

Electing Australia's Senators

The role of the Senate

The Parliament of the Commonwealth of Australia, or the federal Parliament, is made up of two houses—the House of Representatives and the Senate. Both are directly elected by the people of Australia. The functions of the Senate are to represent the states equally and to review the proposals and decisions of the House of Representatives and the executive government. Equal representation of the states was intended by the framers of the Constitution to protect the less-populous states, Western Australia, Tasmania, South Australia and Queensland, against the possible domination of the more prosperous and more populous states of Victoria and New South Wales.

Thus section 7 of the Australian Constitution reads in part:

The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate....

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

Today there are twelve senators from each of the six states, and, since 1975, two from each of the Northern Territory and the Australian Capital Territory, making in all 76 senators.

The Australian Constitution provides the Senate with virtually the same power to legislate as the House of Representatives. The Senate has also developed a vigorous committee system, which scrutinises legislation and the decision-making processes of the government. Apart from the Senate of the United States of America, the Australian Senate is now generally considered to be the most powerful legislative upper house in the world.

While issues of importance to particular states still arise, the increasing importance of national issues and the growth of national political parties, reflecting the development of a strong national identity in Australia, have meant that the reviewing role of the Senate has become its principal function. This role has been strengthened by the method of electing senators.

Electing the Senate

Prior to 1948 the 'first past the post' and the group preference systems used for electing senators meant that all Senate seats in any state could be won by candidates of the same party. The Commonwealth Electoral Act of 1948 provided for the adoption of a system of vote-counting known as proportional representation.

Proportional representation is a somewhat complicated electoral system, which ensures that political parties gain representation in proportion to their share of the vote. The result has been that the membership of the Senate is now a truer reflection of the voters' support of the different political parties.

In introducing the legislation in 1948 the Attorney-General of the time, Dr H.V. Evatt, said that 'the fairest system and the one most likely to enhance the status of the Senate is that of proportional representation.' (*Commonwealth Parliamentary Debates*, 16 April 1948, p. 965).

Since 1949, when the first Senate election under proportional representation took place, elections have resulted in a Senate composed fairly evenly of government and non-government supporters, with the party of government, as determined by a majority of seats in the House of Representatives, most frequently without a Senate majority. Proportional representation has also enabled small parties and independents to gain representation in the Senate, providing a place in the federal Parliament for a wider expression of community viewpoints. By making the Senate more



A polling place during a federal election Image: Australian Electoral Commission

representative, proportional representation has contributed to the Senate's increasing sense of authority, exemplified by its capacity to take a strong position in the review of government legislation and administration.

Proportional representation—how it works

The House of Representatives and the Senate have different electoral means for registering electors' preferences. Both systems of voting are *preferential*, in that electors indicate an order of preference among the available candidates. The chief value of a preferential system is that it sorts the electors' choices on the basis of the *most preferred* candidate. It avoids the defect of the 'first past the post' system still in use in many major countries, whereby the candidate with more votes than any other candidate is elected, but may have only a minority of the total number of votes.

There are, however, important differences between the two preferential systems used for electing the House of Representatives and the Senate.

Preferential voting for the House of Representatives is designed to secure the election of one candidate with a majority of votes. If no candidate receives more than 50 per cent of first preference votes, the next preferences of the voters for the least successful candidates are distributed until one candidate emerges with a majority of votes.

Proportional representation voting, as used in the Senate, is designed to secure the election of several candidates in each state (twelve in the case of a double dissolution, six in the case of a regular half-Senate election) each of whom has obtained a number of votes equal to or exceeding a required quota (or proportion of votes) necessary for election. The quota is obtained by dividing the total number of formal votes by one more than the number of candidates to be elected, and adding one to the result. Thus, if the total of formal votes in a state at an election for six senators is 700 000, the quota is 100 001. That is, a candidate will need to win at least 100 001 votes to be elected.

Candidates receiving votes in excess of the quota, which is a proportion rather than a majority of the total vote, have their surplus votes distributed according to their electors' ranking of preferences. If all the positions have not then been filled by candidates obtaining quotas by this means, then the next preferences of the voters for the least successful candidates are distributed, until all vacancies are filled by candidates obtaining quotas. The end result is a constituency with several candidates elected, each representing a proportion or quota of the total vote.

Rotation of senators and half-Senate elections

In order to strengthen the Senate as a reviewing house, the Constitution provides that the Senate should have a continuing, but rotating, membership.

Senators are elected for six-year terms, half of them being elected every three years. To allow for this, the first Senate was divided into long and short term senators, and a similar division takes place when a completely new Senate is elected after a double dissolution. This system of rotation does not apply to the four senators from the two territories, who serve the same term of office as that of the members of the House of Representatives, normally three years. The six-year term for senators was adapted from the Constitution of the United States of America, and was intended to provide senators with a greater degree of independence from electoral pressures than is possible for members of the House of Representatives, who have to go to the polls every three years.

With the exception of an election of the whole Senate following a simultaneous dissolution of both Houses, state senators retire in rotation, half on 30 June each third year. Newly elected senators begin their six-year term on 1 July. Half-Senate elections must be held within one year before the places of the retiring senators become vacant. Usually half-Senate elections are held concurrently with elections for members of the House of Representatives.

Double dissolutions

The only way in which the fixed six-year term of senators may be shortened is by a simultaneous dissolution of both Houses of the Parliament. This is usually referred to as a double dissolution.

A double dissolution, as provided for by section 57 of the Australian Constitution, may occur only when the Senate has twice failed to pass a bill introduced in and passed by the House of Representatives, with a period of no less than three months occurring between the Senate's first failure to pass and the bill's second passage by the House. In these circumstances the government may advise the Governor-General to dissolve both Houses, so that the disagreement between the Houses may be determined by the people at an election. Double dissolutions have occurred seven times during the history of the federal Parliament—in 1914, 1951, 1974, 1975, 1983, 1987 and 2016. If, after the two Houses have been re-elected, the House of Representatives again passes the proposed law and the Senate again fails to pass it, a joint sitting of both Houses may be held, with the members of both Houses voting together on the proposed law. The only occasion on which this has occurred was in August 1974.

For further information on double dissolutions see Senate Brief No. 7, *Disagreement Between the Houses*.

Casual vacancies

Section 15 of the Constitution, as it was amended in 1977, provides that when a casual vacancy occurs in the Senate, through resignation, absence or death of a senator, a new appointment is made by the Parliament of the state which that senator represented, or, in the cases of the territories, by their legislative assemblies. The 1977 amendment, however, provided for the inclusion of a condition, which had prior to that date been a convention only, that the vacant place should always be filled by a member of the same political party or group as the vacating senator. The new senator then holds the position for the remainder of the term of the senator replaced. This provision is designed to preserve between elections the proportional representation of political parties as determined by the electors.

The nexus provision

Section 24 of the Constitution provides that the number of members of the House of Representatives must be twice the number of senators, or as near as practicable. (Senators from the two territories are not counted in determining the size of the House of Representatives.) This provision, usually referred to as the nexus provision, prevents the House of Representatives becoming at any time disproportionately large in relation to the Senate. The Parliament may legislate to change the number of the members of both Houses, and it has done so on two occasions since Federation, in 1948 and again in 1983. It does this by changing the number of senators representing each state, which automatically allows a proportionate change in the number of members of the House of Representatives. There are currently 150 members of the House of Representatives, just over twice the number of the senators (72) who represent the six states.

The two territories

Section 122 of the Constitution allows the Parliament to legislate for the representation of territories in either House. The Australian Capital Territory and the Northern Territory acquired Senate representation following the passage of the Senate (Representation of Territories) Act in 1974. The first senators for the territories were elected in December 1975. Each territory is represented by two senators, but unlike the 72 senators representing the six states, these senators hold office for the same term as that of the members of the House of Representatives, that is, for three years, or less, depending on the duration of the House.

Party affiliations in the Senate since the introduction of proportional representation in 1949

Figures reflect the composition of the Senate immediately after newly elected senators have taken their seats

Year	ALP	LP	NATS */CLP	DLP	AD	AG	GWA	IND	ONP	FF	PUP	LDP	AMEP	JNL	DHJP	NXT
1949	34	20	6													
1951	28	26	6													
1953	29	26	5													
1955	28	24	6	2												
1958	26	25	7	2												
1961	28	24	6	1				1								
1964	27	23	7	2				1								
1967	27	21	7	4				1								
1970	26	21	5	5				3								
1974	29	23	6					2								
1975	27	27	8					2								
1977	27	29	5		2			1								
1980	26	28	4		5			1								
1983	30	24	4		5			1								
1984	34	28	5		7			2								
1987	32	27	7		7			3								
1990	32	29	5		8		1	1								
1993	30	30	6		7		2	1								
1996	29	31	6		7	1	1	1								
1998	29	31	4		9	1		1	1							
2001	28	31	4		8	2		2	1							
2004	28	33	6		4	4				1						
2007	32	32	5			5		1		1						
2010	31	28	6	1		9		1								
2013	25	27	6	1		10		1		1	3	1	1			
2016	26	25	5			9			4	1		1		1	1	3

* Previously Country Party, National Country Party, and National Party of Australia

AD—Australian Democrats

AG—Australian Greens

ALP—Australian Labor Party

AMEP—Australian Motoring Enthusiast Party

CLP—Country Liberal Party

DHJP—Derryn Hinch's Justice Party

DLP—Democratic Labour Party

FF—Family First Party

GWA—The Greens (WA)

IND—Independent

JNL—Jacqui Lambie Network

LDP—Liberal Democrats

LP—Liberal Party of Australia

NATS—The Nationals

NXT—Nick Xenophon Team

ONP—One Nation Party

PHON—Pauline Hansons's One Nation

PUP—Palmer United Party

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