

# SENATE WATCH

A summary of the use and abuse of Senate processes since July 2005



The Democrats SenateWatch has painstakingly mapped the abuse of power in the Senate by the Howard Government since the 2005 election and here is our report.

Of course the Coalition control of the Senate did not end with the 24th November 2007 election. Until 1st July 2008, when the new Senate comes on board, the Coalition will continue to hold its majority of one vote and could block any of the new government's legislation at will.

The Democrats will keep you posted on how the Coalition handles its power in opposition and on our progress in getting the Rudd Government to restore the Senate to a proper house of review. That's our challenge for the next seven months!

## THE BROKEN PROMISE

In June 2005 the former Prime Minister, John Howard, promised to use his Senate majority "...soberly, wisely and sensibly. We won't use it capriciously or wantonly or indiscriminately, and I make that solemn promise on your behalf to all of the Australian people."

This statement was one of the most serious broken promises of John Howard's 10 years in government. The executive of government exploited the Coalition's slender Senate majority to the fullest, taking control over the parliament and over the information that goes to the public.

Even the Fraser Government – the last government to have a majority in the Senate – did not control the Senate chamber in effect, because there were at any time up to 12 government Senators willing to vote against their government, and who often did so, particularly on accountability issues. Although the power and intent of the executive was challenged occasionally behind closed doors in the Coalition's party room by backbenchers, these challenges did not translate into voting in the Senate Chamber.



The Australian Democrats kept a watch on Mr Howard's misuse of his Senate majority and reminded Australians of his promise to use his Senate power 'wisely and sensibly'. The truth is that the Senate had become a 'rubber stamp' of the former Prime Minister, just as the House of Representatives had long been. The Senate as an institution was turning into a hollow, servile shell where only one voice and one view counts – that of the former Howard Government.

Over nearly thirty years the Democrats worked to transform the Senate into a real chamber of review. Over that time the Senate provided proper checks and balances on executive government. It became a place to debate legislation in detail, to consider important issues properly, backed up by a committee inquiry system that drew its strength from the expert and public input into legislation – input that often the minister concerned had neither sought nor understood.

Bad processes produce bad laws, and bad law harms all of us. The Senate's most powerful tools for reviewing, debating and improving legislation and for questioning and probing the government, and keeping them accountable have been whittled away or closed down. Below is the story of the demise of one of the most vital institutions in our democracy.

1. Number of sitting days
2. Amending legislation
3. Orders for production of documents
4. The Senate's committee system
5. 'Streamlining' the committee system
6. The estimates hearings process
7. Disallowance motions
8. Curtailing debate
9. And the count continues...

### 1. Number of sitting days

One test of any democracy is the length of time the executive allows parliament to meet. The former Howard Government failed this test. The number of sitting days in the Senate declined each year, yet the amount and complexity of legislation and issues dealt with increased dramatically.

Senate	1979	1989	1985	1991	1995	1997	1999	2000	2001*	2002	2003	2004*	2005	2006	2007
No. sitting days	71	92	74	83	78	82	79	71	52	60	63	49	57	58	41
No. bills passed	192	205	210	208	181	223	206	181	166	156	157	154	166	169	184
No. bills passed/day	2.7	2.2	2.8	2.5	2.3	2.7	2.6	2.5	3.2	2.6	2.5	3.1	2.9	2.9	4.5

\*Indicates an election year.

The only Howard Government years with fewer sitting days than 2006 were 2001 and 2004 – both election years. 2005-06 was also a year of dealing with some of the harshest, most contentious legislation in a decade, including the workplace reforms, the full sale of Telstra, anti-terrorism legislation, welfare to work reforms, and more restrictions on the rights of refugees.

A lack of sitting days means that bills pile up, adding to the pressure for government business to take precedence, and leading to other important Senate business not being dealt with. It also means legislation is rushed through without proper debate, often under a 'guillotine' (see below). Rushed legislation means flaws are not detected, consequences are not foreseen and the public is not informed of what is being done.

Curtailing the time available to the Senate to deal properly with its business is a cynical move on the part of any government.

### 2. Amending legislation

The legislative powers of the Senate, particular the debating, scrutinising and amending of government legislation, is one of the most important roles that the Senate undertakes. Good

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democratic governance benefits from a legislative process that can make compromises and take into account different opinions from all its elected representatives.

The Senate should provide protection against extreme legislation for which the government does not have broad community support or which was not canvassed at the previous election.

The former Howard government rejected almost all non-government amendments to bills, even when committees that included government Senators unanimously recommend those changes. This was a marked departure from previous practice. It also discouraged participation in the Senate inquiry process and disenfranchised the many people who did not vote for the Howard Government.

In the past, 25-30% of all bills were amended in the Senate each year. Over a thousand non-government amendments were moved to them each year, with 30-40% of those amendments passing the Senate.

### Amendments moved to bills by Government, ALP, Democrats, Australian Greens, Family First (does not include items etc opposed until 2006)

By party	2004		2005		2006		2007	
	Moved	Agreed	Moved	Agreed	Moved	Agreed	Moved	Agreed
ALP	161	130	139	65	301	2	248	3
Democrats	290	72	297	18	248	0	231	1
Greens	48	0	51	0	84	3	208	0
Family First	-	-	0	0	24	7	4	2
ALP/Dems Joint	13	13	26	1	9	0	4	0
Total	512	215 (42%)	513	84* (16%)	666	12 (2%)	695	6 (0.8%)
Government	442	442	588	586	360	360	381	381

\*Only 2 of the 84 amendments were agreed to after July 2005 (1 ALP; 1 Dems).

Not all non-government amendments that passed in the Senate were accepted by government in the end – but many of them were. And after negotiations, some of them were also agreed to in a different form as government amendments. It was fanciful of the Howard Government to think that all non-government amendments were suddenly groundless or that all committee recommendations were suddenly misguided or of no importance. Nor is it the case that all government legislation is drafted perfectly – we know this from the hundreds of technical amendments the Howard Government had to make to their own bills.

### Total non-government amendments agreed to by the Senate (includes requests, items etc successfully opposed in the Senate) and successful outcomes in the House of Representatives

	2003-04		2004-05 (election year)		2005-06		2006-07		2007-08 (election year)	
	Agreed in		Agreed in		Agreed in		Agreed in		Agreed in	
	Senate	HR	Senate	HR*	Senate	HR	Senate	HR	Senate	HR
<b>Amendments, requests, &amp; items, clauses etc. opposed</b>	615	340	123	28	4	3	17	17	0	0

\* The decline in the number of Senate amendments accepted here is probably due to the Government knowing after the October 2004 election that they would have a majority in a few months' time and could afford not to compromise.

### 3. Orders for production of documents

The 'Return to Order' is a very powerful tool for demanding documents that the government and its agencies would rather keep to themselves. Use of this procedure had increased steadily since the early 1990s – averaging 22 or more orders a year – and the orders were largely complied with, at least until 2001 when the Howard Government began to ignore them.

Information extracted from governments by these orders has included reports and documentation on Telstra's performance, breaching of welfare recipients, new apprenticeships, spending by department and agency on contracts worth more than \$100,000 and the effects of genetically-modified organisms.

Ordering the government to produce documents by this procedure all but ceased under Howard's reign.

	2003-04	2004-05 (election year)	2005-06	2006-07	2007-08 (election year)
<b>Number of orders proposed</b>	33	25	11	14	0
<b>Number of orders agreed to</b>	33	25	1	0	0

### 4. The Senate's committee system

The eight Senate standing committees have a significant role in examining legislation and investigating pressing policy and other substantive issues. The work of Senate committees is usually agreed by consensus and although there have been occasions when the government has objected to inquiries – the 2004 inquiry into 'children overboard' is a case in point – they have gone ahead because opposition parties voting together had a majority. The Howard Government routinely blocked references to committees, allowing only those which would not embarrass them to proceed. The Senate committee system was frequently more like that in the House of Representatives – tame and often time-wasting.

References such as the AWB 'kick back' scandal in Iraq, aviation safety, media ownership laws, climate change, national plan for water, have all been blocked.

	2003-04	2004-05 (election year)	2005-06	2006-07	2007-08 (election year)
<b>No. of references of substantive issues to Senate Committees negatived</b>	3	7	16	17	4

When the Howard Government did agree to an inquiry it was an exercise in control. Complex and important policy changes were railroaded through the committee system. Reporting dates were kept short and public hearings were limited. Even when very complex policy changes such as the welfare to work, workplace relations, anti-terrorism legislation, and media ownership changes were allowed to go to a committee inquiry, the short time frame gave people little time to prepare submissions or for the committee to conduct hearings and write comprehensive reports.

Recommendations to improve legislation, even from the Howard Government's own Senators, were ignored more often than not. Government responses to committee reports took longer and longer, and it was not uncommon for it to be more than a year later. It took the Howard Government over two years to respond to a very comprehensive committee report into

poverty and financial hardship with over 30 recommendations and its response was 'no' to each of the recommendations.

### 5. 'Streamlining' the committee system

In another blow to an already weakened Senate committee process, the Government restructure of the paired legislative and references committee came into effect on 11 September 2006. The Government abolished the Senate's references committees and gave themselves the majority on the eight remaining committees and the Chairs of all of them.

The references committees played an enormously valuable role in the Senate since their creation in 1994. They produced many reports over the years which have been highly commended by many, including the government. They were a well-respected source of information and community input into areas of public policy through a visible, credible forum. With non-government chairs, they were seen as performing a Parliamentary role, rather than being subservient to the government of the day.

Senate procedure, including the structure of committees, has been determined by all parties in the Senate and reforms usually come about by consensus, but the Howard Government's take over of Senate Committees was opposed by all non-Government Senators. Any faith the public has in the Senate committee systems risks being lost with such a 'winner takes all' approach.

### 6. The estimates hearings process

The estimates committee hearings are one of the most powerful tools that the Senate has to question and probe governments on the way our taxes are being spent, how government departments are being managed, and on the impact of government policy on our lives. They are a general inquisition into all the operations of government.

The estimates hearings often uncover information not otherwise made public. The \$55 million spent by government on its industrial relations policy advertising campaign is a recent example.

But under the Howard Government answers to questions were curtailed, delayed, or flatly refused. With the Howard Government majority, the Senate was no longer able to pursue remedies for ministerial refusals to provide the information.

In the words of the Clerk of the Senate, Mr Harry Evans, this 'clearly poses a danger to accountability of government ... and a danger for public servants.' The situation, Mr Evans goes on to say, 'is not in the long-term interest of the government itself, ... Minor illegalities and improprieties are more likely to multiply and end in a major wreck.'

Here are some examples:

1. Direction that no officers would answer questions about the AWB affair because it was before the Cole Commission.
2. Removal of the two Friday "spill-over days" for estimates hearings in May 2006.
3. In general more refusals to answer and a greater tendency to take questions on notice, sometimes a preliminary to an eventual refusal to answer. Questions on the Pvt Kovco inquiry and on petrol tax data are examples.
4. Questions taken on notice can take months to answer - often they arrive just before the next round of hearings, limiting preparedness for follow up questioning.
5. Refusal to allow particular witnesses to appear at the hearings so that they cannot be questioned. A motion that required Mr Triujillo to attend estimates hearings in February 2006 in relation to his administration of Telstra was rejected.

6. The non-appearance of agency CEOs and other senior public servants without any excuse or apology weakens the Senate's ability to question government actions.
7. Government statement that the disclosure of advice provided to government will only be disclosed whenever the government chooses to do so.

### 7. Disallowance motions

Disallowance motions are also an important legislative oversight that has been lost to the Senate. More and more Acts of Parliament delegate to the executive government the power to make the detailed rules and regulations that govern our lives. There are over 1,500 regulations every year. Disallowance motions with majority Senate support can veto or disallow these rules and regulations. They also allow the Senate to publicly debate the impact of the decisions on the people affected by them.

No disallowance motions were agreed to after July 2005 and fewer were being moved. There was also the habit of the Howard Government to include in legislation provisions which exempt instruments from disallowance by either Chamber. Motions to disallow regulations such as those governing funding of university places, live animal exports, compensation assessments, civil unions, family migration, were all been blocked.

	2003-04	2004-05 (election year)	2005-06	2006-07	2007-08 (election year)
<b>Disallowance motions moved</b>	13	8	10	8	2
<b>Agreed to</b>	5	2	0	0	0

### 8. Curtailing debate

#### (a) The 'guillotine'

The 'guillotine' – the declaration that bills are urgent and need to be dealt within a fixed period of time – is a procedural device used occasionally by all governments but used routinely by the Howard Government. The procedure was also used in ways that abused the processes even further.

'Guillotines' were introduced without warning, the time between the introduction of complex bills and their passage through the Senate decreased, as was the time allowed to debate the bill. There were hundreds of government and non-government amendments which did not get proper scrutiny or debate. The sale of the remainder of Telstra, changes to the welfare system and the new workplace relations regime were all railroaded through the Senate Chamber in just a few days under 'guillotines'.

And with the use of the 'guillotine', all other Senate business was swept aside – debate about committee inquiries and their reports, consideration of Auditor-General findings, reports from government departments and the like is cancelled despite their importance for accountability.

	2003-04	2004-05 (election year)	2005-06	2006-07	2007-08 (election year)
<b>Number of bills declared urgent</b>	0	4	21	11	0
<b>Number of motions declared urgent</b>	0	1	5	0	0

### (b) The 'closure'

The 'closure' is a device to stop debate on a particular motion or issue and put it immediately to a vote. It is very common in the House of Reps but rare in the Senate.

	1988	1998	2000	2005-06	2006-07	2007-08
Number of times and year the closure has been used since 1988	6	4	1	16	3	0

## 9. And the count continues

Other misuse of significant accountability tools in the Senate:

1. Question Time is another way of extracting information on what government is actually up to. The number of questions allowed to be asked by the non-government parties at Question Time was reduced by the Howard Government and re-allocated with no prior consultation in August 2005.
2. Questions on notice continued, but with long delays in Howard Government ministers providing the answers.
3. More frequent were Howard Government claims that providing answers would be too expensive.
4. Requests by committees for information were rejected more often. For example, a request for documents relating to the road works on the Gallipoli Peninsula was refused.
5. Continuing loss of parliamentary control and oversight over the amount of money available to government departments and agencies and the purposes on which they can spend it.
6. The Howard Government, for what is believed for the first time, voted against allowing a censure motion to even be debated.
7. The Howard Government refused to allow a Private Senator's Bill to be referred to a committee on the basis that it did not agree with the bill.

## Quotes

*"Alexander Downer and the Libs are taking an arrogant and unparliamentary stand over the AWB scandal."*

**Laurie Oakes, Bulletin, 2006**

*"Since the Coalition got the numbers in the upper house, the Opposition and minor parties obviously cannot set up embarrassing full-scale investigations. Even the inquiries into legislation (such as the industrial relations bill last year) are quick and dirty."*

**Michelle Grattan, The Age, February 15, 2006**

*"We no longer have parliamentary government in any meaningful sense of the term."*

**Harry Evans, Clerk of the Senate**