Senate Brief

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The Role of the Senate

The Senate

The Senate is one of the two houses of the federal Parliament, the other being the House of Representatives. Democratically elected, and with full legislative power, it is generally considered to be, apart from the Senate of the United States of America, the most powerful legislative upper chamber in the world.

The framers of the Constitution intended that the primary role of the Senate would be to protect the interests of the less populous states in the federal Parliament by giving equal representation to all states (see Senate Brief No. 9). As was foreseen by some of the framers, soon after federation parliamentarians began to vote as members of political parties rather than as representatives of states. While this has obscured the role of the Senate as a protector of the less populous states, the state-based system of representation has ensured that legislative decisions are not made only by the representatives of the more populous states. The Senate has also assumed greater importance as a check on the power of the government of the day. The framers' design of the Senate has enabled it to perform this role effectively.

Parliament and government

It has long been recognised that checks and balances are necessary in a system of government to ensure that individual power is not abused. A Parliament to which the executive government, the ministry, is responsible for its actions is one such check. Parliament is the law-making assembly where the opinions, interests and beliefs of the people are represented. It is the foundation upon which modern democracy is built. It is the Parliament's role to ensure that government is answerable to the governed.

In the federal Parliament, the opportunities for the House of Representatives to operate as an effective check on government are significantly reduced because the party or coalition of parties forming government usually holds a majority of its seats and, through extremely rigid voting discipline, controls the House. However, the development of the Australian system of responsible government, under which the federal government is responsible to the Senate as well as the House of Representatives, has ensured that the federal Parliament, through one of its houses, is able to perform its role as a check on government.

Responsible government

The federal government is held responsible to both the House of Representatives and the Senate, though in different ways. The federal government is formed by the party or coalition of parties that holds a majority of seats in the House of Representatives. The government must resign if it loses this majority. In practice, party discipline ensures that the government controls the House of Representatives and that the House imposes no check on government.

The government is responsible to the Senate in the sense that, while the party or coalition of parties possessing the confidence of the House of Representatives does not need to hold a majority of the seats in the Senate to form government, the Senate may force the government to account for its actions by withholding finance from it; that is, by rejecting an appropriation bill for the ordinary annual services of government. Appropriation bills authorise the government to spend revenue to finance its activities.

This position recognises that the Senate is democratically elected and possesses constitutional powers nearly the equal of the House of Representatives. To fulfil the role the Constitution allows the Senate in relation to the government, the Senate is able to scrutinise and judge the activities, policies and legislation of the government. This is why the Senate is known as a house of review.

How the Senate operates as a check on government

The Senate fulfils its role as a check on government by scrutinising bills, delegated legislation, government administration, and government policy in general. It does this by way of procedures utilised in the Senate chamber itself and through the operation of the Senate committee system.

In 1948 the parliament adopted a system of proportional representation for Senate elections. This system helps to ensure that parties gain representation more nearly in proportion to their share of the vote, and allows smaller parties and independents to gain significant representation. This means that the government frequently does not have a majority, or at best has a very small majority, in the Senate. Government legislation and other measures therefore do not always have easy passage in the Senate, but are subject to negotiation and consultation with minor parties and independents, and with the Opposition. The Opposition party or coalition may have sufficient support to have the Senate reject or amend government bills, or undertake activities which do not have the support of the government: for example, to direct committees to inquire into particular government activities, legislation or policy. This political situation in the Senate, together with its democratic election process and its extensive constitutional powers, provides the foundation of the Senate's role as a check on government.

Scrutiny of legislation

A bill must be passed by the House of Representatives and the Senate in identical terms before it can become law. Most bills are initiated by the government and implement government policy. The Senate scrutinises all bills to ensure that they further the public interest. Ultimately, the Senate may pass a bill without amendment, pass it with amendments (or, in the case of money bills, request amendments before passing it) or reject it.

Bills are 'read' (i.e. approved) three times during their passage through the Senate. The broad policy of the bill is debated at the second reading stage. The Senate then resolves itself into a committee of the whole, during which senators are able to examine the detail of bills, engage in debate with ministers (or senators representing House of Representatives ministers in the Senate) and move amendments (see Senate Brief No. 8). This procedure provides the opportunity to ensure that all aspects of a bill are examined thoroughly before the Senate votes to pass, reject or amend a bill.

The Senate committee system substantially increases the ability of the Senate to review bills in the Senate chamber (see Senate Briefs Nos. 4 and 8). Bills considered to require more detailed examination are referred to the relevant legislative and general purpose standing committees for inquiry. The inquiry process is described below. It concludes with the presentation of a report to the Senate. A report may recommend amendments to a bill, or recommend that the bill be passed without amendment. The report is then considered by the Senate when examining the bill in the chamber.

In addition, the Scrutiny of Bills Committee informs the Senate of any bills that unduly trespass on individual rights and liberties or fail to observe proper legislative safeguards, for example, rights of appeal.

Initiation of bills

Most bills are initiated in the House of Representatives because that is where the majority of ministers sit. However, the Senate possesses the power to initiate any bill (other than a money bill). Bills may be initiated in the Senate when, for example, the minister in charge of the bill is a senator, or when the House of Representatives is not sitting.

Scrutiny of legislative instruments

Many statutes do not attempt to comprehensively regulate the law in a particular area, but leave the details to be regulated through legislative instruments. These instruments are often also called delegated legislation because the power to legislate has been delegated by Parliament to the Governor-General (acting on the advice of the government) or to a minister or a statutory office holder. Legislative instruments carry the full force of the law—that is, they have the same legal effect as an Act of Parliament. Much use is made of delegated legislation. Each year, the federal Parliament passes around 200 bills. In contrast, the executive makes around 2000 disallowable legislative instruments. Unless specifically exempted, legislative instruments must be tabled in the Senate (and the House of Representatives) and may be disallowed on a vote in either house (section 42 of the *Legislative Instruments Act 2003*). To improve the effectiveness of the Senate's oversight of these laws, the Standing Committee on Regulations and Ordinances examines all disallowable legislative instruments against criteria similar to those used by the Scrutiny of Bills Committee. It takes up any problems in an instrument with the relevant minister. Unresolved

problems may lead to the disallowance of the instrument by the Senate.

Ministerial activities

Traditionally, some members of the ministry are senators. In recent years, approximately one quarter of ministers have been senators. These ministers also represent in the Senate the ministers who sit in the House of Representatives. Each sitting day, during question time, they may be questioned by senators on any aspect of the administration of their departments, proceedings in Parliament over which they have carriage, or public affairs with which they are connected. Questions may be asked without notice, orally to the minister, or with notice, that is, in writing.

Senators may also put the government under examination at other times; for example, during time set aside for raising matters of public importance, and during debates of a general nature, such as the debate that takes place before the Senate adjourns for the day.

Estimates

An important way in which the Senate examines the operations of government departments and agencies, which develop and implement government policy, is through consideration of the estimates by the Senate's legislative and general purpose standing committees (see Senate Brief No. 5). These committees examine in detail the estimates of annual expenditure of government departments and agencies, looking to see whether revenue is being spent appropriately and efficiently. The estimates are contained in appropriation bills introduced into Parliament as part of the budget (usually in May), and in additional appropriation bills introduced later in the financial year. There are eight committees, each with responsibility for a number of departments. The relevant Senate minister and senior departmental officials appear before the committee which is examining their department to explain expenditure proposals and to answer questions concerning the effectiveness and efficiency of various programs. The committees report to the Senate upon the completion of their inquiries.

In addition, the committees examine the annual reports of government departments and agencies. This process provides a vehicle for those committees to examine the performance of departments.

General government policy and the affairs of the nation

The Senate is able to review government policy and activities generally, as well as the affairs of the nation, through its legislative and general purpose standing committees (see Senate Brief No. 4). These committees are able to inquire into how government policy already implemented is affecting the community, whether a proposed government policy will be beneficial to the community, or whether problems exist in the community which the government ought to be addressing. They also inquire into bills referred to them, on any other matter which the Senate believes ought to be examined.

Committees advertise the terms of reference of their inquiries and invite written submissions. Later, they hold public hearings to take evidence in person. Public hearings are often held outside Canberra, enabling interested individuals and communities across the nation to inform committees about their points of view. Government ministers, departmental officials, and experts in the field may also appear. In this way, the opinions of a wide range of people are heard, and a great deal of useful information is gathered. Inquiries conclude with the presentation of a report to the Senate. The report will usually contain recommendations directed at any relevant bodies—most often at the federal government. Since 1978, successive governments have undertaken to inform the Senate of their response to committee reports within three months of tabling.

Conclusion

Although the Senate, like all institutions, has changed greatly since the Constitution came into effect in 1901, it still performs the functions envisaged by the framers of the Constitution: ensuring that laws are supported by a majority, properly representative of the country, and ensuring that ministers are accountable for their conduct of government to the Australian public.

Further reading

Harry Evans (ed.), *Odgers' Australian Senate Practice*, 12th edn, Canberra, Department of the Senate, 2008. Available on the internet at http://aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/odgers

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