The Year in the Senate — 2006

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2006 was the first full year since the Fraser administration during which the government held a majority of seats in the Senate. Perhaps inevitably, this has led to a series of changes in Senate procedures which has, on the whole, reduced the effectiveness of the Senate as an accountability institution. However, the precarious nature of the government's control (the government has a one-seat majority) has meant that the government has not had matters entirely its own way.

This paper sets out some of the more significant developments (one hesitates to call them 'highlights') in the Senate's operations since the government majority came into effect. In addition, the paper considers two other interesting aspects of the Senate's operations in the last year — a quite novel use of the right of reply in the Senate; and the participation by Senators in what was popularly described as a 'joint sitting' of both houses — but which was in fact no such thing.

Government Majority in the Senate

It is now a matter of record that with the election of Liberal Russell Trood to represent Queensland, the Liberal-National coalition gained a slim majority in the Senate (39 in a 76 seat chamber). This slender margin is reinforced somewhat by the presence of Senator Steve Fielding, from the Family First party, representing Victoria. While Fielding has not always voted with the government, his conservative Christian policy orientation suggests that he is more likely to be a friend to the government than to Labor.

[*] ACT Chapter, Australasian Study of Parliament Group.

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Impact in the Chamber

Upon obtaining its majority, the Government flexed its muscles immediately, unilaterally setting in place a new schedule for sharing questions without notice (during question time). The effect of the changes was to increase the number of government (i.e. 'Dorothy Dixer') questions at the expense of the opposition and minor parties. This action was described by Leader of the Opposition in the Senate, Senator Chris Evans, in the following terms:

> It makes government in this country less accountable, and it gives senators in this parliament less ability to hold the government accountable. It is not acceptable. The government is seeking to take advantage of its increased numbers to reduce accountability and to reduce the capacity of non-government senators to ask questions.[1]

The move was defended by then Leader of the Government in the Senate, Senator the Hon. Robert Hill, on the basis that:

> All senators have rights, all senators accept responsibility to their electors and all senators deserve a fair go. So there should be some acknowledgment, in my humble view, of where the numbers are at question time when the President decides to make his call.[2]

Since that time, the effects of the government majority have been felt in the chamber in a number of ways. Perhaps most notably, the government has taken the view that virtually no non-government amendments will be accepted to any bill during the committee-of-the-whole debate, regardless of whether the proposed amendment is one of sweeping policy or one of minor, technical amendment.[3] Thankfully, the lack of success of the Opposition and minor party amendments does not appear to have dampened their enthusiasm for moving such amendments.

Another important change in the chamber has been the virtual death of orders for the production of documents. In recent years, this has been an important process whereby the Senate has been able to obtain access to documents held by the government. *Odgers' Australian Senate Practice* states:

> Orders for documents are used by the Senate as a means of obtaining information about matters of concern to the Senate. They usually relate to documents in the control of a minister, but may refer to documents controlled by other persons. Documents called for are often the subject of some political controversy, but may simply relate to useful information not available elsewhere.[4]

The utility of this device can be seen from the numbers. In 2001, there were 23 orders made; in 2002, 36; in 2003, 34; in 2004, 21; and in the first half of 2005, 18

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1 Evans, Senator C, *Hansard*, 9 August 2005, p. 14.
2 Hill, Senator the Hon R, *Hansard*, 9 August 2005, p. 21.
3 A very few technical amendments have been accepted, so this practice is not ironclad.
4 Evans, H (2004) *Odgers' Australian Senate Practice*, 11th edn, p. 438.

orders were made. In the eighteen months which have elapsed since the government assumed a majority in the Senate, only one order for the production of documents has been passed. Only eleven such orders have been proposed — perhaps because the proposals appear all but doomed.

Impact on the Committee System

The Senate's Committee system has in recent decades developed to the point where it has been one of the most effective accountability mechanisms in the world. There was, from the outset, speculation that government majority would lead to a weakened Senate committee system. This speculation has largely been justified, although as noted below the effectiveness of the committee system will depend in large part on the role adopted by government Senators.

The first significant change for the Senate committee system was a reduction in the number of matters referred to committees, and a contraction of the timeframes for committee inquiries.

In particular, references of matters to Senate references committees (which had non-government chairs and non-government majorities), reduced to a trickle. The government has refused to allow references in matters including refugee and humanitarian visas, the CSIRO, the Civil Aviation Safety Authority, cross media ownership laws, energy supply sustainability, and the political involvement of the Exclusive Brethren religious organisation.[5] There is a perception — denied by government senators but asserted vigorously by others — that proposals for inquiries are vetted by Ministers, who effectively determine whether Senator Committees may hold them accountable:

> We know the statistics of the massive increase in the number of inquiries and the proposals for inquiries that are being knocked back purely on the say-so of government senators and, in most cases, their actions are purely on the say-so of the relevant minister. So we have one minister in the ministerial wing of this parliament making decisions as to what the Senate does and does not do. That is not satisfactory. It has happened time and time again. The percentage of proposals for inquiries that have been knocked back has increased dramatically — monumentally — since the government gained control of the Senate.[6]

Even where the government has the numbers, committees have been constrained. Senate Legislation Committees, in which the government had both the chair and a majority, typically had bills referred to them for consideration by the Selection of Bills Committee. In the past, the Selection of Bills Committee has acted as a clearing-house whereby any Senator could, within reason, have any bill referred to the relevant Committee. It was not, consequently, a political forum and its reports

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[5] See reference, below, to this organisation using a right of reply to respond to the reference motion.

[6] Bartlett, Senator A, *Hansard*, 8 November 2006, p. 117.

were unanimous. However, in the period between 1 July 2005 and the termination of the system of dual legislation and references committees on 11 September 2006, opposition and minor party members began to dissent from the committee's reports and debate its reports in the chamber. On other occasions the Government amended the adoption motion in the chamber, to vary the report's recommendations.

The effect of these changes is that the government has begun using the Selection of Bills process, or the Senate itself, to either block the referral of bills altogether, or to refer them for report after a very short interval.[7]

An example of this process in action is the Selection of Bills Committee's report no. 13 of 2006, tabled on 8 November 2006. That report contained two proposals to refer the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006 to the Employment, Workplace Relations and Education Committee. The first proposal, from the Australian Democrats, set the reporting date at 31 January 2007. The second proposal, from the Government, set the reporting date at 30 November 2006 (allowing just twenty-two days for the inquiry).

The Committee agreed to the reference but was unable to agree to a reporting date — so this question was left for the chamber. In the chamber, a government Senator (Senator the Hon Chris Ellison, the Minister for Justice and Customs) moved an amendment to the report, installing the government's preferred date for reporting. Senator Bartlett, debating the amendment, argued:

> To allow only three weeks in effect for such legislation, I believe, is really bringing the political process into disrepute.
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> This is not the first time; this is pretty much a weekly occurrence when we sit. Legislation is tabled, immediately bundled off to a committee, shunted to an extremely quick hearing with an extraordinarily short turnaround time for people to put in submissions, with absurdly short time frames for reports to be written and then bundled into the Senate and railroaded through before half of us even know what it is that we are looking at. It draws the Senate and the whole process into disrepute. Sometimes I wonder if it is not actually part of the government's agenda to do that. Either way, we do not need to speculate on the agenda. The consequence is a very poor one. It is a poor process. We are not just debating points here; we are making laws and we should at least show the public the courtesy and respect of doing our job properly, given they have given us the responsibility of being in parliament.[8]

The government's number carried the day, however, and the reporting date of 30 November was duly installed.

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7 Perhaps the most notorious examples of such short intervals were the bills relating to the sale of Telstra, for which the inquiry lasted six days, and the 'Welfare to Work' legislation, for which the inquiry lasted nineteen days.

8 Bartlett, Senator A, *Hansard*, 8 November 2006, p. 54.

Restructure of the Committee System

The Senate committee system last underwent a substantial restructure in 1994. In that year, the Procedure Committee recommended the establishment of eight 'paired' standing committees, organised along policy lines. In each area of policy, there was a legislation committee, which had a government chair and a government majority, and whose primary function was to consider legislation in detail; and a references committee, with a non-government chair, and a non-government majority. The role of references committees was to undertake more wide-ranging, policy based inquiries on matters referred by the Senate.

Odgers' Australian Senate Practice notes that the changes in 1994 were introduced 'to make the committee system more responsive to the composition of the Senate.'[9] With a change in the Senate's composition, a change in the committee system was perhaps inevitable. In the media release announcing the changes, the Leader of the Government in the Senate, Senator the Hon. Nick Minchin, stated that 'the membership and chairmanship of the committees will reflect the composition of the Senate.'[10]

The proposal, in short, was to end the pairing of committees, so that each policy area had one committee with a government majority and a government chair. To offset this, the number of policy areas would be increased from eight to ten (leading either to an increase in committees from eight to ten, or a decrease from *sixteen* to ten, depending on whom one asked), and Deputy Chairs (from non-government parties) would receive additional remuneration.

The Proposals did not meet with approbation.

The process for developing and implementing these changes was unusual, and again reflected a largely unilateral approach. Previous changes, such as that in 1994, had been the result of an inquiry and recommendations by the Senate Procedure Committee. This set of changes was announced (albeit as a proposal) by the Leader of the Government and his deputy, in a press release, wherein they proposed 'ongoing consultation over the July recess and implementation in the sitting weeks in August.'[11] There was no mention of the Procedure Committee being involved.

The same day, however, the Leader of the Opposition in the Senate gave notice of his intention to refer the matter to the Procedure Committee. This motion was supported by both the Democrats and the Greens, and was not opposed by the Government. However the procedure committee's deliberations were limited to the

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9 Evans, H (2004) *Odgers' Australian Senate Practice*, 11th edn, p. 348.

10 Media release, Minchin, Senator the Hon. N, and Coonan, Senator the Hon. H, *Proposal to Reform the Senate Committee System*, 20 June 2006.

11 Media release, Minchin, Senator the Hon. N, and Coonan, Senator the Hon. H, *Proposal to Reform the Senate Committee System*, 20 June 2006.

practicability of the proposed arrangements. It was unable to comment on their wisdom.

That debate took place on 14 August, when the government introduced the proposed changes. Senator Ray's opening remarks give the flavour of the opposition and minor party reactions: 'Some months ago Senator Minchin, by way of correspondence, announced the execution of the Senate committee system as we know it. What we are doing today is reading out the will.'[12]

In the end, changes were passed almost entirely in accordance with the government's original proposal. The Senate now has eight standing committees, each with a government chair and a non-government deputy chair. Each committee has eight members — four from the Government, three from the Opposition, and one minor party or independent senator. The chair has a casting vote. Each committee undertakes all of the work previously undertaken by the paired committees, including consideration of legislation, policy inquiries, estimates, and review of annual reports.

The effect of the change in committee structures largely remains to be seen. The Government now has the numbers on all committees. Theoretically this means that the government members of each committee can completely control the procedural business which proceeds by way of committee votes: this includes matters such as where and when the committee will hold hearings, which witnesses will be invited to give evidence, whether to take evidence *in camera*, and whether to insist on answers when public servants (especially in estimates) are trying like fury to dodge answering.

One thing the Committees will almost certainly not be able to do, however, is undertake incisive, politically-charged, accountability-based inquiries such as the Inquiry into a Certain Maritime Incident (the 'Children Overboard' inquiry) or the Inquiry into Ministerial Discretion in Migration Matters.

The impact of the changes will significantly depend on the attitudes of backbench senators, both government and opposition. One of the reasons for the success of the committee system in recent years is that many committee inquiries have *not* been purely partisan exercises. Most committees have attached a great deal of value to comity within the committee as a group. Backbench senators from both sides recognise that committees offer them the best opportunity they have to be involved in policy development, particularly in the public eye. More than that, a sense of fair play in the committees has led to attempt to ensure that witness lists reflect, at least to some extent, the more significant voices on various sides of each issue examined. Consequently, while the government has the numbers, there are good reasons for optimism that the committee system can continue to do useful and interesting work.

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[12] Ray, Senator the Hon R, *Hansard*, 14 August 2006, p. 85.

Estimates During 2006

The Estimates process has for years been the most incisive of the Senate's tools of accountability — regularly striking fear into the hearts of senior public servants! It is consequently little surprise that the current numbers in the Senate have led to several changes in the conduct of Estimates, which would not have been possible prior to 1 July 2005.

Vale Spillover Days

The most obvious change is the loss of the 'spillover days.' Previously, Committees which were unable to complete their deliberations within the allotted time (four days for budget estimates, two days each for supplementary and additional estimates) were able to reconvene for an additional day to complete their schedule. This year, however, on 11 May, the Government introduced the usual motion referring budget estimates off to Committees … but without provision for spillover days.

Opposition and minor parties were predictably unamused. Labor Senator Joe Ludwig stated:

> This motion takes away the opportunity to have spillover days — that is, two Fridays in the fortnight — which we use to question this government and to keep this government accountable to its commitment to the budget and other matters more generally. This says to the opposition, to minor parties and to the Senate more generally, 'We're going to remove the ability for you to continue to use Fridays to scrutinise and keep this government to its promises and to keep it accountable for its actions.'[13]

Democrats Senator Andrew Bartlett described the move as 'another example of the quite calculated endeavour by this government to slowly strangle any semblance of accountability and genuine meaning behind the word 'democracy.''[14] Their objections were to no avail, however, and spillover days now appear to be a thing of the past.

The Wheat Gag

During the February round of estimates hearings, government Ministers made opening statements which included the following advice to the committee:

> The government has directed that officials appearing before Senate legislation committees should not answer questions directed to them on matters before the commission of inquiry being conducted by the Hon. Terrence Cole into certain Australian companies in relation to the oil for food program. While examination of officials by the committees might be appropriate in the future, the government considers that Mr Cole should be able to proceed with his inquiry and present his

[13] Ludwig, Senator J, *Hansard*, 11 May 2006, p.27.
[14] Bartlett, Senator A, *Hansard*, 11 May 2006, p. 31.

> findings without parallel public questioning that would not assist consideration of complex issues.[15]

Labor senators attempted to outflank this instruction by seeking the Clerk's advice on whether the *sub judice* convention, by which the parliament voluntarily refrains from debates which may compromise court proceedings and therefore justice, was relevant in this case. The Clerk advised:

> In relation to royal commissions and other commissions of inquiry, the practice which has been followed in the Senate for many decades now is that there is no inhibition on inquiry into or debate on matters before such commissions, because they are not courts and are not trying cases.[16]

The government, however, did not attempt to rely on sub judice to justify the gag. In fact, the government made no attempt to rationalise its argument at all, beyond suggesting that it was desirable for Mr Cole's inquiries to trump those of the Parliament:

> obviously the committee can ask any questions it likes. It is up to the government's officials as to whether they answer them. I have told you what the government's position is with regard to questions that relate to matters before the Cole royal commission.[17]

Some statutory authorities, however, are not subject to the same level of ministerial instruction as are public service departments. The wheat gag consequently did not apply to officers of the Wheat Export Authority, who gave extensive evidence.

It remains to be seen whether the Government will make similar directions in relation to future commissions of inquiry, or indeed in relation to other areas of policy.

Attempts to Confine Questioning

While the estimates process is nominally an assessment of the government's past and proposed expenditure, the reality is that *all* activities of government are held to involve expenditure of public money and that, as a result, any government activities may become the subject of questioning at estimates. The Senate has expressed this view formally, by the adoption of the Procedure Committee's second report of 1999, which stated:

> Any questions going to the operations or financial positions of departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates hearings.[18]

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[15] See, for example, Minchin, Senator the Hon. N, *Finance and Public Administration Committee Hansard*, 13 February 2006, p. 35.

[16] Evans, H, *Finance and Public Administration Committee Hansard*, 13 February 2006, p. 4.

[17] Minchin, Senator the Hon. N, *Finance and Public Administration Committee Hansard*, 13 February 2006, p. 35.

[18] Senate Procedure Committee, *Second Report of 1999*, p. 3.

Despite this, following statements by Ministers that questioning in Estimates should be more focussed on the appropriations and less of a policy free-for-all, a number of chairs sought to exclude lines of questioning as not relevant to the committee's inquiry. On most occasions this amounted to little more than a new aspect of the usual political cut-and-thrust which occurs during estimates; on one occasion, however, it led to serious disorder in the Economics Legislation Committee, when the chair sought to declare a line of questioning irrelevant and transfer the call to another senator.

In general, however, the character of the estimates hearings was not confined during 2006 any more than in past years. The government continues to occasionally assert that estimates should focus on appropriations, non-government senators continue to ask questions relating to policy and administration anyway, and by and large most chairs and witnesses do not object.

Witnesses at Estimates

There is a general expectation that the senior most officers of government agencies will attend estimates hearings, and that they will usually be accompanied by a minister. This expectation is based in part upon an expectation that agencies will regard the proceedings of the Senate with due gravity and courtesy; and in part upon practical necessity. Privilege resolution 1(16) allows officers 'reasonable opportunity to refer questions asked … to superior officers or to a minister.' This is, of course, easier to do if such a senior officer or minister is present.

During this year, the continued failure of Mr Sol Trujillo, Chief Executive Officer of Telstra, to appear before estimates, was the source of considerable political debate. Prior to the February Estimates, the Environment, Communications, IT and the Arts Committee wrote specifically requesting Mr Trujillo to appear. A resolution attempting to direct him to appear was proposed but not carried in the Senate. Instead, he met privately with members of the National Party who had been critical of his non-appearance.

Mr Douglas Gration, Company Secretary of Telstra, told the committee that 'consistent with past practice, we would put together the team we thought best placed to help the committee to discharge its functions.'[19] He did not explain why Telstra thought that Mr Trujillo would not find a place in that team, particularly after the committee's invitation (presumably, by inference, expressing its view that Mr Trujillo would be able to help the committee to discharge its functions).

Given that the full sale of Telstra has now occurred, Mr Trujillo is unlikely to be troubled by estimates again.

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[19] Gration, D, *Environment Communication, Information Technology and the Arts Committee Hansard,* 13 February 2006, p. 30.

The Australian Broadcasting Corporation, appearing in October before the same Committee, attracted considerable criticism from both opposition and government senators for the failure of key officers to appear. The suggestion put by the senators was that the officers were absent in order to protect them from the requirement that they answer questions immediately, in the publicity which attracts to the estimates process. Instead, questions for those officers would be taken on notice (so that answers can be crafted carefully, delayed interminably in the Minister's office, and then loaded to the internet without drawing undue attention).

Content of Estimates Questioning

Notwithstanding the procedural concerns expressed above, estimates continued during 2007 to provide the best accountability mechanism available in the Commonwealth Parliament. A range of controversial issues emerged:

Breaches of the Oil-for-Food program requirements — During the supplementary estimates round in November, Australian Federal Police Commissioner Mick Keelty revealed that the AFP were investigating seven breaches of the United nations oil-for-food program; the wheat export irregularities which were the subject of the Cole commission, and six others. While the wheat gag did not apply to the six others, the Legal and Constitutional Affairs Committee followed its usual practice of not pressing questions which may compromise police investigations. The committee did not have to — the existence of seven possible breaches was revelation enough, coming as it did shortly after the Foreign Minister had told the House of Representatives that he had no reason to believe any further breaches had taken place.

Government Advertising — While this issue is one of the perennial estimates favourites, government advertising has come in for increased attention in recent times, partly as a result the large government expenditure on advertising for its industrial relations legislation (which was the basis of an unsuccessful court challenge by the unions). Consequently it was somewhat startling that the Department of Prime Minister and Cabinet's annual report for 2005–06 omitted to report the government's advertising expenditure. Senator John Faulkner got an additional shock when he asked for the figures, which had increased from $137.7 million in 2004–05 to $208.5 million in 2005–06:

> What a blow-out that is. No wonder it is not in the annual report. I had no contemplation the figure would be as massive as that. I would not be putting it in the annual report either. I hope I am not being conned here when I am told the reason for this not being in the annual report is that it is just an oversight, because the figure is an absolute shocker, isn't it?[20]

[20] Faulkner, Senator the Hon J, *Finance and Public Administration Committee Hansard*, 30 October 2006, p. 104.

ABC and SBS broadcasting content — Opposition and minor party senators were not the only ones to take advantage of Estimates as an opportunity to hold the public service to account. Government senators, in particular Senator Concetta Fierravanti-Wells and Senator Michael Ronaldson, took the national broadcasters, ABC and SBS to task. Both Senators criticised the ABC for allegedly anti-government bias, and in particular questioned the ABC about its use of the word 'terrorist' to describe organisations. SBS came under similar questioning, including its characterisation of Guantanamou bay prisoner David Hicks as a 'freedom fighter for Islam.' Senator Fierravanti-Wells made her point as follows:

> From the questions to you at the last estimates, we canvassed *Dateline* and its very biased anti-American and anti- Israeli stance. The pro-Arab sentiments of George Negus, I think, are quite well known both from his work on the program and from his book about Islam. I do not believe it is the role of the Australian government to fund this kind of counterculture, which is a far-left view of world affairs, especially in the Middle East, and which is promoting anti-American views amongst Australian communities.[21]

Losses for the Government

Despite its possession of a majority, the government did not prove entirely invulnerable during 2006. Three noteworthy losses took place during the year.

Migration legislation

The Migration Amendment (Unauthorised Designated Arrivals) Bill 2006 proposed to increase the range of migration applicants who could be processed at offshore detention facilities. Under current law, any arrival who makes it to the mainland is entitled to be detained and processed on the mainland. Were the bill passed, this would no longer be the case.

The Legal and Constitutional Legislation Committee, chaired by Liberal Senator Marise Payne, and having a majority of government members, reviewed the bill and recommended that the bill should not proceed. The report included minority reports by the opposition, the Democrats and the Greens, and thus lacked the additional power it may have derived from unanimity — but all four reports agreed that the bill should not proceed.

A small group of backbench Members and Senators then announed their intentions to oppose the bill. Five members of the House of Representatives actually did so — three crossing the floor, and two abstaining. A series of meetings between the 'rebel' senators and members (so-called by the media) and the Immigration Minister ensued. In the end, however, the government shelved the bill rather than risking defeat on the floor of the Senate.

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[21] Fierravanti-Wells, Senator C, *Environment, Communications, IT and the Arts Committee Hansard*, 30 October 2006, p. 34.

Same Sex Civil Unions

On 11 May, the ACT legislative assembly passed its *Civil Unions Act 2006*, allowing for same sex unions whose effect approximated that of marriage. As a self-governing territory, ACT statutes are essentially delegated legislation made under the *Australian Capital Territory (Self-Government) Act 1988*, and are disallowable by the Governor-General on the advice of the (Commonwealth) government.

The Commonwealth government immediately announced its intention to disallow the Civil Unions Act. However, the instrument by which the Governor-General disallowed the ACT Act was, itself, a disallowable instrument. Senators from the three non-Government parties moved a motion to disallow the government's disallowance. There was little real danger of the non-government senators' motion being supported — the government had, on this occasion, a safe buffer in Senator Fielding — but the real interest lay in the voting intentions of ACT Liberal senator Gary Humphries. Humphries did not support the content of the Civil Unions Act, but he *did* support the principle that the ACT Legislative Assembly should be able to pass leiglsation in accordance with its electoral mandate, without fear that such legislation would be over-ridden. Humphries stated:

> There are certain rules that apply in Australian democracy. Those rules include that elections need to be held regularly, that ballots in elections need to be conducted in secret, that electoral systems need to produce parliaments that at least approximately reflect the voting intention of their communities and so on. There are many such conventions. There is another convention, and that is that, where parliaments have legislative power over matters affecting their community, and legislate in those areas, majorities must prevail. To that convention I think we could add another — not always honoured, I have to say, but one to which many Australians pay lip-service — and that is that, where governments outline their program before an election, they have a right, where the numbers are furnished by the electorate, to see that promise become law.[22]

Humphries eventually crossed the floor to vote for the disallowance, but the disallowance motion failed anyway (and, hence, the ACT legislation was disallowed).

Disallowance Motion

One the same day as the Civil Unions disallowance debate (it may have been something in the water) Nationals Senator Barnaby Joyce moved to disallow government regulations relating to petroleum retail marketing sites. It is highly unusual for a government senator to move such a motion on his or her own initiative.

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[22] Humphries, Senator G, *Hansard*, 15 June 2006, p. 34.

The government, unsurprisingly, voted against the disallowance motion. All others, including Senator Fielding, voted in support. Senator Joyce crossed the floor to support his own motion, which left the Senate with a tied vote.[23] Consequently the disallowance motion failed, and the regulations remained in effect.

Miscellaneous Matters of Interest

Citizen's Right of Reply

Like some other houses of parliament, the Senate has a process whereby citizens who are the subject of adverse comment in the chamber may apply to the Privileges Committee for the right to tender a reply and have it included in *Hansard*. Unlike many other chambers, the Senate allows the use of this process on a regular — even frequent — basis. This year, a rather unusual example took place.

On 9 May, Greens Senator Bob Brown tabled a notice of motion proposing to refer, to the Community Affairs References Committee, an inquiry into the activities of the 'Exclusive Brethren' religious organisation. The first term of reference charged the Committee with the task of considering the role of the Exclusive Brethren in 'family breakdown and the psychological and emotional effects related to the practice of excommunication …'

The notice of motion remained on the notice paper until 15 August, when it was debated, put and defeated.

In the meanwhile, however, certain persons on behalf of the Exclusive Brethren applied for a right of reply in relation to the notice of motion itself. This was highly unusual — the motion had not been moved, let alone debated or passed. However the view of the Brethren was that the notice itself, without anything further, was enough to justify a reply. This application was even more unusual because Senator Brown's notice of motion did not refer to any individual by name.

The privileges committee agreed that the applicants had a right to reply, and a response by three members of the Exclusive Brethren was included in *Hansard* on 21 June.

The Joint Sitting That Wasn't

In 2003, a joint sitting of the Senate and the House of Representatives was held in order to hear an address by the President of the United States of America, Mr George W Bush. During those proceedings, two Greens Senators were expelled

[23] Unlike many other parliamentary chambers, the presiding officer in the Senate does not have a casting vote. The effect of such a casting vote would be to provide one state with more than 12 votes in the chamber, and consequently upset the federal balance. Tied votes are resolved in the negative.

from the House of Representatives Chamber by the Speaker, who purported to be applying the standing orders of the House of Representatives. This action raised a range of questions relating to the constitutionality of the meetings, the jurisdiction of the Speaker to expel Senators from a meeting of the Senate, and whether the Speaker had in fact applied the standing order of the House correctly (by calling the vote on the voices despite allegations that the requisite number of members and senators had called for a Division). These matters are canvassed in the Senate Procedure Committee's third report of 2003, and the Senate Privileges Committee's 118th report (April 2004).

The outcome of these events was that the Senate adopted the Procedure Committee's recommendation that no further such joint meetings should be held. Instead, if the government desired to assemble all members and senators to hear an address by a foreign head of state, the House of Representatives should convene a meeting, and invite Senators to attend as guests.[24]

In March 2006, the Prime Minister of the United Kingdom, the Rt. Hon. Tony Blair MP, visited Canberra and the resolution was enacted for the first time. Although the media firmly persisted in describing the event as a joint sitting, in fact it was no such thing — Mr Blair addressed the House of Representatives, and the Senators were present as guests.

The Year Ahead: 2007

A general election is expected in 2007, most likely in the second half of the year. Media speculation will inevitably focus to some degree on whether the government can retain its majority in the Senate. At the very least, it should be interesting to see whether voters, having experienced two years under the current circumstances, continue to vote a 'straight ticket' in the House and the Senate, or whether voters take out Senate insurance by splitting their vote. Those predicting a return to a non-majoritarian Senate in 2007 would do well to remember that the senators standing in 2007 are those who were elected in 2001. The senators elected during the government's particularly strong showing in 2004 will remain — thus making the task of the non-government parties much more difficult.

There will also be some likely focus on the fate of the Australian Democrats, who returned no senators in 2004, and who will face the challenge of losing two retiring incumbents, Senator Andrew Murray in Western Australia and Senator Natasha Stott-Despoja in South Australia.

As always, an interesting year lies ahead. ▲

[24] Senate Procedural Order of Continuing Effect, No. 39, 11 May 2004.