Chapter 1

THE SENATE AND ITS CONSTITUTIONAL ROLE

THE PARLIAMENT of the Commonwealth of Australia, which is given the power to make laws for the Commonwealth by the Constitution, has two elected houses: the Senate and the House of Representatives.

There are two reasons for this division of the law-making body, the legislature, into two houses. Both reasons have a long history, pre-dating the framing of the Australian Constitution by elected conventions in the 1890s.

The first is expressed by the term bicameralism, the principle that making and changing the laws should require the consent of two different bodies. The requirement for the consent of two differently constituted assemblies is a quality control on the making of laws. It is also a safeguard against misuse of the law-making power, and, in particular, against the control of one body by a political faction not properly representative of the whole community.

Secondly, the division of the legislature into two houses allows the central legislature of the nation to reflect and secure its federal nature, that is, that it is a union of states, in which the responsibilities of government are divided between regional state legislatures representing the people of their regions and exercising regional powers, and a national legislature, representing the people of the whole country, exercising specified national powers. In such a nation, particularly a nation occupying a large geographical area, a central legislature elected by the people as a whole necessarily involves the danger that a majority within that legislature could be formed by the representatives of only one or two regions, leading to neglect of the interests of other regions and their consequent alienation from the central government. The solution to this problem is to have one house of the legislature elected by the people as a whole, representing regions in proportion to their population, and one house elected by the people voting in their separate regions, and representing those regions equally. This federal bicameral structure was invented by the framers of the Constitution of the United States of America in 1787, has been followed by federal states around the globe, and was followed by the framers of the Australian Constitution.

The Senate, bicameralism and federalism

When the Australian Constitution was drawn up in the 1890s, two principles were accepted by the framers of the Constitution as its foundations. These principles were not varied during the long process of amendment of the draft Constitution.

The first was that Australia would be a federal nation, formed by the union of the self-governing states, in which the people of each state would elect their state parliaments to exercise state responsibilities, and the people of the whole nation would elect a national parliament to exercise specified national responsibilities.

The second principle was that the national legislature, the Parliament of the Commonwealth, would consist of two houses, one representing the people as a whole and one representing the people voting by their states, and that the consent of both houses would be necessary for the passing of laws.

These principles were repeatedly stated during the debates on the draft Constitution:

> ....it is accepted as a fundamental rule of the Federation that the law shall not be altered without the consent of the majority of the people, and also of a majority of the States, both speaking by their representatives ... (Samuel Griffith, quoted by Richard Baker, Australasian Federal Convention, 23 March 1897, p. 28)

> ....the great principle which is an essential, I think, to Federation — that the two Houses should represent the people truly, and should have co-ordinate powers. They should represent the people in two groups. One should represent the people grouped as a whole, and the other should represent them as grouped in the states. Of course majorities must rule, for there would be no possible good government without majorities ruling, but I do not think the majority in South Australia should be governed by the majority in Victoria, or in New South Wales. .... If we wish to defend and perpetuate the doctrine of the rule of majorities, we must guard against the possibility of this occurring. (John Cockburn, Australasian Federal Convention, 30 March 1897, p. 340)

Senators were to represent the *people* of the states, not state governments. Suggestions that are occasionally made that senators should be appointed by state governments are therefore misconceived. Nor was it intended that senators vote in state groups or according only to their assessment of state interests; the function of ensuring that the legislative majority is geographically distributed does not require such behaviour.

The choice by the framers of the Constitution of a federal system also involved the national government consisting of three branches, the legislature (the law-making body), the executive (the body which administers the laws), and the judiciary (the body which interprets the laws, including the Constitution, and applies them to particular cases). The Australian Constitution therefore establishes as the legislature the Parliament of the Commonwealth of Australia, as the executive the monarch, represented in Australia by the Governor-General, and as the judiciary the High Court of Australia, with other federal courts established by the Parliament.

Unlike the framers of the United States constitution, however, the Australian founders did not confer the effective executive and legislative powers on separate bodies. Instead, they adopted the British system of responsible or cabinet government, in which the executive power, nominally held by the monarch represented by the Governor-General, is actually exercised by ministers who are also members of Parliament. It was envisaged, though not specified in the Constitution, that these ministers would hold office only so long as they had the support of a majority of the House of Representatives. This system, which had emerged in Britain only in the 50 years or so before the Australian Constitution was drawn up, had operated in each of the Australian states, and the founders wished to adopt it largely because of its familiarity.

A significant minority of delegates at the constitutional conventions wished to abandon this system of cabinet or responsible government at the national level and to confer the executive power on a separately elected body. One of their reasons for proposing this was that they contended that the federal system would be incompatible with the British system of cabinet or responsible government, because the federal system required equality of powers between the two houses of the legislature. Their apprehensions were subsequently realised, to the extent that, with the rise of highly disciplined political parties, the House of Representatives came to be completely controlled by the ministry with a party majority in the House.

In Australia's Commonwealth Parliament bicameralism is therefore a product of constitutional intent and design, not of evolutionary process. The Senate and the House of Representatives are creations of the same process of constitutional design. The design of the Senate followed the United States Senate in several aspects: equality of state representation; six year terms; and election of senators by rotation. It was, however, an innovatory design so far as the Senate was concerned. The Senate from the beginning was directly elected by the people, unlike its United States counterpart, which was indirectly elected until 1913.

The name "Senate" was carefully chosen. In the 1897 draft it was called the "States Assembly", for the reason that it was to be the house representing the states as distinct entities and the house which had the custody of the states' interests. At the Adelaide convention of 1897 the name "States Assembly" was struck out and the name "Senate" inserted (13 April 1897, pp 481-2). This restored the proposal of the 1891 draft. The name "Senate" is appropriate because, as was said in the debate on the amendment, its responsibilities affect the nation as a whole as well as of the constituent states. It has the further advantage of according its members the distinctive title of "senator".

A major effect of federalism is that the Parliament of the Commonwealth, like the United States Congress, is not even nominally a sovereign parliament: its powers are limited by the Constitution. The British and New Zealand Parliaments, on the other hand, are nominally sovereign in that, in theory, their power to legislate on any matter is unrestricted in the absence of limiting constitutions.

Bases of the two Houses

An effective bicameral system requires that the two houses of the legislature be constituted on different bases: if they are constituted in the same way they would be likely to have the same political colour and therefore not be an effective check upon each other. The federal system necessarily requires that the two houses be constituted on different bases to reflect and secure the federal character of the union. The two Houses of the Australian parliament therefore have different compositions.

The main differences between the Australian Houses derive from the representative base, method of election, and terms of office. The principal features of federal bicameralism as exemplified in the Commonwealth Parliament are:

- Effective equality of the Senate and the House in the making of laws and the performance of all other parliamentary responsibilities. The only qualification is that certain types of financial legislation must originate in the House of Representatives, and in some cases the Senate is limited to suggesting and, if necessary, insisting on amendments.

- Senators are elected on a state or territory basis, each state or territory voting as one electorate; membership of the House is based on single member electorates approximately equal in population.

- Each state irrespective of population is represented by 12 senators, each territory by 2 senators; representation in the House of Representatives is based on population.

- Distinctive methods of electing the two Houses. Senators are elected by a proportional method; the method of electing members of the House of Representatives is preferential.

- State senators are elected for terms of six years; half the senators from each state retire at three-yearly intervals. Members of the House of Representatives are elected for terms not exceeding three years. Except in the circumstances of simultaneous dissolution of both Houses, the Senate, in contrast to the House of Representatives, is a continuing House. The terms of territory senators end and begin at each election for the House of Representatives.

- Constitutional provision for resolution of disagreements between the Senate and the House over legislation originating in the House of Representatives. Such disagreements over legislation originating in the House may be resolved by simultaneous dissolution of both Houses. If, following new elections, the disagreement persists, the legislation in contention may be submitted to a joint sitting of both Houses.

Rationale of bicameralism

The principle of bicameralism has a long history. As well as being practised by many states since ancient times, it has also been expounded by the leading philosophers and practising politicians in the course of the development of modern nations.

Bicameralism is in practice necessary to achieve a parliament truly representative of the people. Bicameralism helps to improve and enhance the representative quality of a parliament and to ensure that it is representative in a way in practice not achievable in a unicameral parliament. Modern societies are complex and diverse; no systems of representation are, of themselves, capable of providing a truly representative assembly. Adequate representation of a modern society, with its geographic, social and economic variety, can be realised only by a variety of modes of election. This is best achieved by a bicameral parliament in which each house is constituted by distinctive electoral process. A properly structured bicameral parliament ensures that representation goes beyond winning a simple majority of votes in one election, and encompasses the state of electoral opinion in different phases of development.

Bicameralism is also an assurance that the law-making power is not exercised in an arbitrary manner. Such an assurance is of considerable practical significance in parliaments where the house upon which the ministry relies for its survival is liable to domination by rigidly regimented party majorities.

The rationale of bicameralism is expounded in clearest terms in *The Federalist*, the famous essays written in 1787-88 by Alexander Hamilton, James Madison and John Jay to explain the Constitution of the United States. This work, which was referred to by the Australian framers, warned that those administering government "may forget their obligations to their constituents, and prove unfaithful to their important trust ... a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one, would otherwise be sufficient" (No. 62, Everyman ed., p. 317).

In so arguing *The Federalist* adopted the French philosopher Montesquieu's proposition that: "The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting" (*The Spirit of the Laws*, 1748, Hafner Press, 1949, p. 160). Montesquieu was aware of the implications of a single representative body liable to domination by the executive power, a condition observable in many assemblies of the British or Westminster type in which legislative and executive power are combined. He warned that "When the legislative and executive powers are united ... there can be no liberty" (*ibid.*, p. 151).

The Federalist also drew attention to the value of a second, reflective expression of representative opinion. Pointing to "the propensity of all single and numerous assemblies ... to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders, into intemperate and pernicious resolutions", *The Federalist* urged the contribution of a second body, less numerous and able "to hold its authority by a tenure of considerable duration" (*ibid.*). Such a second body responds to "the necessity of some stable institution in the government".

The Federalist, in urging the utility of the second opinion, invoked not only arguments drawn from political prudence but also others deriving from the "whole system of human affairs, private as well as public":

> We see it particularly displayed in all the subordinate distributions of power; where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual, may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state. (*The Federalist*, No. 51, pp 264-5)

A philosopher who gave close attention to the question of bicameralism was John Stuart Mill in his great treatise, *Representative Government* (1861). Mill was acutely conscious of the limitations which a house elected on the basis of single member constituencies posed for representation. Mill, writing in a period prior to the rise of the organised political party and party discipline in Parliament, attached little weight to a number of the arguments for bicameralism of the type found in *The Federalist*. But the principal reason he offered for supporting a Parliament with two Houses is pertinent to any contemporary consideration of this issue:

> The consideration which tells most, in my judgment, in favour of two Chambers (and this I do regard as of some moment) is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult. It is important that no set of persons should, in great affairs, be able, even temporarily, to make their *sic volo* prevail without asking any one else for his consent. A majority in a single assembly, when it has assumed a permanent character — when composed of the same persons habitually acting together, and always assured of victory in their own House — easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable there should be two Chambers: that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year. One of the most indispensable requisites in the practical conduct of politics, especially in the management of free institutions, is conciliation: a readiness to compromise; a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views; and of this salutary habit, the mutual give and take (as it has been called) between two Houses is a perpetual school; useful as such even now, and its utility would probably be even more felt in a more democratic constitution of the Legislature. (Everyman edition, pp 325-6)

Mill thus shared the views of Montesquieu and *The Federalist* in identifying the virtue of the two Houses as a check on each other.

Bicameralism was addressed from a similar perspective by Walter Bagehot in another classic of political literature, *The English Constitution* (1867). While not an admirer of the principle of division of power exemplified by the American Constitution, Bagehot recognised the virtue of a second house not easily captured by a disciplined majority:

> A formidable sinister interest may always obtain the complete command of a dominant assembly by some chance and for a moment, and it is therefore of great use to have a second chamber of an opposite sort, differently composed, in which that interest in all likelihood will not rule.
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> The most dangerous of all sinister interests is that of the executive government, because it is the most powerful. It is perfectly possible — it has happened, and will happen again — that the cabinet, being very powerful in the Commons, may inflict minor measures on the nation which the nation did not like, but which it did not understand enough to forbid. If, therefore, a tribunal of revision can be found in which the executive, though powerful, is less powerful, the government will be the better; the retarding chamber will impede minor instances of parliamentary tyranny, though it will not prevent or much impede revolution. (*The English Constitution*, in Norman St John-Stevas (ed), *The Collected Works of Walter Bagehot*, London, The Economist, vol. 5, pp 273-4)

The framers of the Australian Constitution inherited this collective wisdom. When they combined it with their decision that Australia should be a federal nation, they found the case for a strong second chamber irresistible:

> There are two essentials — equal representation in the Senate and for that body practically co-ordinate power with the House of Representatives. All those who recognise what are the essentials to a true union will admit these essentials. (John Gordon, Australasian Federal Convention, 30 March 1897, p. 326)
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> We are not here to discuss abstract principles, we are not here to discuss the meaning of words; but I venture to think that no one will dispute the fact that in a federation, properly so called, the federal senate must be a powerful house .... We are to have two houses of parliament each chosen by the same electors .... We are to have, instead of a highly centralised government such as they

> have in Great Britain, a division of powers.... (Richard Baker, Australasian Federal Convention, 17 September 1897, pp 784, 789)

The Constitution reflected their conclusion that, in order to perform the representative role assigned to it, the Senate, like its United States counterpart, must have the power to veto and to suggest changes to any proposed law. It could not be merely a debating and delaying chamber.

Rationale of federalism

Federalism has been practised since ancient times, in the sense that small states have united by their governments appointing a central governing body and agreeing to carry out its decisions. Modern federalism, however, is quite different from those kinds of arrangements. It involves the people of the constituent states electing a national legislature, which has the power to make laws directly affecting the people of the states on defined subjects. This distinctive system, federalism as we now know it, was invented in 1787 by the framers of the Constitution of the United States. As it has been so widely copied elsewhere since that time, its distinctive features are often overlooked.

Apart from providing a way of persuading separate self-governing states to unite on the basis of retaining their separate identities, federalism has positive virtues, and the recognition of these virtues has contributed to its spread around the world.

The division of powers between regional and national governments has been seen as an additional safeguard of the rights of the people and against governments misusing their powers. If a bad government possesses all powers, all powers may be abused, but a national or regional government can use its powers, and the people can use their separate votes in electing those governments, to correct, to some extent, any misuse of the powers of either one.

This concept of federalism as first and foremost a safeguard was put by the framers of the United States Constitution:

> [In a federation] the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. (*The Federalist*, No. 51, pp 265-6)

Federalism, while allowing the union of nations occupying large territories, avoids the domination of government by any single group or interest. Again, the American founders put this point very cogently:

> The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. (*The Federalist*, No. 10, p. 47)

Other advantages are attributed to federalism: the adaption of local policies to local circumstances; the ability of states to conduct experiments and innovations in policy without involving the whole country; a healthy competition between states for the best policies; more opportunities for citizens to participate in decision-making, to gain experience in government and to hold public office. It may be contended that these benefits may be obtained by any system of local or regional government. They are more likely to be secured, however, in a federal system in which the regional units have a constitutionally-guaranteed independent existence, and may not be terminated or controlled by a central authority.

As has been noted, federalism and bicameralism are linked because the federal character of a nation can be reflected in, and secured by, the bicameral legislature. Bicameralism and federalism both have the advantage of enabling legislative assemblies to be more effectively representative of large and diverse nations. The virtues of federalism, neglected for much of the 20th century, were rediscovered in the turmoil of recent decades:

> Federalism is resurfacing as a political force because it serves well the principle that there are no simple majorities or minorities but that all majorities are compounded of congeries of groups, and the corollary principle of minority rights, which not only protects the possibility for minorities to preserve themselves but forces majorities to be compound rather than artificially simple. (Daniel Elazar, *Exploring Federalism*, 1987, p. 2)

As the passages from the debates of the Australian founders quoted above indicate, they were well aware of the principle of compound majorities which is here identified as the essence of federalism. The same author wrote:

> As the dust settles in the 1990s there are more federations than ever including more people than ever. These are the foundation stones of the new paradigm. At present there are twenty-one federations containing some two billion people, or 40 percent of the total world population. They are divided into over 350 constituent or federated states (as against 180 plus politically sovereign states). ('From statism to federalism: a paradigm shift', *International Political Science Review*, 17:4, 1996, p. 426.)

As a geographically large country, with a diverse society, Australia has reaped the benefits of the federal system. Its people frequently take advantage of the expanded political rights given to them by the system, and invoke its safeguards, for example, by electing different political parties to state and Commonwealth governments, and to the two Houses at the Commonwealth level.

The Senate and representation

The framers of the Constitution determined that the Senate would best operate if it were directly elected by the people of the states. It was suggested at that time that the best method of election would be proportional representation, which is designed to ensure that representatives are elected in proportion to their support among the electors. This system was not written into the Constitution, however; instead it was left to the Commonwealth Parliament to determine the actual method of election. The system of proportional representation, which, as was suggested when the Constitution was drawn up, is the logical method for electing representatives of a large area such as a state, was not adopted until 1948, taking effect in the elections of 1949 (see Chapter 4, Elections for the Senate).

The Senate by its constitutional design enlarges the Parliament's capacity to represent the diversity of the Australian people by providing a balance to the numerical preponderance of the more populous states in the House of Representatives. As a consequence of the 1948 proportional method of electing senators, it does so in a fashion which more accurately reflects the state of electoral opinion in the nation. It corrects dysfunctions of the single member electoral system used for choosing the House of Representatives and thereby provides parliamentary representation for individuals and parties with significant voter support, which would be otherwise unrecognised in parliamentary terms except where such support is geographically concentrated.

The important role which the method of electing senators has in enhancing the representative capacity of the Commonwealth Parliament may be seen in the information in Table 1, which demonstrates that the party composition of the Senate almost invariably reflects the party disposition of voting in the electorate more closely than does the House of Representatives. As already observed, one effect of the Senate method is to remedy explicit deficiencies in the single member electorate system used for electing members of the House of Representatives.

Table 1 sets out, in abridged form, information concerning the relationship of percentage of the vote to percentage of seats in the Senate and the House of Representatives respectively for elections since 1949. While a direct correspondence between percentage of the vote and percentage of seats is rare, it is clearly the case, for almost all elections, that the correspondence between percentages of votes and of seats is closer in the Senate than in the House of Representatives. Moreover, it is almost never the case that the correspondence in the House of Representatives is closer than in the Senate.

The electoral system of the House of Representatives regularly awards a majority of seats, and government, to parties which secure only a minority of electors' votes, occasionally less than 40 percent, and on several occasions less than those of the major losing parties.

Table 1 suggests that, in a House of Representatives election, the imbalance between percentage of votes and seats is most marked in what is known as a "landslide" victory. In 1958, for instance, the Australian Labor Party (ALP) received 42.8 percent of the vote in the Senate election and 42.9 percent in the House election. In that election, the ALP secured 46.9 percent of the Senate places at issue, but only 37.9 percent in the House. Again, in 1975, 40.9 percent of the Senate vote secured 42.2 percent of the Senate places for the ALP; a higher percentage of the vote in the House of Representatives, 42.8 percent, brought the ALP only 28.4 percent of seats in the House. Confirming the propensity of the House of Representatives method of election to exaggerate majorities, in 1983 a 49.5 percent share of the House vote yielded 60 percent of the seats for the ALP; in the same election, 43.6 percent of the vote for the Liberal and National parties brought a 40 percent share of the seats in the House. In the Senate, an ALP share of 46.9 percent of places in the Senate reflected a 45.5 percent of the vote; in this case, the Liberal and National parties' 39.9 percent of the vote brought 43.8 percent share of places in the Senate. In their "landslide" victory of 1996, the Liberal and National parties secured 63.6 percent of the seats in the House with 47.3 percent of the vote; in the Senate their 44 percent of the vote delivered 50 percent of seats. In 1998 the Liberal and National parties secured a majority in the

House with less than 40 percent of the votes and fewer votes than the Labor Party; in the Senate their votes were more accurately reflected.

Complaints by governments that proportional representation makes it impossible for the winning party to secure a majority in the Senate were refuted by the 2004 election, in which the Liberal and National parties secured a Senate majority of one with 45 percent of votes, while their majority in the House was again exaggerated. Those majorities were lost in the 2007 election, when the Senate results again produced a more balanced outcome.

The state basis of Senate elections does not significantly exaggerate representation in the Senate. While there are cases where election of a single senator brings a measure of exaggeration, it is usually the case that the share of places secured by minor parties is less than their share of the vote. In the case of the Australian Democrats, it was only in 1984 that the reverse was conspicuously the case (a 7.6 percent share of the vote brought a 10.9 percent share of seats). In 1975 a one percent share of the vote brought the Liberal Movement one seat, that is, 1.67 percent of the places. In the 1990, 1993 and 1996 elections for the Senate, Green shares of the vote, 2.8, 2.9 and 2.4 percent respectively, brought 2.5, 2.5 and 2.5 percent shares of the seats contested. In 1998, 2001, 2004 and 2007 the minor parties generally were underrepresented, but still more accurately represented in the Senate than in the House. It thus appears that even the divergence of the populations of the various states and territories does not have a significant effect on the national representivity of the Senate.

A very clear example of the capacity of the Senate system to improve representation in the Commonwealth Parliament is party representation of Tasmanians. In the period from the simultaneous dissolutions of 1975 to the general election for the House and the Senate in 1987, notwithstanding a party share of the vote of from 40.3 percent (1983) to 45.1 percent (1980), no candidate endorsed by the Australian Labor Party for a House seat was successful. In the same period there were 4 to 5 Labor senators from Tasmania. In 1998, 2001 and 2007, this situation was reversed, with Tasmanian Liberal Party voters unrepresented in the House.

More generally, the Senate has provided opportunity for parliamentary representation for parties, groups and individuals enjoying significant voter support which goes unrecognised in the single member electorate system by which members of the House of Representatives are chosen. These include the Democratic Labor Party from 1955 to 1974, the Liberal Movement (1974-81), the Australian Democrats (1977-2008) and the Greens.

The effect of proportional representation on the representative character of the Senate is also illustrated by Table 2, which shows party affiliations in the Senate since 1901.

The representative character of the Senate has enabled it to uphold the responsibility of governments to Parliament. Much of the traditional doctrine on this question of responsibility derives from a period before the emergence of rigid parties and disciplined majorities within Parliament, most conspicuously in lower houses, the control of which is *the* condition of a ministry taking and maintaining office. In Australia this issue has added importance because there are few other national legislatures in which party voting is so disciplined as it is in the House of Representatives. This being so the need for alternative parliamentary avenues for holding a government to account is pronounced, and this need in Australia is supplied by its

elected Senate. Since 1949 there have been only four relatively short periods (1951-56, 1959-62, 1976-81, 2005-07) in which a ministry has had a majority in the Senate. Conversely, the Opposition party in the House of Representatives, irrespective of its partisan complexion, has not had a majority in the Senate (with the exception of 1949-51 and, in unusual circumstances, in 1974-75). Accordingly, it does not follow that a ministry lacking a secure majority in the Senate is automatically confronted by a hostile Opposition majority. Any attempt by an Opposition to achieve its partisan ends by use of its numbers in the Senate must, to succeed, have the support of other non-government senators. The Senate when functioning as a repository of and forum for responsibility is thus more than a mere venue for a clash between government and Opposition working on the basis of pre-determined numbers. Governments have therefore been held to account in the Senate more effectively than in a house where they are always supported by a party majority.

A decline of accountability accompanying ministerial control of both Houses of the Parliament may well in the long run be adverse to governments themselves as well as to the country generally. This was the lesson that many drew from the fall of the then government in 2007 after its period of majority in the Senate gained in the 2004 elections.

All free systems of government need checks and balances against any excessive concentration of power and, so far as the Australian system is concerned, the Senate is the most important of the constitutional checks and balances, the more so because it is an elected institution. Lack of control of the Senate can no doubt be inconvenient to a government and at times frustrating, but such considerations are secondary to the greater good of responsible checks and balances exercised by a second chamber elected by universal adult franchise and closely reflecting the diversity of electoral opinion in the nation.

(For a refutation of the often-made claim that proportional representation is incompatible with "efficiency" (usually defined in economic terms), see Arend Lijphart, 'Australian Democracy: Modifying Majoritarianism?', in *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, Papers on Parliament No. 34, Department of the Senate, 1999. It is not necessary to sacrifice accountability of government to achieve "efficiency".)

Functions of the Senate

The functions of the Australian Senate may be summarised as follows:

(1) As an essential of federalism, to ensure adequate representation of the people of all the states, the main elements being:

   (a) equal representation of the people of the Original States;

   (b) equal legislative powers: except for the financial initiative, powers which, in effect, are equal to those of the House of Representatives: the Senate cannot be compelled to pass any proposed legislation; except for certain financial bills it has unrestricted right of amendment; in respect of those money bills which it cannot

amend, the Senate has the right to make, and to insist on, requests to the House of Representatives for amendments.

(2) To balance domination of the House of Representatives by members from the more populous states whereby, of 150 members, 115 represent the three eastern states of New South Wales, Victoria and Queensland.

(3) To provide representation of significant groups of electors not able to secure the election of members to the House of Representatives.

(4) To review legislative and other proposals initiated in the House of Representatives, and to ensure proper consideration of all legislation.

(5) To ensure that legislative measures are exposed to the considered views of the community and to provide opportunity for contentious legislation to be subject to electoral scrutiny. The Senate's committee system has established a formal channel of communication between the Senate and interested organisations and individuals, especially through developing procedures for reference of bills to committees.

(6) To provide protection against a government, with a disciplined majority in the House of Representatives, introducing extreme measures for which it does not have broad community support.

(7) To provide adequate scrutiny of financial measures, especially by committees considering estimates.

(8) To initiate non-financial legislation. The Senate's capacity to initiate proposed legislation effectively means that the Parliament is not confined in its opportunities for considering public issues in a legislative context to those matters covered by bills brought forward by the executive government.

(9) To probe and check the administration of the laws, to keep itself and the public informed, and to insist on ministerial accountability for the government's administration. The informing function is well expressed in the following statement by Woodrow Wilson, President of the United States, 1913-21:

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinise these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function. (*Congressional Government*, 1885, Meridian, 1956, p. 193.)

(10) To exercise surveillance over the executive's regulation-making power. In the exercise of this function, either House may disallow a regulation made by the executive government, and the concurrence of the other House in the vote of disallowance is not necessary. This gives the Senate a special character not, in practice, enjoyed by the House of Representatives, where, because it is dominated by a disciplined majority supporting the government, the carrying of a disallowance motion is rare. It has been mainly in the Senate that the executive government's use of its regulation-making power has been effectively scrutinised.

(11) To protect personal rights and liberties which might be endangered if there were a concentration of unrestrained power in the House of Representatives. The protection of the rights and liberties of citizens is a feature of the Senate's consideration of proposed legislation, the executive's regulation-making power, and administrative decisions. Major avenues for meeting these responsibilities of the Senate are the Standing Committees for Scrutiny of Bills and Regulations and Ordinances.

(12) Because the Senate is rarely dominated by either of two major sides of Australian politics, to provide effective scrutiny of governments, and enable adequate expression of debate about policy and government programs. The significance of the Senate's role in these functions is that it is an elected and parliamentary forum. Other outlets for such debates in the community, for example, public conferences or press, radio and television, are not inherent institutions of democracy, though vital to it. As a parliamentary forum, moreover, the Senate is one place where a government can be, of right, questioned and obliged to answer. As such the Senate has been rightly seen as the safeguard of the Commonwealth.

Armed as it is by the Constitution with extensive powers, it is in the judgment of the Senate of the day to decide whether or not to insist on any of its legislative amendments disagreed to by the House of Representatives, or in certain cases to refuse to pass a bill at all.

As such power should be used circumspectly and wisely, factors which the Senate may take into account in reaching such decisions include:

(1) A recognition of the fact that the House of Representatives represents in its entirety, however imperfectly, the most recent choice of the people whereas, because of the system of rotation of senators and except in the case of simultaneous dissolution of the two Houses, one-half of the Senate reflects an earlier poll.

(2) The principle that in a bicameral parliament one house shall be a check upon the power of the other.

(3) Whether the matter in dispute is a question of principle for which the government may claim electoral approval. The Senate is unlikely to resist legislation in respect of which a government can truly claim explicit electoral endorsement, but the test is always likely to be the public interest.

(4) The right of the Senate to examine all measures of public policy.

Significant occasions of the exercise by the Senate of its functions are recorded in the relevant chapters of this work and in appendix 10, Chronology of the Senate, 1901-2008.

Legislative powers

As has been noted, the choice by the Australian founders of a federal system of government involved the limitation of the law-making powers of the national legislature to matters prescribed by the Constitution. The subjects on which the Commonwealth Parliament may legislate are listed in section 51 of the Constitution, and other sections also empower the Parliament to make laws on particular matters. Some matters are exclusively within the legislative power of the Commonwealth, that is, the states may not make laws in respect of those matters. Examples are customs and excise duties and bounties (s. 90) and the issuing of money (s. 115). Most subjects on which the Commonwealth Parliament can legislate are concurrent with state powers, that is, the states can also legislate in relation to them; this includes most of the subjects listed in section 51. When a law of the Commonwealth in relation to any of these subjects is inconsistent with a law of the state, the Commonwealth law prevails (s. 109). The Commonwealth is positively forbidden to legislate in relation to some matters, such as any establishment of religion (s. 116). Some subjects are not prescribed by the Constitution as subjects on which the Commonwealth can legislate, and those subjects, such as education, are left to the states. The Commonwealth Parliament may, however, legislate indirectly in relation to such subjects, for example, through its power to grant financial assistance to the states (s. 96).

The Constitution confers the legislative power of the Commonwealth on the two Houses of the Parliament and the executive government acting together. The effect of this is that each of the two Houses must agree to a proposed law (a bill) before it can become a law.

The only distinction between the powers of the Houses in relation to proposed laws is contained in section 53 of the Constitution, and relates to the initiation and amendment of proposed financial legislation. Briefly, the Senate cannot originate a taxing bill or an appropriation bill; amend a taxing bill or a bill appropriating money for the ordinary annual services of the government; or amend any bill so as to increase any proposed charge or burden on the people. The Senate may, however, at any stage return to the House of Representatives any of the bills which it cannot amend, with a request for amendment, proposed by any senator, and can insist on its requests. The rationale of these provisions is related to the system of cabinet government; they confer on the executive government in the House of Representatives the initiative in respect of financial proposals.

Whether or not the Senate has the power to amend a proposed law does not affect the basic feature of the legislative procedures of the Commonwealth Parliament, namely that a bill can become law only if supported by both Houses, and neither House can be compelled to pass a bill.

The exercise by the Senate of its legislative powers is covered by Chapters 12 and 13 on Legislation and Financial Legislation.

Other powers

In relation to powers other than legislative powers, the Constitution provides that the "powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth" (s. 49).

In 1987 the Parliamentary Privileges Act was enacted by the Parliament under this section. The powers conferred by section 49 and the statute are dealt with in Chapter 2, Parliamentary Privilege.

Composition of the Senate

The Senate consists of 76 senators, 72 of whom are elected by the people of the six states, 12 from each. The people of the Australian Capital Territory and the Northern Territory each elect two senators.

The Constitution, s. 24, authorises the Parliament to change the sizes of the two Houses, but they are linked by the provision that the number of members of the House "shall be, as nearly as practicable, twice the number of the senators". For this purpose, senators for the territories are not counted (*Attorney-General for NSW v Commonwealth* 1977 139 CLR 527). The effect of this provision is to maintain the role of the Senate of ensuring that the Commonwealth Parliament is broadly representative of the nation as a whole and not subject to excessive domination by members from the more populous states. This is of considerable practical importance if, following simultaneous dissolution of the two Houses, they remain in dispute over legislation and a joint sitting is required (see Chapter 21 for further consideration of this matter). Section 122 of the Constitution authorises the Parliament to grant representation to the territories.

From 1901 until 1949, the size of the Senate was 36, six from each state. From 1949 until 1975, it was 60, ten from each state. In 1975 the size of the Senate was increased to 64 by addition of four senators elected by the two major territories (two each). The size of the Senate was again increased in 1984 by increasing the number of senators from each state from ten to twelve. (The changes in the sizes of the Houses were accomplished by the Representation Acts; the provisions for territory senators are now in the Commonwealth Electoral Act, ss 40-44.)

The Constitution provides that in deciding the size of the Senate, "equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators" (s. 7). A state cannot be deprived of its equal representation in the Senate without the consent of its people (s. 128).

The Constitution states that senators shall be "directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate" (s. 7). No use has been made of the possibility of departing from the principle of each state voting as one electorate. Because of the improved representation of electors by the proportional method of election of senators instituted in 1948, the principle of each state voting as one electorate is now essential to the Senate's, and the Parliament's, effectiveness and should be retained. This principle is a protection against

"localism" in the election of senators. It also strengthens the bicameral quality of the Commonwealth Parliament by giving each House a distinctive system of election. The representational value of the Senate would be diminished not only if the representative base were to be subject to artificial manipulation, but, even more so, if single-member electorates were to be introduced, for it is in addressing the inadequacies of an electoral system on the single-member basis as used for the House of Representatives that the Senate is able to strengthen the representativeness of the Parliament as a whole. In this respect the compositional structure of the Australian Senate is, by design, superior to that of the United States Senate where, in the normal course, only one senator is elected in a state on each occasion.

The Constitution also states that, until the Commonwealth Parliament decides otherwise, the Queensland Parliament "may make laws dividing the State into divisions and determining the number of senators to be chosen for each division" (s. 7). This provision has never been used. In 1982 the Commonwealth Parliament passed a private senator's bill, the Senate Elections (Queensland) Bill 1981, removing from the Queensland State Parliament the right to divide Queensland for the purpose of electing senators.

When it was decided, in accordance with section 122 of the Constitution, to include senators elected by the Australian Capital Territory and the Northern Territory, the principle of proportional representation was retained by providing for election of two senators by each territory voting as a whole. Territory representation in the Senate accordingly recognises both majority and minority electoral strength. In the case of the ACT, for instance, since 1980 all House of Representatives members have usually been from the Australian Labor Party; in the Senate, however, one senator has been from each major party.

Casual vacancies

If the place of a senator becomes vacant before expiration of a term, for example, by death or resignation, the Constitution provides (s. 15) that the vacancy shall be filled by the state Parliament, both houses, in all cases except Queensland (which has a unicameral Parliament), sitting and voting together. Should the state Parliament not be in session, "the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens". (For further information see Chapter 4, Elections.)

As a result of an amendment to the Constitution passed in 1977, where a vacancy is left by a senator who, at the time of election, was publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented to be such a candidate, "a person chosen or appointed under this section [15] in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party".

The purpose of this provision is to maintain the integrity of the proportional method of voting introduced in 1948 so far as the filling of casual vacancies is concerned. From the inception of this system of voting until 1975 such vacancies as arose were, by convention, filled by people of the same party affiliation. In 1975, however, two casual vacancies, both involving senators from

the Australian Labor Party, one in New South Wales (arising from the resignation of Senator L.K. Murphy), one in Queensland (arising from the death of Senator B.R. Milliner), were filled by non-ALP candidates.

The current section 15 of the Constitution has not fully resolved the problem of filling casual vacancies caused by the death, resignation or disqualification of a senator in a manner which preserves the representational strength deriving from the proportional method of election. Further analysis of this aspect is contained in Chapter 4, Elections.

The decision of the electors in adopting a replacement section 15 of the Constitution in 1977 for filling casual vacancies is a clear demonstration of public support for the proportional method of composing the Senate embodied in the 1948 legislation. Other examples of support for this method may be found in its adoption for electing Legislative Councils in New South Wales in 1978, South Australia in 1975, Western Australia in 1989 and Victoria in 2003.

In order to preserve equality of state representation in the Senate, and to maintain proper representation of electoral opinion, the Senate has taken a close interest in prompt filling of casual vacancies when they arise. This matter is covered more fully in Chapter 4.

Chapter 4 also includes information about filling casual vacancies arising in the representation of the Australian Capital Territory and the Northern Territory.

Rotation of senators and terms of office

The term of senators from the states is six years commencing on 1 July following a periodical election. Six places from each state are contested at each alternate election. The Senate is thus a continuing chamber with no places being vacant except for casual vacancies.

The terms of senators elected in an election arising from a simultaneous dissolution date from 1 July preceding the election. Following such an election senators are divided into two classes: short-term senators whose terms expire on 30 June three years after their nominal date of commencement; and long-term senators whose terms expire on 30 June six years after their nominal date of commencement. It is the Senate itself which decides the method by which its members are divided into two classes and which senators are assigned to each class (Constitution, s. 13). For more details see Chapter 4, Elections.

The election of territory senators coincides with general elections for the House of Representatives, and their term expires and the new term begins on the day of the election (Commonwealth Electoral Act, s. 42).

The six year fixed term of senators derives in part from the Senate's character as a continuing House. It stems also from the view that an effective Parliament reflects the state of electoral opinion at different stages of its development rather than at a particular date. It is also a feature of the Senate's character contributing to its role as a House of review and reflection.

The six year term and the principle of rotation were based on comparable provisions in the Constitution of the United States concerning the United States Senate. The objectives of those

provisions as expounded by *The Federalist* were to counteract the dangers of instability which would arise if all places in the Congress were contested at biennial intervals, and to create conditions enabling some members of Congress to become expert in legislation and "the affairs and the comprehensive interests of their country" (*The Federalist*, No 62, p. 317). In the case of the United States Senate, with its special responsibilities concerning foreign relations, especially the ratification of treaties, the longer term was perceived to be an advantage (*ibid*., p. 318).

In the case of the Australian Senate the benefits of the distinctive arrangements for election and tenure are most readily observable in its extensive committee activity, in scrutiny of primary and subordinate legislation; in the twice-yearly examination of estimates; and in review of policy and administration.

The commencement date for Senate terms was originally 1 January; 1 July was fixed as the commencement date following amendment of the Constitution in 1906.

The provision for back-dating the commencement of senators' terms following a simultaneous dissolution preserves the Senate's continuity, with fixed terms for senators and a fixed starting point. It has, however, the effect of shortening the terms of both short and long-term senators by up to one year.

One incidental effect is that successive governments have brought forward dissolutions of the House of Representatives to coincide with periodical elections of senators, usually but not invariably those in the short-term class (1977 and 1984; 1955 was the exception). This effect of current constitutional provisions on the timing of elections could be reduced if the terms of state senators after simultaneous elections for the two Houses were deemed to commence on 1 July following such elections (see Chapter 4, Elections for the Senate, under Terms of state senators).

In the past there have been four attempts to secure amendment of the Constitution to provide that the term of a senator, barring the particular circumstances of a simultaneous dissolution of the two Houses, should be that of two terms of the House of Representatives. Such an amendment would change the term of a senator from a fixed to a maximum term.

Although these amendments were defeated by the electors on three occasions (1974, 1977, 1984), the Constitutional Commission of 1986-88 recommended that the proposal should be revived. The Commission did not offer any particular reason for resubmission of the matter, yet again, to the electors, merely stating that the reasons for so doing in the past "remain convincing" (*First Report*, PP 97/1988 (volume 2), p. 345). In 1988 the proposal, with maximum terms of four years, was again put to a referendum and again defeated, in this instance by one of the largest margins in the history of referendums in Australia.

The proposal, if adopted, would fundamentally alter the nature of bicameralism in the Commonwealth Parliament by removing one of its essential features, the principle of fixed, periodical elections, with a fixed, autonomous electoral cycle for the Senate. To lock the Senate into an electoral cycle dependent upon general elections for the House of Representatives, which can occur at any time, would significantly weaken its position as an independent house, and dilute its capacity to embrace electoral opinion which goes unrepresented in the method used for electing members of the House of Representatives. It would also remove a significant restraint on

governments holding early elections for partisan reasons. The overwhelming weight of argument supports retention of the present constitutional arrangements which allow for, but do not compel, holding periodical elections for the Senate simultaneously with general elections for the House of Representatives.

The nexus

The Constitution provides that the number of members of the House of Representatives "shall be, as nearly as practicable, twice the number of the senators" (s. 24). This not only ensures an appropriate balance between the Houses in terms of their representational roles; it also places limits on the extent to which the House of Representatives can prevail over the Senate in the event of a joint sitting following a simultaneous dissolution: essentially, a proposed law must be supported by something more than a bare majority in the House if it is to have a prospect of securing a majority in a joint sitting.

A proposal to alter the Constitution to remove this so-called nexus between the Senate and the House was rejected by the electors at referendum in 1967. The purpose of that proposal was to allow expansion of the size of the House without increasing the size of the Senate.

The Constitutional Commission of 1986-88, however, revived the proposal. The Commission's approach recognised that the nexus plays two roles: one in regulating (but not limiting) the size of the Parliament; the other in the procedures governing a disagreement between the Houses. Other methods were proposed for containing the size of the Parliament; these would place limits on the size of the Senate without any comparable limits on the size of the House of Representatives. To address the situation arising in the case of joint sittings the Commission proposed a special majority to take account of the effect which ending the nexus would have on voting in that context.

The Commission's analysis, however, did not include any consideration of the representational significance of the Senate, particularly its role in enabling opinion virtually excluded from the House of Representatives by the single member electorate system to be represented in Parliament. The Commission's approach was hostile to democracy in that it showed little concern for a role in Parliament for parties or individuals enjoying significant electoral support but unable to gain representation in of the House of Representatives.

Maintaining the Senate's capacity as a chamber broadly representative of both majority and minority electoral opinion in Australia is critical to its continuing legitimacy as a House with powers essentially equal to those of the House of Representatives, and to the role accorded to it in a joint sitting.

Another link between the two Houses is that, apart from provisions in the Constitution, electoral legislation for each House requires the support of both Houses. Thus, while in internal matters each House governs itself, elections for each House are governed by legislation. This is appropriate in a constitutional democracy.

Rules and orders

Section 50 of the Constitution authorises the Senate to make rules and orders with respect to the mode in which its powers, privileges, and immunities may be exercised and upheld, and the order and conduct of its business and proceedings. Standing orders and other rules made by the Senate embody procedures designed to ensure that parliamentary business, especially legislation, is conducted in an orderly, open and predictable manner devoid of surprise, haste or sleight of hand.

On 6 June 1901 the Senate adopted temporary standing orders which were, with some exceptions, the standing orders of the House of Assembly of South Australia. The reasons for the adoption of those particular standing orders were that the President of the Senate, a South Australian, was familiar with them; and that, having been used to general satisfaction by the convention which drafted the Constitution, more senators were acquainted with them than any other standing orders. The temporary standing orders remained in force until 1903. On 1 September of that year the permanent standing orders came into force. They were replaced by new standing orders adopted on 21 November 1989.

The standing orders of 1903 were intended, amongst other things, to embody the meaning and spirit of the Constitution concerning procedure and the relationship between the two Houses; to encompass what had been the universal practice in state parliaments, so that the standing orders were, as far as possible, a complete code of practice; to simplify procedure, including by abolition of procedures and practices (based on obsolete conditions) which had no effect or significance; and to provide standing orders identical to those of the House of Representatives, except in those cases where difference could not be avoided (Report of Standing Orders Committee, PP L7/1901). The 1989 standing orders updated and consolidated those of 1903 to accord with current procedures.

Broadly speaking, the standing orders were framed for the purpose of enabling the Senate to be master of its own procedure, but recognising the fundamental parliamentary rule that there should be safeguards against surprise and haste.

In interpreting the standing orders, a cardinal rule is that each standing order must be read in conjunction with the others (ruling of President Givens, SD, 11/6/1914, p. 2002). The practice of the Senate is that where there may be doubt with respect to the interpretation of a rule or order, the chair leans towards a ruling which preserves or strengthens the powers of the Senate and the rights of senators, rather than towards a view which may weaken or reduce the Senate's powers or senators' rights.

Except so far as is expressly provided, the standing orders do not in any way restrict the mode in which the Senate may exercise and uphold its powers, privileges, and immunities (SO 208). This provision saves for the Senate all powers, privileges, and immunities conferred on it by the Constitution. Where there is a clear direction in the Constitution as to the powers of the Senate, that direction overrides any standing order or practice of the Parliament (ruling of President Givens, SD, 15/7/1921, p. 10148-9).

When the standing orders were considered by the Senate, a motion was made to insert the following provision:

> In all cases not provided for hereinafter, or by Sessional or other Orders, resort shall be had to the rules, forms and practice of the Commons House of the Imperial Parliament of Great Britain and Ireland in force on 1 January 1901, which shall be followed as far as they can be applied to the proceedings of the Senate.

Although this rule had been included in the temporary standing orders adopted by the Senate in 1901, and a similar standing order was adopted by the House of Representatives, the Senate rejected the proposed new standing order by 18 votes to 5. It was rightly contended that the Senate, working under a new Constitution, ought to have its own practice and procedure.

The Senate's first President, Senator Richard Baker, explained the Senate's decision thus: "The avowed intention of the Senate in omitting the Standing Order was that in cases not positively and specifically provided for we should gradually build up 'rules, forms, and practices' of our own, suited to our own conditions". (PP S1/1904, p. 1).

The Senate's decision to omit the standing order necessarily meant that succeeding Presidents have found it necessary to give many rulings, not only in connection with interpretation of the standing orders, but in those instances where the standing orders are silent. As it is, the Senate has for its guidance the practice of other houses without the bondage of following procedure which may be unsuited to Australian conditions.

A President's ruling which has not been dissented from by the Senate is equivalent to a resolution of the Senate (ruling of President Baker, SD, 4/10/1906, pp 6089-90; rulings of President Gould, SD, 9/8/1907, pp 1690-1; 18/10/1907, p. 4909).

The Senate may at any time amend its standing orders, and the current standing orders have been amended, or added to, on many occasions since their adoption in 1989.

Any senator may submit to the Senate a substantive motion for the alteration of any standing order, or for the adoption of new standing orders. Such motion requires notice in the ordinary way. The motion being agreed to, the standing orders would be amended accordingly. The more usual practice, however, and one which makes use of the expertise of the Procedure Committee (before 1987 called the Standing Orders Committee), is to submit proposals to amend the standing orders to that committee, with a request to report on the proposals. Other committees often make recommendations for references of matters to the Procedure Committee. Alternatively, the committee may on its own initiative present a report recommending amendments to the standing orders, without a prior reference from the Senate.

A report from the Procedure Committee is usually considered, sometimes in committee of the whole, on a subsequent day. The advantages of consideration in committee of the whole are that each recommendation of the Procedure Committee may be considered *seriatim* and senators are able to speak to each question more than once until full understanding and agreement are reached (for procedure in committee of the whole, see Chapter 14). The committee of the whole may make amendments to the recommendations of the Procedure Committee. The resolutions of the committee of the whole are subject to adoption by the Senate. A report from the Procedure

Committee may be considered by the Senate, rather than in committee of the whole. Upon the order of the day being read for the consideration of the report, motions may then be moved to adopt recommendations of the committee. The Senate may make modifications to the recommendations of the Procedure Committee.

On the Senate agreeing to amendments to the standing orders, a motion is sometimes moved that the amended standing orders come into force on some future date. The merit of this practice is that senators have an opportunity of considering their effect. In the absence of such a motion, the new standing orders come into force immediately upon their adoption by the Senate.

In 1975 the Senate resolved that certain proposed amendments to the standing orders would operate initially as sessional orders and, unless otherwise ordered, that they would become amendments to the standing orders at the end of six months (11/2/1975, J.499, 860).

Sessional orders are orders which have effect only for a session of Parliament. They are used when the Senate wishes to try out new procedures on a temporary basis or otherwise wishes to make orders of limited duration.

The standing orders contain provisions allowing the suspension of the standing orders and other rules of the Senate where necessary to achieve particular purposes, subject to certain procedural safeguards (see Chapter 8, Conduct of Proceedings, under Suspension of standing orders). These provisions illustrate the way in which the Senate's rules seek to allow the majority of the Senate to act expeditiously to achieve its ends while ensuring that the rights of minorities are not put aside, even temporarily, without due deliberation.

TABLE 1: VOTES AND SEATS IN ELECTIONS, 1949–2007 (See Supplement)

Election	SENATE				HOUSE OF REPRESENTATIVES		
	Party	% of vote	Seats	% of seats	% of vote	Seats	% of seats
1949	ALP	44.9	19	45.2	46	48	39
	LP }	50.4	19	45.2	39.3	55	44.7
	CP }		4	9.5	10.8	19	15.4
1951	ALP	45.9	28	46.7	47.7	54	43.9
	LP }	49.7	26	43.3	40.5	52	42.3
	CP }		6	10	9.7	17	13.8
1953	ALP	50.6	17	53.1			
	LP }	44.4	13	40.6			
	CP }		2	6.3			
1954	ALP				50.1	59	48
	LP }				38.5	47	38.2
	CP }				8.5	17	13.8
1955	ALP	40.6	12	40	44.7	49	39.5
	LP }	48.8	13	43.3	39.7	57	46
	CP }		4	13.3	7.9	18	14.5
	ACL	6.1	1	3.3	5.1	—	—
1958	ALP	42.8	15	46.9	42.9	47	37.9
	LP }	45.2	13	40.6	37.1	58	46.8
	CP }		3	9.4	9.3	19	15.3
	DLP	8.4	1	3.1	9.4	—	—
1961	ALP	44.7	14	45.2	48	62	50
	LP }	42.1	12	38.7	33.5	45	36.3
	CP }		4	12.9	8.5	17	13.7
	DLP	9.8	1	3.2	8.7	—	—
1963	ALP				45.5	52	41.9
	LP }				37.1	52	41.9
	CP }				8.9	20	16.1
	DLP				7.4	—	—
1964	ALP	44.7	14	46.7			
	LP }	45.7	11	36.7			
	CP }		3	10			
	DLP	8.4	2	6.7			
1966	ALP				40	41	33
	LP }				40.1	61	49
	CP }				9.8	21	16.9
	DLP				7.3	—	—
1967	ALP	45	13	43.3			
	LP }	42.8	10	33.3			
	CP }		4	13.3			
	DLP	9.8	2	6.7			
	Others	2.4	1	3.3			

	SENATE				HOUSE OF REPRESENTATIVES		
Election	**Party**	**% of vote**	**Seats**	**% of seats**	**% of vote**	**Seats**	**% of seats**
1969	ALP				47	59	47.2
	LP }				34.8	46	36.8
	CP }				8.6	20	16
	DLP				6	—	—
1970	ALP	42.2	14	43.8			
	LP }	38.2	11	34.4			
	CP }		2	6.3			
	DLP	11.1	3	9.4			
	Others	5.6	2	6.3			
1972	ALP				49.6	67	53.6
	LP }				32	38	30.4
	CP }				9.4	20	16
	DLP				5.2	—	—
1974	ALP	47.3	29	48.3	49.3	66	51
	LP }	43.9	23	38.3	34.9	40	31.5
	CP }		6	10	10.8	21	16.5
	DLP	3.6	—	—	1.4	—	—
	LM	1	1	1.7	0.8	—	—
	Others	2.9	1	1.7	0.4	—	—
1975	ALP	40.9	27	42.2	42.8	36	28.4
	LP }	51.7	27	42.2	41.8	68	53.5
	NCP }		8	12.5	11.3	23	18.1
	DLP	2.7	—	—	1.3	—	—
	LM	1.1	1	1.5	0.6	—	—
	Others	3.6	1	1.5	1.7	—	—
1977	ALP	36.8	14	41.2	39.6	38	30.6
	LP }	45.6	16	47	38.1	67	54
	NCP }		2	5.9	10	19	15.3
	AD	11.1	2	5.9	9.4	—	—
	Others	4.9	—	—	1.4	—	—
1980	ALP	42.3	15	44.1	45.1	51	40.8
	LP }	43.5	13	38.2	37.4	54	43.2
	NP }		2	5.9	8.9	20	16
	AD	9.3	3	8.8	6.6	—	—
	Others	3.1	1	2.9	1.7	—	—
1983	ALP	45.5	30	46.9	49.5	75	60
	LP }	39.9	24	37.5	34.4	33	26.4
	NP }		4	6.3	9.2	17	13.6
	AD	9.6	5	7.8	5	—	—
	Others	3.2	1	1.6	1.7	—	—
1984	ALP	42.2	20	43.5	47.5	82	55.4
	LP }	39.5	17	37	34.4	45	30.4
	NP }		3	6.5	10.6	21	14.1
	AD	7.6	5	10.9	5.4	—	—
	NDP	7.2	1	2.2	—	—	—

	SENATE				HOUSE OF REPRESENTATIVES		
Election	**Party**	**% of vote**	**Seats**	**% of seats**	**% of vote**	**Seats**	**% of seats**
1987	ALP	42.8	32	42.1	45.8	86	58
	LP }	42	27	35.5	34.6	43	29
	NP }		7	9.2	11.5	19	12.8
	AD	8.5	7	9.2	6	—	—
	NDP	1.1	1	1.3	—	—	—
	Others	3.1	2	2.6	2	—	—
1990	ALP	38.4	15	37.5	39.4	78	52.7
	LP }	41.9	16	40	35	55	37.2
	NP }		3	7.5	8.4	14	9.5
	AD	12.6	5	12.5	11.4	—	—
	Greens	2.8	1	2.5	1.4	—	—
	Others	2.7	—	—	3.4	1	0.7
1993	ALP	43.5	17	42.5	44.9	80	54.4
	LP }	43	15	37.5	37.1	49	33.3
	NP }		4	10	7.2	16	10.9
	AD	5.3	2	5	3.8	—	—
	Greens	2.9	1	2.5	1.9	—	—
	Others	3.8	1	2.5	4.7	2	1.4
1996	ALP	36.2	14	35	38.8	49	33.1
	LP }	44	20	50	38.7	75	50.7
	NP }				8.6	19	12.9
	AD	10.8	5	12.5	6.8	—	—
	Greens	2.4	1	2.5	1.7	—	—
	Others	6.7	—	—	5.5	5	3.4
1998	ALP	37.3	17	42.5	40.05	66	44.59
	LP }	37.7	17	42.5	34.09	64	43.24
	NP }				5.65	16	10.81
	AD	8.46	4	10	5.11	0	0
	Greens	2.72	0	0	2.1	0	0
	ON	8.99	1	2.5	8.39	0	0
	Others	4.85	1	2.5	4.61	1	0.68
2001	ALP	34.2	14	35	37.84	65	43.3
	LP }	41.6	20	50	37.08	68	45.3
	NP }				5.93	14	8.7
	AD	7.2	4	10	5.41	0	0
	Greens	4.8	2	5	4.96	0	0
	ON	5.5	0	0	4.34	0	0
	Others	6.1	0	0	4.45	3	2.0
2004	ALP	35.01	16	40	37.63	60	40
	LP }	45.04	21	52.5	40.47	74	49.3
	NP }				6.23	13	8.7
	AD	2.1	0	0	1.24	0	0
	Greens	7.66	2	5	7.19	0	0
	FF	1.76	1	2.5	2.01	0	0
	Others	8.43	0	0	5.23	3	2

Election	SENATE				HOUSE OF REPRESENTATIVES		
	Party	**% of vote**	**Seats**	**% of seats**	**% of vote**	**Seats**	**% of seats**
2007	ALP	40.3	18	45	43.38	83	55.33
	LP }	39.77	18	45	36.28	55	36.67
	NP }				5.49	10	6.67
	AD	1.29	0	0	0.72	0	0
	Greens	9.04	3	7.5	7.79	0	0
	FF	1.62	0	0	1.99	0	0
	Others	7.98	1	2.5	4.35	2	1.33

(Information in this table is based on figures supplied by the Australian Electoral Commission. Reference was made to *Federal Election Results 1949-1993*, by Gerard Newman, Commonwealth Parliamentary Library, Research Paper No. 24, 1993.)

Abbreviations

ACL	Australian Labor Party (Anti-Communist)
AD	Australian Democrats
ALP	Australian Labor Party
CP	Country Party
DLP	Democratic Labor Party
FF	Family First
LM	Liberal Movement
LP	Liberal Party of Australia
NCP	National Country Party
NDP	Nuclear Disarmament Party
NP	National Party
ON	One Nation

TABLE 2: PARTY AFFILIATIONS IN THE SENATE, 1901–2007 (See Supplement)

In all cases the figures reflect the composition of the Senate after newly-elected senators have taken their seats.

1901	Labor 8	Freetraders 17	Protectionists 11		
1903	Labor 14	Freetraders 12	Protectionists 8	Tariff Reformers 1	Independent 1
1906	Labor 15	Freetraders 12	Protectionists 6	Tariff Reformers 1	Independent 2
1910	Labor 23	Fusion 13			
1913	Labor 29	Liberal 7			
1914(a)	Labor 31	Liberal 5			
1917	Labor 12	Nationalists 24			
1919	Labor 1	Nationalists 35			
1922	Labor 12	Nationalists 24			
1925	Labor 8	Nationalists 25	Country Party* 3		
1928	Labor 7	Nationalists 24	Country Party* 5		
1931	Labor 10	Country Party* 5	United Australia Party 21		
1934	Labor 3	Country Party* 7	United Australia Party 26		
1937	Labor 16	Country Party* 4	United Australia Party 16		
1940	Labor 17	Country Party* 3	United Australia Party 16		
1943	Labor 22	Country Party* 2	United Australia Party 12		
1946	Labor 33	Liberal 2	Country Party* 1		
1949(b)	Labor 34	Liberal 20	Country Party* 6		
1951(a)	Labor 28	Liberal 26	Country Party* 6		
1953(c)	Labor 29	Liberal 26	Country Party* 5		
1955	Labor 28	Democratic Labor 2	Liberal 24	Country Party* 6	
1958	Labor 26	Democratic Labor 2	Liberal 25	Country Party* 7	
1961	Labor 28	Democratic Labor 1	Independent 1	Liberal 24	Country Party* 6
1964(c)	Labor 27	Democratic Labor 2	Independent 1	Liberal 23	Country Party* 7
1967(c)	Labor 27	Democratic Labor 4	Independent 1	Liberal 21	Country Party* 7

1970(c)	Labor 26	Democratic Labor 5	Independent 3	Liberal 21	Country Party* 5			
1974(a)	Labor 29	Independent 1	Liberal Movement 1	Liberal 23	Country Party* 6			
1975(a)(d)	Labor 27	Independent 1	Liberal Movement 1	Liberal 27	National Country Party* 8			
1977	Labor 26	Independent 1	Liberal 29	National Country Party* 6	Australian Democrats 2			
1980	Labor 27	Independent 1	Liberal 28	National Country Party* 3	Australian Democrats 5			
1983(a)	Labor 30	Independent 1	Liberal 24	National Party* 4	Australian Democrats 5			
1984(e)	Labor 34	Nuclear Disarmament Party 1	Independent 1	Liberal 28	National Party* 5	Australian Democrats 7		
1987(a)	Labor 32	Nuclear Disarmament Party 2	Independent 1	Liberal 27	National Party* 7	Australian Democrats 7		
1990	Labor 32	Independent 2	Liberal 29	National Party* 5	Australian Democrats 8			
1993	Labor 29	Independent 4(f)	Liberal 30	National Party* 6	Australian Democrats 7			
1996	Labor 29	Independent 3(g)	Liberal 31	National Party* 6	Australian Democrats 7			
1998	Labor 29	Independent 3(h)	Liberal 31	National Party*4	Australian Democrats 9			
2001	Labor 28	Independent 5(j)	Liberal 31	National Party*4	Australian Democrats 8(j)			
2004	Labor 28	Independent 1(k)	Liberal 33	National Party*6	Australian Democrats 4	Greens 4		
2007	Labor 32	Independent 2(k)	Liberal 32	National Party 5	Greens 5			

* In May 1975 the name "Country Party" was changed to "National Country Party" and in October 1982 the name "National Country Party" was changed to "National Party of Australia".

(a) The elections of 1914, 1951, 1974, 1975, 1983 and 1987 followed simultaneous dissolutions.
(b) Senate increased from 36 to 60 senators.
(c) Senate election held separately from House of Representatives.
(d) Senate increased from 60 to 64 senators following the election of territory senators - 2 from each of Australian Capital Territory and Northern Territory.
(e) Senate increased from 64 to 76 senators.
(f) 2 Greens (WA), 1 Ind (Tas), 1 Ind (Tas) until 1995 ALP.
(g) 1 Green (WA), 1 Green (Tas), 1 Ind (Tas). After August 1996 Labor 28 Independent 4.
(h) 1 Green (Tas), 1 Ind (Tas), 1 One Nation.
(i) Labor 28, Independent 4 from October 2001.
(j) 2 Greens, 2 Independents (both Tas), 1 One Nation. After July 2002, 7 Australian Democrats, 6 Independents.
(k) 1 Family First.