committees has rendered these ad hoc entities ineffective and a waste of Senate resources.

The nexus between Senate composition and select committee formation illustrates that a function of parliamentary democracy is increasingly being appropriated by political players to legitimise their own political priorities and silence diverse and constructive voices in the democratic dialogue. The current ‘short-sighted’ political culture of the Senate has undermined the value of Senate select committees, which ultimately will lead to a weaker democratic society.

References

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Kernot, C. and Bartlett, A. 2010 ‘The power of select committees senate committees and government accountability’, Papers on Parliament No. 54, Proceedings of the conference to mark the 40th anniversary of the Senate’s legislative and general purpose standing committee system, Department of the Senate, Canberra.


End Notes
1. Each portfolio area has a pair of standing committees. A legislative committee, tasked to review referred bills and a references committee, responsible for inquiries into broader policy matters. For more information see Evans and Laing 2012: 461.
2. The composition of the current 2015 Senate is: Coalition 33; ALP 25; Australian Greens 10; Palmer United Party 1; Independents 4; Liberal Democratic Party 1; Family First 1; Australian Motoring Enthusiast Party 1.
3. Senator David Leyonhjelm (Liberal Democratic Party of NSW); Senators John Madigan (Independent, Victoria), Senator Bob Day (Family First Party, South Australia) and Senator Nick Xenophon (Independent, South Australia) and Senator Chris Back (Liberal Party, Western Australia).

Author
Dr Jacqueline Dewar lectured in Sociology at James Cook University before moving to Canberra where she worked for 15 years in the Federal Parliament, in the Parliamentary Committee system. During that time Jacqueline was a committee Secretary on a range of House of Representatives, Senate and Joint Committees. Currently she is lecturing at the University of the Sunshine Coast where she has lectured in several courses in Sociology and has also taught in Australian Politics.