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Research Paper
No. 2 2000–01

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ISSN 1328-7478

Published by the Department of the Parliamentary Library, 2000

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27 July 2000

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Major Issues

In the Australian Federal Parliament conflict between the House of Representatives and the Senate has been an enduring feature. This is because of the distribution of powers between the two Houses. Much of this conflict is over legislation, although there have also been significant areas of conflict over accountability of the government to the Parliament. The political contest between government and opposition, generally and often dramatically played out on the floor of the House of Representatives, is increasingly to be found also in the Senate. Here the Government now has to contend with the lack of a majority, and the consequent necessity of dealing with both the opposition party, and the minor parties and independents. While there is no guarantee that the Senate will not reject government legislation or pass it without amendment, in fact most bills are passed, and amendments may not substantially change the content of legislation. Rejected or significantly amended bills are those falling into the most contentious category, which may remain the subject of irreconcilable political differences. In such circumstances the provisions of section 57 of the Constitution, which specify how, under certain conditions, legislative deadlocks may be resolved, become relevant in the political process.

The framers of the Constitution realised that legislative disputes were likely to arise from the bicameral constitutional framework they were establishing. It was clear that serious conflict between the two Houses might not always be resolved by one House submitting to the other. Resort by the government to the simultaneous dissolution of both Houses was therefore provided as a means of resolving such conflicts.

Conflict in bicameral systems is often seen in the context of the popular will being thwarted by an unrepresentative, anti-democratic upper house, or conversely, as the 'excesses' of democracy being curbed by a more sober and responsible body. The Australian Constitution was framed before the contest of 1910 between the British House of Commons and the House of Lords, which curtailed the House of Lords' power to thwart the Commons. A constitution framed after this might have been a less conservative document. Though designed as a States' House, the Senate did not in practice work as such, but instead was dominated by party. It has sought to establish an additional basis of legitimacy, and has found this in the significant improvement in its representativeness achieved through proportional representation. Accordingly, the Senate has claimed a legitimacy equal to that of the House of Representatives, and additionally a role and duty to act to restrain government. The constitutional structure, allied to the recasting of the nature of the Senate, give great potential for political debate and conflict.

The Australian deadlock resolution procedure is unique in modern political systems. Generally bicameral parliamentary systems have adopted other means to regulate conflict. In Australia legislative conflict must be resolved either within the Parliament, through negotiation and compromise on specific issues, or outside it, by means of an election to decide who is to govern. No matter what changes to the Constitution may be thought desirable, change is not possible unless approved by referendum, and in Australia these are seldom successful. Thus resolution of legislative deadlock must happen either through the formal constitutional processes or through the practical workings of the political system.

A fundamental feature of section 57 is that it operates in one direction only: it applies to legislation passed by the House of Representatives which has failed to pass, or been rejected by the Senate. It does *not* apply to legislation initiated in and passed by the Senate to which the House of Representatives disagrees. Thus the Constitution asserts the primacy of the House of Representatives as the 'people's house' and the chamber of government. While it is the actions of the Senate which create the grounds for a double dissolution, the decision to resort to section 57 is taken by the government.

The nature of any resolution is always highly contingent on the particular political circumstances prevailing. While legislative conflict generally involves a high degree of political brinkmanship, use of section 57 was in the past likely to clear the political air. It has been invoked six times. Two double dissolutions, those of 1914, and 1983, resulted in a change of government, three, of 1951, 1974 and 1987, saw the re-election of the government. The other example was the anomalous double dissolution of 1975, following the Constitutional Crisis of 1975, when the elected Government had been dismissed before the election by the Governor-General. For practical purposes, in 1975 a new government was elected. The only occasion on which disputed legislation was enacted by a joint sitting of the Parliament was in 1974. Resort to section 57 has always been something to be carefully considered by any government. The possibility of a double dissolution affects the everyday operations of the parliamentary and political processes. It is not necessarily a weapon to wield with abandon, resulting as it may in an election defeat.

The first two double dissolutions were widely separated in time. Then came four within a period of 14 years. There have been a number of times when the possibility of a double dissolution loomed large, but did not eventuate. The most recent of these was during the first term of the Howard Government. The fact that the Government chose not to invoke a double dissolution raises the possibility that a different style of politics has evolved. In the light of political developments since the last double dissolution in 1987, do significant political and constitutional problems still exist?

To what extent might section 57 still matter in Australian political processes? This paper canvasses some of these questions, and other issues arising both from the Constitutional Crisis of 1975, and the republican referendum in 1999. Here the important constitutional questions concerning the role of the head of state, and the reserve powers need to be addressed in the event of any change.

Of fundamental importance is the effect of the voting system used for Senate elections. The voting systems used until 1948 tended to produce large majorities for the victorious party, and therefore deadlocks arose rarely. The only double dissolution in that period was contrived to resolve the political difficulties of almost equal numbers in the House of Representatives and a hostile Senate. But in the 50 years since the introduction of proportional representation in the 1949 election the increasing difficulty of gaining a majority in the Senate, and the consequent increased assertiveness of the Senate, have brought about significant changes to Australian political processes. The Senate electoral system now frequently results in the election of candidates who do not belong to a major party.

The strength of partisan party support and the size of the Senate quota affect the composition of the Senate. While support for the major parties remained high, this was reflected in the composition of the Senate. But with decline in the extent and intensity of this support, and concomitant increase in support for other (minor) parties, numbers became more delicately balanced. The two increases in the size of the Parliament and the fall in the size of the quota have made it progressively easier for minor parties to win seats in the Senate. This situation also increases the influence of minor parties and independents. This situation may possibly be more acceptable to the electorate than the more adversarial model of politics often practised in Australia. This is not necessarily so, given the fact that voting represents a choice between different political values. It remains to be seen whether there has been a major shift in Australian political processes or whether such changes are temporary.

While resort to double dissolutions became more frequent—because of the increased likelihood of conflict—an election is now less likely to materially alter the closeness of numbers in the Senate. Under the political conditions now prevailing—with the effective balance of power now being held by minor parties—such an outcome appears less and less likely. Compromise rather than outright contest may now offer better political prospects all round. This is, of course, contingent on the nature of the minor parties represented.

The concept of the government mandate has been central to the rhetoric of the double dissolutions. When governments lack a majority in the Senate, the effective power and influence of the Senate increases. Thus there has been considerable political debate about the nature of the mandate conferred by the people in an election. This debate is desirable and an important means of political persuasion. Successive governments have claimed the right and the duty to implement their policies, unhindered by what they categorise as Senate obstruction and denial of the will of the people. Governments in this situation have called for a fair go. The non-government members, i.e. the Opposition and minor parties, however, claim to have their own mandates, both as parties whose members have been elected by the people, and institutionally, as the other House of the Parliament, to act as a brake on government. While governments without a majority in the Senate have complained that their popular mandate has been violated, it has also been argued that the threat by government to resort to section 57 is tantamount to holding the Senate to ransom.

It may be argued that the reality lies in between these extremes. Because the double dissolution procedure is part of the constitutional structure, its use is a legitimate political practice. The existence of section 57 operates to some extent as a relief valve for political tensions. On those occasions when there is a genuine policy divide over which both Houses choose to confront each other, it is entirely appropriate for the voters to decide the issues and for both Houses to face the consequences of such confrontation. This is not to say that it is a solution to all political conflicts in the federal arena. The Constitution does not—cannot—prevent deadlocks from occurring. Section 57 perhaps in some ways facilitates their occurrence. But it imposes costs on both Houses of the Parliament. It may be argued that this is a sufficient constraint. The Constitution in fact places the resolution of deadlocks on the ultimate arbiter—the people.

There is, however, another category of conflict. The issues raised by the Constitutional Crisis of 1975 have not been resolved. Section 57 fails to cope with the political situation of a deadlock over financial legislation. The required delays of section 57 are clearly inappropriate here. The assumption that such conditions are unlikely to recur is not necessarily well-founded, and there is a strong case for constitutional clarification and reform.

Introduction

The Australian Constitution was framed to establish a union of the six Australian colonies into one nation, on the principles of federalism. It established a bicameral parliament, with a House of Representatives popularly elected with single member constituencies, and a powerful Senate in which there is equal representation of the six States. The Australian system of government was strongly based on the British Westminster system, but the American Constitution was also a substantial influence. The House of Representatives is generally regarded as the inheritor of representative government—the people's house, in which governments may be formed or defeated. The Senate, on the other hand, was created to protect the smaller, less populous states from being outvoted by the larger states and to ensure that the interests of the States might not be overridden by the national government. It too is popularly elected, but each state votes as one electorate. The Senate has the power to reject any bill, and may amend any legislation except as provided with respect to financial legislation by section 53.

It was clear during the framing of the Constitution that there might be serious conflict between the two Houses, which might not always be resolved by one House submitting to the other. The provisions of section 57 were inserted to provide a solution. The potential for deadlock was apparent, but opinions differed on its importance and means of resolution.[1]

Conflict in bicameral systems is often seen in the context of the popular will being thwarted by an unrepresentative, anti-democratic upper house, or conversely, as the 'excesses' of democracy being curbed by a more sober and responsible body. The Australian Constitution was framed before the contest of 1910 between the British House of Commons and the House of Lords, which curtailed the House of Lords' power to thwart the Commons. Section 7 of the Constitution requires equal representation of the States, and for the Senate to be directly elected by the people of the States. The Senate did not, however, become in practice a States' House, but one dominated instead by party. It has sought to establish an additional basis of legitimacy, and found this in the significant improvement in its representativeness achieved through proportional representation. Accordingly, the Senate has claimed a legitimacy equal to that of the House of Representatives, and additionally a role and duty to act to restrain government. The nature and extent of these roles have been the subject of extensive debate.

The Australian deadlock resolution procedure is unique in modern political systems. Generally bicameral parliamentary systems have adopted other means to regulate conflict, such as separation of powers, limits on the powers of upper houses to reject or delay

legislation, or fixed term elections. But in Australia legislative conflict must be resolved either within the Parliament through negotiation and compromise on specific issues, or outside it by means of an election to decide who is to govern. The nature of the resolution is highly contingent on the particular political circumstances prevailing. While legislative conflict generally involves a high degree of political brinkmanship, use of section 57 was in the past likely to clear the political air. But under the political conditions now prevailing—with the effective balance of power now being held by minor parties—such an outcome appears less and less likely. Compromise rather than outright contest may now offer better political prospects all round. This is, of course, contingent on the nature of the minor parties represented.

The provisions of section 57 of the Australian Constitution set out the circumstances under which both Houses may be dissolved simultaneously. It has been invoked six times, to resolve legislative conflict between the two houses.[2] The first two double dissolutions were widely separated in time. Then came four within a period of 14 years. There have been a number of times when the possibility of a double dissolution loomed large, but did not eventuate. The most recent of these was during the first term of the Howard Government. The fact that the Government chose not to invoke a double dissolution raises the possibility that a different style of politics has evolved. If this is so, to what extent might section 57 still matter in Australian political processes? This paper canvasses some of these questions, and considers other issues which arose from past conflict between the House of Representatives and the Senate, notably that of the Constitutional Crisis of 1975.

These factors set the parameters of the Commonwealth Parliament's political processes. This paper considers, in the light of political developments since the last double dissolution in 1987, whether significant political and constitutional problems still exist. These questions are relevant not only because of their intrinsic political and constitutional interest, but also because of the way in which both Houses of the Parliament have evolved since 1901. The history of double dissolutions shows that some were highly contentious and divisive. Furthermore, although the defeat of the republican referendum in November 1999 removed the republican issue from the immediate political agenda, it raised to prominence once more the important constitutional issues of the role of the head of state, and the reserve powers, which would need to be addressed in the event of any change.

On only one occasion were the full provisions of section 57 used: the Joint Sitting of the Parliament in August 1974 was the only time disputed legislation has been enacted. Two double dissolutions resulted in a change of government, and on three occasions the government retained office. The double dissolution is not necessarily a weapon to wield with abandon. It may result in an election defeat. The length of time required to meet the conditions is another constraint.

A fundamental feature of section 57 is that it operates in one direction only: it applies to legislation passed by the House of Representatives which has failed to pass, or been rejected by the Senate. It does *not* apply to legislation initiated in and passed by the Senate to which the House of Representatives disagrees. Thus the Constitution asserts the primacy of the House of Representatives as the 'people's house' and the chamber of

government. While it is the actions of the Senate that create the grounds for a double dissolution, the decision to resort to section 57 is taken by the government.

The prospect of a double dissolution affects the everyday operations of the parliamentary and political processes.

Of fundamental importance is the effect of the voting system used for Senate elections. The voting systems used until 1948 tended to produce large majorities for the victorious party, and therefore deadlocks arose rarely. The only double dissolution in that period was contrived to resolve the political difficulties of almost equal numbers in the House of Representatives and a hostile Senate. But in the 50 years since the introduction of proportional representation in the 1949 election the increasing difficulty of gaining a majority in the Senate, and the consequent increased assertiveness of the Senate, have brought about significant changes to Australian political processes. As the number of seats won by a party or candidate is proportional to the number of votes received, votes cast for minor parties need not be 'wasted', but could instead, increasingly frequently, result in the election of candidates who did not belong to a major party. While resort to double dissolutions became more frequent—because of the increased likelihood of conflict—an election is now less likely to materially alter the closeness of numbers in the Senate.

The strength of partisan party support and the size of the Senate quota are the other major factors affecting the composition of the Senate. While support for the major parties remained high, this was reflected in the composition of the Senate. But with decline in the extent and intensity of this support, and concomitant increase in support for other (minor) parties, numbers became more delicately balanced. The two increases in the size of the Parliament and the fall in the size of the quota have made it progressively easier for minor parties to win seats in the Senate. This situation also increases the influence of minor parties and independents. This situation may possibly be more acceptable to the electorate than the more adversarial model of politics often practised in Australia. This might not necessarily be the case, given the fact that voting represents a choice between different political values. It remains to be seen whether this is a major shift in Australian political processes or whether it is a temporary condition.

The concept of the government mandate has been central to the rhetoric of the double dissolutions. When governments lack a majority in the Senate, the effective power and influence of the Senate increases. Thus there has been considerable political debate about the nature of the mandate conferred by the people in an election. Successive governments have claimed the right and the duty to implement their policies, unhindered by what they categorise as Senate obstruction and denial of the will of the people. Governments in this situation have called for a fair go. The non-government members, i.e. the Opposition and minor parties, however, claim to have their own mandates, both as parties whose members have been elected by the people, and institutionally, as the other House of the Parliament, to act as a brake on government. Claim and counter-claim compete. While governments without a majority in the Senate have complained that their popular mandate has been violated, it has also been argued that the threat by government to resort to section 57 is tantamount to holding the Senate to ransom.

It may be argued that a desirable balance lies in between these extremes. The paper argues that, because the double dissolution procedure is part of the constitutional structure, its use is a legitimate political practice. There is now greater need for negotiation between contending parties over policy and legislation. However, on those occasions when there is a genuine policy divide over which both Houses choose to confront each other, it is entirely appropriate for the voters to decide the issues and for both Houses to face the consequences of such confrontation. This is not to say that it is a solution to all political conflicts in the federal arena. The Constitution does not—cannot—prevent deadlocks from occurring. Section 57 perhaps facilitates their occurrence. But it imposes costs on both Houses of the Parliament. It may be argued that this is a sufficient constraint. The Constitution in fact places the resolution of deadlocks on the ultimate arbiter—the people.

However the issues raised by the Constitutional Crisis of 1975 have not been resolved. Section 57 fails to cope with the political situation of a deadlock over financial legislation. The required delays of section 57 are clearly inappropriate here. The assumption that such conditions are unlikely to recur is not necessarily well-founded, and there is a strong case for constitutional clarification and reform.

This Abiding City? Government vs Senate

Australia's last double dissolution was held in 1987, and was called by the Hawke ALP Government. As had been the case for all governments since 1980, (and for the ALP—whether in opposition or in government—since the 1951 double dissolution), the Government failed to win a majority in the Senate. This brought to an apparent close a period in which double dissolutions appeared to have become a normal political event instead of a very unusual one. The ALP was obliged to accept an active Senate, even to the extent of having to accept changes to the Budget in 1993. Though re-elected in 1990 and 1993, the ALP had seemed close to defeat. Double dissolutions appeared neither an acceptable political risk, nor likely to improve government numbers in the Senate.

After the election of the Howard Government in 1996, there was frequent speculation that the Government would seek a double dissolution should its legislative program be blocked by the Senate. With a majority of 40 in the House of Representatives, the newly elected Government believed it had a mandate to implement its policies. However, like its predecessors, the Howard Government did not hold a majority in the Senate. Once the new Senate term commenced on 1 July 1996, Senate numbers were:

Table 1: Senate Numbers in 1996

AD	ALP	LIB	NPA	GR	HAR	Total
7	29	31	6	2	1	76

The ALP numbers then fell from 29 to 28 on 20 August 1996, when Senator Colston (ALP, Queensland) resigned from the party, and with Government support was elected Deputy President of the Senate. Senator Colston voted with the Government on some of its crucial legislation.

There were a number of legislative disagreements between the Government and the Senate. The Government did not hesitate to draw attention to the possibility of a double dissolution, blowing hot or cold according to the circumstances.[3] A number of 'trigger' bills[4] which had been rejected, or passed with unacceptable amendments were stockpiled to enable the Government to call a double dissolution if it so chose.

For much of this period, a double dissolution appeared a good political risk for the Government, but this changed, largely because of a new party—Pauline Hanson's One Nation Party (PHON). Formed by Pauline Hanson, the disendorsed Liberal candidate for the seat of Oxley, Queensland elected in 1996 as an Independent, the party quickly gained support and in its first electoral test, the Queensland state election of 13 June 1998, won 23 per cent of the vote and 11 seats. This, and ALP gains, resulted in the loss of office by the National/Liberal Party Coalition State Government.

Support for PHON increased throughout Australia, giving it the prospect of winning Senate seats in Queensland and in other States, probably primarily at the expense of the Liberal and National Parties, and, importantly, of holding the balance of power in the Senate. This therefore dramatically increased the potential political risks and costs to all parties of a double dissolution. It resulted in an alternative political solution to the legislative disputes, and the maintenance of the usual electoral arrangements.

Fresh negotiations between Senator Brian Harradine (Independent, Tasmania) and the Government resulted in the passage of the *Native Title Amendment Act 1997*. Despite having the necessary trigger, the Workplace Relations Amendment Bill 1996, the Government abandoned the double dissolution option. It launched a taxation reform policy combining a goods and services tax (GST) with a range of tax cuts, to be implemented in 2000[5]. Thus was brought to a close the long series of political jousts which had given all the indications of ending in Australia's seventh double dissolution.

There was a conjoint general election for the House of Representatives and for half the Senate on 3 October 1998. The half Senate election was the best means of minimising major party losses in the Senate, and preventing the election of PHON candidates.[6] The 1998 election resulted in the re-election of the Howard Government, although with a reduced majority. The Government lost seats in the Senate. There was considerable support for PHON, with 8.39 per cent in the House of Representatives and 8.99 per cent in the Senate, but Pauline Hanson was defeated in the House of Representatives division of Blair, and PHON failed to win any House of Representatives seats. In the Senate the only PHON candidate elected was Heather Hill,[7] in Queensland. Four of the five Independents in the House of Representatives were defeated. The native title question had provoked fears of a race-based election and more permanent and damaging divisions, but this did not

become an explicit focus of the campaign. The Australian Democrats regained the balance of power from the commencement of the new Senate term on 1 July 1999.

Table 2: Senate Numbers in 1999

AD	ALP	LIB	NPA	CLP	GR	HAR	PHONP	Total
9	29	31	3	1	1	1	1	76

With minor parties and independents now generally holding the balance of power in the Senate—due in part to a fall in the support for the major parties—political processes have had to be adapted perforce into a less adversarial mode of politics. Governments increasingly have to compromise on policy. Oppositions and minor parties cannot merely obstruct. It could be argued that this situation represents a very significant alteration to Australian political processes. Nevertheless the possibility of legislative deadlocks during the term of the 39th Parliament remains—and seems equally likely for future Parliaments. It is thus worth considering the nature of changes to our political processes, and the importance of section 57 of the Constitution. This paper argues that it cannot be assumed that such changes are permanent, and that section 57 has become irrelevant for all practical purposes.

Voting Statistics and Senate Majorities

The conditions under which a double dissolution may occur are increasingly likely to be replicated, but under present political conditions a double dissolution is less likely to resolve the deadlock.

Since the commencement of the Senate term on 1 July 1981 no government has held a majority in the Senate. The statistics suggest firstly that it has become extremely difficult for either the ALP or the Coalition to win a majority in the Senate, and secondly that this difficulty is increasing. The presence of minor parties has concomitantly made it more difficult for an opposition to hold a majority in the Senate.

Table 3 shows the share of the vote at House of Representatives and Senate elections received by the major parties (i.e. the ALP, the Liberal/National Parties) since 1970. Their share of the votes tended to be higher in the 1970s double dissolutions. The combined percentage of the vote received by the major parties in Senate elections has ranged between 80.2 per cent (1996) and 86.5 per cent (1993), falling to 75 per cent in 1998. The minor party and independent vote has been consistently higher in Senate elections than in elections for the House of Representatives, except for 1998 when PHON drew House of Representatives votes away from the major parties.

Table 3: Votes for Major Parties 1970 to 1998

(%)

Party	1970	1972	*1974	*1975	1977	1980	*1983	1984	*1987	1990	1993	1996	1998
						House of Representatives							
ALP		49.6	49.3	42.8	39.6	45.1	49.5	47.5	45.8	39.4	44.9	38.8	40.1
LNP		41.4	45.7	53.1	48.1	46.3	43.6	45.0	46.1	43.4	44.3	47.2	39.7
Total		91.0	95.0	95.9	87.7	91.4	93.1	92.5	91.9	82.8	89.2	86.0	73.8
						Senate							
ALP	42.2		47.3	40.9	36.8	42.3	45.5	42.2	42.8	38.4	43.5	36.2	37.3
LNP	38.2		43.9	51.7	45.6	43.5	39.9	39.5	42.0	41.9	4 3.0	44.0	37.7
Total	80.4		91.2	92.6	82.4	85.8	85.4	81.7	84.8	80.3	86.5	80.2	75.0
D(a)			3.8	3.3	5.3	5.6	7.7	10.8	7.1	2.5	2.7	5.8	-1.2

* Denotes double dissolution election.

(a) Difference between the total votes received by the major parties in each House.

Note: 1970—half Senate election only; 1972—House of Representatives election only.

The two important factors shown by these statistics are firstly the decrease in support for the major parties, and secondly that a significant number of electors apparently use a tactical vote. That is, their vote in the Senate differs from that cast for the House of Representatives. There are sufficient voters wanting the Senate not to mirror the composition of the House of Representatives to achieve this result. Proportional representation, of course, facilitates this form of tactical voting.

Consequences

Political practices have changed in response to the lack of government majorities in the Senate:

- Senate activism has increased. Successive oppositions, minor parties and independents have all taken advantage of their numbers and positions of influence to use Senate powers as much as has been politically feasible and advantageous. The 1975 Constitutional Crisis was the most extreme example. As constitutional lawyer Professor Michael Coper noted, in effect the Opposition claimed the right to determine when there should be an election—a matter which was and generally still is a government prerogative.[8] Since 1975 there has been a reluctance to force an election, with the Australian Democrats committing themselves 'to keep the bastards honest', but not to block supply. While avoiding the blocking of appropriation bills, the Senate has continued to amend and, from time to time, reject government bills. The Senate is unlikely to adopt a self-denying ordinance: such practice is now generally accepted as right and proper in the Australian constitutional framework. Power once used is seldom abandoned.

- the possible use of section 57 has therefore of necessity been part of governments' political strategies since the 1970s, and this is also true for all parties. With the possibility of legislation being rejected or amended in the Senate, it is an obvious and prudent move by government to retain the political initiative and allow for the resort to a double dissolution, if this seems the best political strategy.

- the groups with the numbers in the Senate fully realise the political advantage that can be gained by amending or rejecting contentious legislation. Minor parties and independents have to justify their existence, and one means is by seeking to amend or defeat legislation. Depending on the strength of their opposition, and their electoral prospects, they too may be willing to risk a double dissolution. Much depends on the specific issues, timing and general political climate and the strength of political feeling both in and out of Parliament.

It may be argued on the one hand that with the minor parties holding the balance of power, governments are now obliged to negotiate on legislation, and that consequently a less adversarial mode of politics is developing. If this is so, conflict between the two houses, no longer presents insuperable problems. However this more accommodating mode may be only temporary, and in any event operates essentially on a case-by-case basis. It represents compromise rather than consensus—practical politics, in fact. There can be no guarantee that such willingness to compromise will continue. Much depends on the nature of the minor parties holding the balance of power. Compromises and policy changes may result in increased alienation of party support. Such factors and the inherent volatility of politics might again bring about serious legislative and political conflict. Then the unresolved problems so clearly exemplified by the 1975 Constitutional Crisis might once again matter a great deal.

Mandates

The debate on the implementation of government policy and the relationship between the two Houses concerns not only the practical politics involved but also the normative issues of democratic processes. The mandate—the right and duty to implement policy both as promised at elections and as circumstances require—often claimed by government, and the proper roles of each House of Parliament, come into consideration here.

As Dr John Uhr notes, there are separate and possibly conflicting mandates for each House. He instances the 1996 election as typical in that electors voted for the full House of Representatives but for only half the Senate:

> This is the historical pattern of Australian electoral choice, reflecting the Constitution's design for overlapping rather than aligned representation between the House and the Senate. Much as the framers predicted, governments become frustrated with this institutional impediment to their will, and thus it comes as no surprise that simultaneous or so-called double dissolutions for the whole Senate as well as the whole House have taken place on six occasions, when justified by the constitutional provisions regulating the resolution of disagreement between the two houses.[9]

He notes that the Australian system:

> With its characteristic split or halving of Senate voting, combined with proportional representation, makes it difficult for any incoming government to claim a 'mandate' for representing 'the nation'.[10]

The term 'mandate' has been frequently used in Australian politics,[11] and its meaning has varied. While 'mandate' has been used by governments to assert not only their right but also their obligation to implement their policies, the concept has also been adopted by non-government parties to delineate clearly their role in the Parliament. An activist Senate with its own mandate is seen as congruent with the strong bicameralism of the Australian federal system. The minor parties claim a separate mandate from the voters to use their power in the Senate to review and moderate government policies.

Uhr argues that this is what successive Senates have done since federation. After reviewing the Howard Government's strategies to have its legislation passed in the Senate, he comments:

> These 1996 mandate wars reveal the contentious character of political representation. Opinions differ on the merits of mandates, depending on the value one is prepared to give to the claims of representation raised by those non-government parties who defend their right to use their share of parliamentary power to amend government policy. The conventional wisdom is that responsible party government confers a mandate to govern on the majority party in the House of Representatives, although there is a clear trend to concede that the Senate is evolving its own modifications of the conventional doctrine.[12]

The meaning of the mandate claimed by the minor parties, and indeed by the Opposition, is very similar or equivalent to the duties of the elected representative. In defence of the concept of the government's mandate, and to put into perspective some criticisms of the House of Representatives, two fundamental features of the political system should be kept in mind. These are that government is one of the primary roles of the House of Representatives, and that at elections the people not only individually elect their own representatives but collectively they elect a government. It is a legitimate political expectation that there be effective government. A bicameral parliamentary system cannot necessarily be categorised simplistically as a contest between heroes and villains.

Section 57 and Australian Political Processes

In discussing the application of the provisions of section 57, *Odgers' Australian Senate practice* makes the following judgment:

> Section 57 of the Constitution was intended to provide a mechanism for resolving deadlocks between the two Houses in relation to important legislation. By judicial interpretation, and by the misuse of the section by prime ministers over the years, it now appears that simultaneous dissolutions can be sought in respect of any number of bills;

> that there is no time limit on the seeking of simultaneous dissolutions after a bill had failed to pass for the second time; that a ministry can build up a 'storehouse' of bills for simultaneous dissolutions; that the ministry which requests simultaneous dissolutions does not have to be the same ministry whose legislative measures have been rejected or delayed by the Senate; that virtually any action by the Senate other than passage of a measure may be interpreted as a failure to pass the measure, at least for the purposes of the dissolutions; and that the ministry does not need to have any intention to proceed with the measures which are the subject of the supposed deadlock after the election. By putting up a bill which is certain of rejection by the Senate on two occasions, a ministry, early in its life, can thus give itself the option of simultaneous dissolutions as an alternative to an early election for the House of Representatives. This gives a government a de facto power of dissolution over the Senate which it was never intended to have, and greatly increases the possibility of executive domination of the Senate as well as of the House of Representatives.[13]

It goes on to argue for reform of section 57 so as to restrict the power of the ministry to use section 57 for political convenience:

> … a limitation should be placed on the number of measures which may be the subject of a request for dissolutions, time limits should be placed upon such dissolutions in relation to the rejection of the measures in question, and a prime minister should be required to certify that the measures in question are essential for the ministry to carry on and that it is the intention of the ministry to proceed with the measures should it remain in office, and the Governor-General should be required to be satisfied independently on those matters.[14]

However such comments reflect the institutional viewpoint of the Senate. The powers of the Senate remain what they have been since Federation. While there is no government majority in the Senate, the Senate is generally safe from Executive domination. Nor is there any reason why the use of section 57 should be confined to one rejected bill, if in fact the Senate rejects more than one. The High Court held that section 57 operates distributively. The late Geoffrey Sawer, a leading academic lawyer and commentator on the Constitution, discussed the use of section 57 for political convenience in his analysis of the 1914 dissolution. On the assumption that section 57 should only operate in a situation occurring naturally from the Senate's treatment of government measures, he wrote:

> It is doubtful whether any such doctrine can be read into section 57 ... The difference between 'provoking' a dissolution and just letting it happen is in any event too dependent on political evaluations to form a satisfactory basis for a judicial doctrine.[15]

Similarly, successive government criticisms of the Senate's use of its constitutional powers reflect the practical perspective of ministers intent on policy implementation, as much as the constitutional theories and niceties. The rhetoric used by both the House and the Senate about the right of the Senate to reject or amend government legislation is largely aimed at winning the hearts and minds of the people, as well as influencing the votes of individual Senators.

The crucial issues are the health of the political system and the effective working of parliamentary democracy. *House of Representatives practice* comments:

> The rejection of bills other than appropriation and supply would seem to present no insuperable hurdle to constitutional democratic government. Certainly it may hinder a Government's legislative program but if such hindrance is considered as serious this will be reflected in public opinion which will, in turn, eventually influence Senate action on the legislation. This process may take some time to work out: meanwhile the Government has the task of convincing the people of the correctness of its policies.[16]

Obviously, resort to an election to resolve a deadlock allows the people to decide the issue—providing an immediate democratic solution rather than a protracted struggle which may weaken the political system. There is no guarantee that the election will break the deadlock. The resort to an election may be something of a blunt instrument, as the decision of the voter is likely to be more broadly based on an overall assessment of the government rather than on the specific bill(s) in question. It is a not a model which has been adopted by other democracies, but this is not necessarily a criticism, but rather a reflection of the differences in various constitutional structures.

Dispute resolution procedures in other democracies include:[17]

- the suspensive veto, which may take the form of a specified period of delay or the shuttling of bills between the two houses
- eventual passage of the bill by a qualified majority in lower house
- a joint session of the two houses
- a joint committee of the two houses
- a referendum on the disputed bill, or
- unicameralism.

Whatever their merits, none of these procedures could be adopted in Australia without a successful constitutional referendum.

Implications of the 1975 Constitutional Crisis: Section 57 and Supply

The dismissal of the Whitlam Government in 1975 placed a tremendous strain on the Australian political system. It provoked outrage on the one side and applause on the other, and exacerbated political divisions in Australia. It showed that the Constitution did not cover such a deadlock. In 1975, the existence of section 57 triggers enabled both Houses to be dissolved simultaneously. However, it could happen that a Senate might again reject or fail to pass the Budget, but, deliberately or otherwise, not have created section

57 triggers. In this case the Senate would not itself need to face the people. Both in 1974 and 1975, the disputes over the supply bills were not exclusively over policy, but rather to force an election.[18] Clearly, the provisions of section 57 do not address the problems in the refusal of supply, especially in so far as the provisions requiring a three-month interval between rejection or failure to pass.

Constitutional lawyer Professor Cheryl Saunders succinctly comments:

> It takes a long time to resolve disagreements between the Houses through a double dissolution and joint sitting. The minimum period is at least six months. In most cases it takes much longer. This means that section 57 is no use at all for dealing with deadlocks over bills which authorise governments to spend money for 'ordinary annual services' (that is, to keep the government running).
>
> There is nothing in the Constitution to deal with deadlocks like this.[19]

It is not feasible for a government to have supply defeated twice: a single occurrence is decisive.

It is still possible for a Senate to block or fail to pass a budget, without itself having to go to an election. It is entirely possible that once the memory of 1975 fades, the political constraints which apply now might disappear. The Australian Democrats might abandon their commitment not to block appropriation legislation, or no longer have the numbers to make a difference. The Opposition might again have the combination of the numbers in the Senate and the probability of winning a forced election. Another constitutional crisis could occur. It cannot be predicted how extensive another crisis might be or how it would be resolved. As Saunders comments:

> It is possible, of course, that the Senate could reject key money Bills in circumstances where there are no trigger bills available. If that were to happen, there would be no constitutional way of resolving the deadlock at all. Great strain would be placed on our institutions, including the position of Governor-General, and on our ability to follow the procedures of constitutional government.[20]

Successive governments have failed to resolve these problems. There have been no successful constitutional referenda proposals since 1977. Three of the four proposals were carried,[21] but only one of these, amending section 15 of the Constitution, was related to the constitutional crisis.[22] The reasons for failure lie firstly in continued disagreement about how the Constitution should be amended. Most proposed changes have lacked bipartisan support, not surprisingly, given the sharp divisions over the rights and wrongs of the crisis. Secondly, there has not been sufficient voter support for any of the reforms proposed to date. The proposed 1983 referenda, which included a fixed term proposal for the House of Representatives, were cancelled by the Government, and in 1984 a referendum to change Senate terms to the same as those of the House of Representatives was defeated. Another proposal, for a fixed four-year term of both Houses of Parliament, was one of the four unsuccessful referenda held in 1988. Despite the intensive and sustained debate and

constitutional reviews conducted by the successive Constitutional Conventions and the Constitutional Commission, the Constitution remains unchanged.[23]

In the meantime there seems to be a belief that former conventions apply and the Senate would not again block supply.[24] A combination of the right opportunity and the existence of the 1975 precedent might easily disprove this assumption.

The Republican Question

A second wave of constitutional discussion arose from the issue of whether Australia should become a republic. This culminated in the unsuccessful referendum of 6 November 1999. The proposed substitution of a president for the appointed vice-regal Governor-General, whether directly or indirectly elected, led to some discussion about how extensive a change there should be. At issue were the authority and powers of a president, the possible development of a rival source of political power, and the need for codification of the reserve powers.

The minimalist proposal put to referendum avoided the issue of codification. However the defeat of the referendum means that should another republican referendum go to the vote, then the issue of direct or indirect election would need to be decided first, followed by the issue of the powers. Interestingly in this context, the political newsletter *Inside Canberra* raising the possibility of the Senate losing the power to force an election, quoted the Clerk of the Senate, Harry Evans, as accepting a simple and general codification of powers of an elected President:

> In effect it would stop the Senate from holding up an Appropriation bill or rejecting an Appropriation bill for the purpose of trying to bring about an early Representatives election, but again I don't see any problem with that. It is not an explicit constitutional power you would be taking away and I don't see any problem with it.[25]

Reform Proposals

Numerous reform options have been proposed, discussed, and sometimes even put to the vote.[26] One option is to remove the power of the Senate to block supply, but otherwise to retain the powers of the Senate to reject or amend other bills, so that the existing provisions of section 57 would apply only to these bills. Another is to leave the power unchanged, but placing practical limits on its exercise, such as fixed terms and simultaneous elections for both Houses, allowing an earlier dissolution under specified conditions in the last year of the term, such as those contained in the Victorian or South Australian constitutions. The narrow category of bills specified in the Victorian Constitution in effect means it is impossible to force such an election.[27] The conditions for early dissolution could include the circumstances of the government losing a vote of confidence in the House of Representatives, or the defeat of a bill of a designated

category. A further solution is to amend section 57 to provide for a simultaneous dissolution in the case of rejection of supply without the time constraints presently required. It is arguable that if both Houses automatically face the electorate in cases of otherwise unresolvable political or legislative conflict, there is no necessity to change the powers of the Senate. As noted above, such solutions have been unsuccessfully proposed. The past experience of referendum proposals does not offer much prospect of constitutional change, but the case for reform remains compelling.

The Menzies Idea

The Menzies Government had attempted early in its first term to avoid the possibility of evenly divided Senate numbers by introducing the Constitution Alteration (Avoidance of Double Dissolution Deadlocks) Bill 1950. This aimed at ensuring that as far as possible elections would produce a majority in the Senate. Mr Menzies, in his Second Reading Speech, argued that the need arose because of the introduction of proportional representation. This, combined with the increase in Senate numbers to ten from each state, meant that:

> It is highly probable that any double dissolution under this system would result not in the clearing of the air but in a further stalemate.[28]

The bill had two features. Firstly, it provided that voters would determine which Senators would have a six-year term (long term) and which Senators should have the three-year term (short-term). To do this it was necessary to amend section 13 of the *Constitution*, which confers on the Senate the power to determine how long and short term senators were to be determined. Therefore, at a double dissolution, instead of 10 Senators from each state being elected, resulting in an even division between the parties of 5–5, there would be two ballots, each for five seats, with an inevitable result of 3–2. Two concurrent votes would be exercised. At half Senate elections there would be an uneven number of positions to be filled. The second component of the bill was a clause to amend section 7 of the *Constitution,* by inserting a new section 7A to require that:

> The number of senators for a State (whether an original State or a new State) shall be a number which is divisible by two without remainder but is not divisible by four without remainder.

Thus the number of Senators for each state could be 10, but not 12. The bill was referred to a Senate Committee, which reported against the proposals,[29] and the bill lapsed at the 1951 double dissolution. It may be doubted whether the Menzies Government had any serious expectation of the bill passing. Such a proposal today would be complicated by the existence of Territorial Senators.

The 1967 Nexus Referendum

On 27 May 1967 the Holt Government held a referendum proposing to break the nexus between the size of the Senate and the House of Representatives. This proposal had the support of both Government and Opposition, but was nonetheless defeated, mainly because of the opposition of dissident Liberals and Democratic Labor Party (DLP) Senators. They argued that breaking the nexus would weaken the power and authority of the Senate. If carried, this would have amended that part of section 24 of the Constitution which requires the House of Representatives to be, as nearly as practicable, twice the size of the Senate. Thus the House of Representatives could have been enlarged without a concomitant increase in Senate numbers, and the quota for election to the Senate would have remained fairly high. (See Endnote 6.)

Electoral Law Changes

Since the election of the Howard Government there has been increased attention paid to other means of avoiding deadlocks between the two Houses. Suggestions include decreasing the size of Parliament, so as to increase the quota for election to the Senate, introducing a formal threshold of a specified percentage of the quota, or even changing the proportional representation system. The general objective is to minimise the possibility of minor parties or independents holding the balance of power. However if the support for the major parties continues to decline, neither a smaller Parliament nor an electoral threshold would produce a Senate majority for either of the major parties.[30]

A possible means of reducing the possibility of a deadlocked Senate would be to divide each state into two notional districts, each electing three Senators in a half Senate election or six at a double dissolution. This would achieve a larger quota for election of 25 per cent in a half Senate election, and of 16.7 per cent in a double dissolution. Under such a system it would be essential to ensure scrupulous fairness, and, equally importantly, to prevent either the rigging of boundaries for electoral advantage, or a potentially divisive criteria for boundaries such as an urban/rural geographic division. By dividing the electoral rolls for the states into two notional districts—easily done by computer—each voter would be enrolled in one of the two districts. The electoral rolls would annotate each voter as being so enrolled in District A or District B. Such a scheme would maintain the Senate as a States house, and avoid the possibility of any Senator representing only a part of a State. No amendment of the Constitution would be needed: the system could be introduced by amending the *Commonwealth Electoral Act 1918*. The Senate would continue to determine the order of election of Senators, and the present voting system need not be altered. Voters could still exercise tactical voting.

Table 5 uses the results of the 1996 and 1998 half Senate elections to show the effect of this system on the composition of the Senate. These figures show it would be possible to achieve a majority in the Senate, but a party would have to obtain good results in two successive elections. Minor parties would have a chance of winning the third seat in each

'district'. To maximise the chance of election, minor parties or independents might adopt the strategy of agreeing to contest different districts, so as not to split the vote. In 1996 the Coalition would have won 22 seats, the ALP 16 and AD 2, and in 1998 the ALP would have won 22, the Coalition 16 and the AD 2. After adjusting the totals (so as not to count the Territory Senators twice), the composition of the Senate would have been 36 ALP, 36 Coalition and 4 AD. The AD would still have held the balance of power in the Senate commencing 1 July 1999.

The significant disadvantages would be the substantial reduction in the proportionality of the Senate election result, and that it would be difficult (but nor impossible) for a minor party or independent candidate to be elected. Calculations on the effect of this idea have been made on voting patterns in the last two elections, and it is, of course, quite possible that changes in the electoral system might lead voters to alter their present voting habits.

Table 4: Hypothetical Senate Election Results

	ALP	L/NP	AD	HAN	HAR	GRN
Half Senate Election (1998 Results)						
NSW	2	1				
Vic	2	1				
Qld	1	1	1			
SA	1	2				
WA	2	1				
Tas	2	1				
Total	**10**	**7**	**1**			
Senate						
A'List	10	7	1			
B'List	10	7	1			
Territories	2	2				
Total	**22**	**16**	**2**			
Half Senate Election (1996 Results)						
NSW	1	2				
Vic	1	2				
Qld	1	2				
SA	1	1	1			
WA	1	2				
Tas	2	1				
Total	**7**	**10**	**1**			
Senate						
A'List	7	10	1			
B'List	7	10	1			
Territories	2	2				
Total	**16**	**22**	**2**			
Double Dissolution (1998 Results)						
NSW	3	2	1			
Vic	3	3				
Qld	2	2	1	1		
SA	2	3	1			
WA	2	3	1			
Tas	3(2)	2(3)			1(0)	0(1)
Total	**15**	**15**	**4**	**1**	**1**	
Senate						
A'List	15	15	4	1	1	
B'List	14	16	4	1	0	1
Territories	2	2				
Total	**32**	**32**	**8**	**2**	**1**	**1**

Note: For Double Dissolution election results same for 'A' and 'B' lists except for Tasmania where prominent candidates (Senator Brown and Harradine) would win a place on alternative lists.

Conclusion

In considering the present relevance and importance of section 57, at least two issues are at stake. The first is that of the blocking of supply bills. Here it is argued that although the issue has not recurred since 1975, the possibility remains. Section 57 is not adequate to deal with the issue of supply legislation, and any such crisis might once again place dangerous strains on the political system. Notwithstanding the practical difficulties firstly of formulating a constitutional solution which has bipartisan support, and secondly of its being approved at referendum, the case for change remains strong.

The second issue is that of general legislative disputes. Section 57 has generally operated satisfactorily, but because of the continued lack of government majorities in the Senate and the presence of small parties holding the balance of power, political processes have had to be adapted to accommodate this level and type of conflict. Section 57 under present conditions is much less likely to resolve a legislative deadlock one way or the other. It appears that support for an activist (rather than obstructive) Senate has grown and that the proportional representation voting system is popular. The increasing numbers of electors who vote one way for the House and another way for the Senate indicate a desire for some degree of restraint on government. It may be some consolation to voters whose party was defeated if the Senate prevents the government from doing exactly as it likes. Conversely, those who did vote for the government of the day may accept some limits on it as a quid pro quo for restraining the government when their party is in opposition. Minor parties and independents may relish being able to impose restraints in a relatively impartial way. It is also possible to interpret the defeat of referenda not merely to voter inertia or resistance to change, but perhaps also to some degree of satisfaction with the existing constitutional structure. Though messy in theory, perhaps the system works well enough in practice.

The lack of a Senate majority has meant that governments have had to negotiate with other parties and independent Senators over passage of their legislation and budgets. When negotiations fail, the options are that either the Government must accept the situations, or pursue the provisions of section 57, with the attendant risks to all parties. The ALP Hawke and Keating Governments were obliged to negotiate with the Australian Democrats and the Greens, and had to agree to many amendments to legislation, as well as to procedural changes which reduced government control and influence in the Senate and its committees.

Australian political processes throughout the eighties and nineties have run on fairly clearly defined tracks. Even after the Australian Democrats won enough Senate seats to make a difference, they behaved in 'normal' political ways, as did the Greens and Independents. However the emergence of PHON, with its tapping of disenchantment with the major parties and political processes, may signal a sea change. Whether PHON adapts to ordinary political processes remains to be seen: the party has so far distanced itself, emphasising that it is not a part of the political mainstream, and protesting against economic rationalist policies. Moreover, PHON has been riven by splits, and now seems less likely to cause substantial political uncertainty and instability. But even if the party

itself is losing support, there is evidence of sufficient continuing disaffection, particularly among rural voters, to make politicians tread carefully and to minimise opportunities for voter backlash.

The uncertainty thus generated may be sufficiently strong to restrain political brinkmanship, and to ensure that electoral opportunities are minimised by the higher quota at half Senate elections. The necessity of negotiating with the Opposition or minor parties and independents may in time lead to a more consensual approach to policy formulation and the content of legislation. At the same time, it would nonetheless appear to be sound political practice to pursue a prudent path, and to reserve the double dissolution option for those circumstances more truly requiring the decision of the voters.

Even if negotiation and conciliation were to become more the norm, disagreements and deadlocks would still be quite likely. Inevitably there will be issues not susceptible to watering down or compromise. In such cases resort to the provisions of section 57 is quite appropriate. The Constitution provides that there is a cost to the full exercise of Senate powers. If these costs are too high, the Senate may choose to compromise, but if it does choose to insist on failing to pass, amending or rejecting legislation, it ought itself to be equally willing to be dissolved and to face the electorate. To insist on its power of rejection but to claim exemption from the verdict of the people goes counter to the principles and practices of accountability and democracy. Such acceptance of the costs and benefits of section 57 could facilitate development of a political culture whereby the political legitimacy of both houses might be enhanced. Disputes can be resolved either by negotiation, or by one house giving way to the other. When neither occurs the people should decide.

Endnotes

1. For a discussion of the Australian constitutional structure, the representativeness of the Senate, and the tensions between responsible government and federalism, see Jacqueline Lipton, 'Responsible government, representative government and the Senate: options for reform,' *University of Queensland law journal*, vol. 19, no. 2, 1997, pp. 194–214.
2. For a short account of the circumstances of the six double dissolutions see: J. R. Richardson, Resolving deadlocks in the Australian Parliament, forthcomong *Information and Research Services Research Paper.*
3. Various examples are: Treasurer Peter Costello, extracts quoted on PM, 28 November 1996. Transcript 97-2518 (Online); Peter Reith, AM 22 October 1997. Transcript 97-0782; John Howard, Address to 500 Club luncheon, Perth, 11 June 1998; Tim Fischer, quoted in *The Canberra Times*, 17 June 1998, 'Early poll: Nats up ante.'
4. Bills which meet the conditions specified in section 57 of the Constitution are generally referred to as 'triggers'. The trigger bills were: the Workplace Relations Amendment Bill

1997, the Public Service Bill 1997, the Public Employment (Consequential and Transitional) Amendment Bill 1997 and the Parliamentary Service Bill 1997.

5. The GST legislation was passed in the Howard Government's second term, though amended slightly by the Democrats in the Senate, and came into effect on 1 July 2000.

6. Because of the smaller quota of votes required for election, minor parties and independents may be more easily elected in a double dissolution than in a half Senate election. The lower the quota, the easier it is to be elected, either through first preference votes or from the distribution of preferences. This, and the declining support for major parties, may reduce considerably the incentive of a government to have a double dissolution.

Quotas required for Senate election

Quota	1949–83	Seats	Since 1984	Seats
Half Senate	16.67	5	14.29	6
Double dissolution	9.10	10	7.69	12

7. Mrs Hill's election was disputed, on the grounds that she was a citizen of Great Britain, and thus owed loyalty to a foreign power. On 23 June 1999 the High Court, sitting as the Court of Disputed Returns, declared Hill incapable of being chosen, because of her dual citizenship, (*Sue v Hill*, 1999 HCA 30 (23 July 1999). The High Court ordered a recount of the Senate vote, and Mr Leonard (Len) Harris, the next One Nation candidate on the ballot paper, was declared elected on 2 July 1999.

8. Michael Coper, *Encounters with the Australian Constitution*, North Ryde, Sydney, CCH Ltd, 1987, p. 251.

9. John Uhr, *Deliberative democracy in Australia: the changing place of Parliament*, Cambridge, Cambridge University Press, England, 1998, p. 105.

10. ibid., p. 106.

11. For fuller discussion of the concept of the mandate, see Dr Liz Young, 'Competing mandates in Australian politics'. *Research Note no. 4*9, *1996.* Information and Research Service, Parliamentary Library. J. R. Nethercote, 'Mandate: Australia's current debate in context', *Research Paper no. 19, 1998–99*. See also Murray Goot, *Whose mandate? Policy promises, strong bicameralism and polled opinion*. Paper presented to the Department of Political Science, Research School of Social Sciences, Australian National University, 1998.

12. Uhr, op. cit., p. 108.

13. *Odgers' Australian Senate practice*, Edited by Harry Evans, Canberra, Department of the Senate, 9th edition, 1999, p. 115. See also 8th edition, 1997, p. 111. This comment is also reproduced in Senate Brief no. 7 of 1997, *Disagreement between the Houses*, p. 7.

14. id.

15. Geoffrey Sawer, *Australian federal politics and law, 1901–1929*, Melbourne University Press, Melbourne, 1956, p. 123.

16. *House of Representatives practice*, 3rd edition, Edited by L. M. Barlin, Canberra, Australian Government Publishing Service, 1997, p. 61.
17. These alternatives, along with the Australian dissolution procedure, are described and discussed in: Meg Russell, *Resolving disputes between the chambers*, The Constitution Unit, University College London, London, July 1999.
18. See statements quoted in *Victoria v The Commonwealth*, 134 CLR 1975, pp. 94–96. Constitutional lawyer Michael Coper argues that in actual fact the body claiming the right to force an election is not the Senate, but the Opposition. Michael Coper, *Encounters with the Australian Constitution*, CCH Australia Limited, North Ryde, 1987, p. 257.
19. Cheryl Saunders, *It's your Constitution: governing Australia today*, Federation Press, Annandale, NSW, 1998, p. 67.
20. ibid., p. 68.
21. The two other successful proposals allowed Territory electors to vote at referenda, and approved a retirement age of 70 for the Commonwealth judiciary.
22. This amendment aimed to ensure that the party composition of the Senate is not changed when a casual vacancy is filled. The vacancy must be filled by a nominee from the same party as that of the senator being replaced.
23. The *Final Report* of the Constitutional Commission contains a useful summary of the discussions, resolutions adopted by the constitutional conventions of the 1970s and 1980s, the bills introduced into Parliament over the year and the actual referendum proposals. See pp. 223–232.
24. This is largely based on the commitment by the Australian Democrats not to block supply. The pledge Democrat Senate candidates made in statutory declarations before the 1980 election was not to use 'their voting numbers in such a way as to cause the blocking of supply or money bills in a manner which would prevent the majority party in the House of Representatives from governing.' This pledge has been modified since. While still stating that supply should never be blocked under any circumstances, it allows that the Senate may take any action possible on any other bill. Thus the pledge has not operated so as to prevent the defeat of specific budget items or the modification of the budget. See Hiroya Sugita, *Challenging 'twopartism' the contribution of the Australian Democrats to the Australian party system*, Ph. D Thesis, Flinders University of South Australia, July 1995, pp. 203–4. See also Hiroya Sugita, 'Parliamentary performance in the Senate', in *Keeping the bastards honest: The Australian Democrats' first twenty years*, Edited by John Warhurst, Allen & Unwin, St Leonards, NSW, 1997, pp. 160–162. Note that the numbers in the Senate require the agreement of both Opposition and some or all minor parties/independents to make such changes or to defeat financial legislation.
25. *Inside Canberra*, vol. 52, no. 186, 12 November 1999, pp. 2–3.
26. See J. R. Richardson, op. cit., for a more extensive discussion. See also Constitutional Commission, *Final Report*, 2 vols, AGPS, Canberra, 1988. This provides a detailed analysis.
27. There is provision for the Assembly to be dissolved within the first three years of the Assembly's term if the Council rejects or fails to pass an Appropriation bill dealing with the ordinary annual services of the Government within a month of its receipt by the Council.

However a Government may avoid being forced to an early dissolution because of the blocking of supply during its first three years in office under s. 8(3) of the *Constitution Act 1975* by including appropriations for capital works with appropriations for the ordinary annual services. See Brian Costar. 'Constitutional change,' in *Trials in power: Cain, Kirner and Victoria 1982–1992*, Edited by Mark Considine and Brian Costar, Melbourne University Press, Melbourne, 1992, pp. 205–6. Costar writes:

> The political genius of the reforms lay in the definition of a relevant appropriation bill. Section 4 of the constitution now reads:
>
> > (4) In sub-section (3) (c) a reference to a Bill dealing only with the appropriation of the consolidated fund for the ordinary annual services of the Government is a reference to a Bill which deals only with the appropriation of the Consolidated Fund for the ordinary annual services of the Government for a particular year only but does not include a Bill to appropriate moneys for-
> >
> > the construction or acquisition of public works land or buildings;
> >
> > the construction or acquisition of plant or equipment which normally would be regarded as involving an expenditure of capital;
> >
> > appropriations for the services proposed to be provided by the government which have not formerly been provided by the Government; or
> >
> > appropriations for or relating to the parliament.
>
> Since it is traditional in Victoria that supply bills contain some or all of the items covered by sub-sections (a) to (d), the rejection of such bills no longer provides grounds for an early dissolution of the Assembly. Put bluntly, the Legislative Council has lost its power to force elections during the three-year fixed term of parliament by rejecting money bills. Its powers in the fourth year of the parliamentary term are uncertain—an uncertainty which would favour a government enjoying the confidence of the lower house.

28. Mr Robert Menzies, House of Representatives, *Commonwealth Parliamentary Debates*, vol. 207, 4 May 1950, p. 2217.
29. Australia, Parliament, Senate, Select Committee on the Constitution Alteration (Avoidance of Double Dissolution Deadlocks) Bill, *Report*, AGPS, Canberra, 1950, s. 1.
30. See Margaret Healy and Gerard Newman, 'An electoral threshold for the Senate?' *Research Note no. 19, 1998–9*, Department of the Parliamentary Library.

Appendix 1: Composition of the Parliament 1901–1998

House of Representatives

Election	*Govt*[a]	*ALP*	*FT*	*PROT*	*A-S*	*LIB*	*NAT*	*CP*	*UAP*	*Others*[b]	*Total*
1901	PROT	14	28	31	–	–	–	–	–	2	75
1903	PROT	23	25	26	–	–	–	–	–	1	75
1906	PROT	26	–	16	27	–	–	–	–	6	75
1910	ALP	43	–	–	–	31[c]	–	–	–	1	75
1913	LIB	37	–	–	–	38	–	–	–	–	75
1914	ALP	42	–	–	–	32	–	–	–	1	75
1917	NAT	22	–	–	–	–	53	–	–	–	75
1919	NAT	26	–	–	–	–	37	11	–	1	75
1922[d]	NAT/CP	30	–	–	–	5	26	14	–	1	76
1925	NAT/CP	24	–	–	–	–	37	14	–	1	76
1928	NAT/CP	32	–	–	–	–	29	13	–	2	76
1929	ALP	47	–	–	–	–	14	10	–	5	76
1931	UAP	15	–	–	–	–	–	16	40	5	76
1934	UAP/CP	18	–	–	–	–	–	14	33	10	75
1937	UAP/CP	29	–	–	–	–	–	16	28	2	75
1940	UAP/CP	32	–	–	–	–	–	14	23	6	75
1943	ALP	49	–	–	–	–	–	12	12	2	75
1946	ALP	43	–	–	–	17	–	12	–	3	75

Election	*Govt*[a]	*ALP*	*LIB*	*NPA*[e]	*CLP*	*DLP*	*AD*	*GRN*	*Others*[b]	*Total*
1949	LIB/CP	48	55	19	–	–	–	–	1	123
1951	LIB/CP	54	52	17	–	–	–	–	–	123
1953[f]	LIB/CP	54	52	17	–	–	–	–	–	123
1954[d]	LIB/CP	59	47	17	–	–	–	–	–	123
1955	LIB/CP	49	57	18	–	–	–	–	–	124
1958	LIB/CP	47	58	19	–	–	–	–	–	124
1961	LIB/CP	62[g]	45	17	–	–	–	–	–	124
1963[d]	LIB/CP	52	52	20	–	–	–	–	–	124
1964[f]	LIB/CP	52	52	20	–	–	–	–	–	124
1966[d]	LIB/CP	41	61	21	–	–	–	–	1	124
1967[f]	LIB/CP	41	61	21	–	–	–	–	1	124
1969[d]	LIB/CP	59	46	20	–	–	–	–	–	125
1970[f]	LIB/CP	59	46	20	–	–	–	–	–	125
1972[d]	ALP	67	38	20	–	–	–	–	–	125
1974	ALP	66	40	21	–	–	–	–	–	127
1975	LIB/NCP	36	68	22	1	–	–	–	–	127
1977	LIB/NCP	38	67	18	1	–	–	–	–	124
1980	LIB/NCP	51	54	19	1	–	–	–	–	125
1983	ALP	75	33	17	–	–	–	–	–	125
1984	ALP	82	44	21	1	–	–	–	–	148
1987	ALP	86	43	19	–	–	–	–	–	148
1990	ALP	78	55	14	–	–	–	–	1	148
1993	ALP	80	49	16	–	–	–	–	2	147
1996	LIB/NPA	49	75	18	1	–	–	–	5	148
1998	LIB/NPA	67	64	16	–	–	–	–	1	148

Shading denotes elections when the Government gained an absolute majority in the Senate.

Simultaneous dissolution election years are in bold.

(a) Government after election.

(b) *Others* include: 1903–1 Revenue Tariff; 1906–4 Independent Protectionist and 2 Western Australia Party; 1919–1 Independent Nationalist; 1928–1 Country Progressive; 1929–3 Independent Nationalists and 1 Country Progressive; 1931–4 Lang Labor; 1934–9 Lang Labor; 1937–1 Independent UAP; 1940–4 Non-Communist Labor; 1966–1 Independent (formerly ALP). The remainder not specified herein are Independents.

(c) Known as 'Fusion' in 1910.

(d) Separate House of Representatives election.

(e) Country Party (CP) until May 1975; National Country Party (NCP) from May 1975 to October 1982.

(f) Separate half-Senate election.

(g) Includes the two Territory members who did not have full voting rights (hence the LIB/CP government remained in office).

Elections: Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

Voting system: 1901–18 First-past-the-post voting; **from 1918** Preferential voting.

Senate

Election	*Govt*[a]	*ALP*	*FT*	*PROT*	*LIB*	*NAT*	*CP*	*UAP*	*Others*[b]	*Total*
1901	PROT	8	17	11	–	–	–	–	–	36
1903	PROT	14	12	8	–	–	–	–	2	36
1906	PROT	15	12	6	–	–	–	–	3	36
1910	ALP	23	–	–	13[c]	–	–	–	–	36
1913	LIB	29	–	–	7	–	–	–	–	36
1914	ALP	31	–	–	5	–	–	–	–	36
1917	NAT	12	–	–	–	24	–	–	–	36
1919	NAT	1	–	–	–	35	–	–	–	36
1922	NAT/CP	12	–	–	–	24	–	–	–	36
1925	NAT/CP	8	–	–	–	25	3	–	–	36
1928	NAT/CP	7	–	–	–	24	5	–	–	36
1929[d]	ALP	7	–	–	–	24	5	–	–	36
1931	UAP	10	–	–	–	–	5	21	–	36
1934	UAP/CP	3	–	–	–	–	7	26	–	36
1937	UAP/CP	16	–	–	–	–	4	16	–	36
1940	UAP/CP	17	–	–	–	–	3	16	–	36
1943	ALP	22	–	–	–	–	2	12	–	36
1946	ALP	33	–	–	2	–	1	–	–	36

Election	*Govt*[b]	*ALP*	*LIB*	*NPA*[e]	*CLP*	*DLP*	*AD*	*GRN*	*PHON*	*Others*[b]	*Total*
1949	LIB/CP	34	20	6	–	–	–	–	–	–	60
1951	LIB/CP	28	26	6	–	–	–	–	–	–	60
1953[f]	LIB/CP	29	26	5	–	–	–	–	–	–	60
1954[d]	LIB/CP	29	26	5	–	–	–	–	–	–	60
1955	LIB/CP	28	24	6	–	2	–	–	–	–	60
1958	LIB/CP	26	25	7	–	2	–	–	–	–	60
1961	LIB/CP	28	24	6	–	1	–	–	–	1	60
1963[d]	LIB/CP	28	24	6	–	1	–	–	–	1	60
1964[f]	LIB/CP	27	23	7	–	2	–	–	–	1	60
1966[d]	LIB/CP	27	23	7	–	2	–	–	–	1	60
1967[f]	LIB/CP	27	21	7	–	4	–	–	–	1	60
1969[d]	LIB/CP	27	21	7	–	4	–	–	–	1	60
1970[f]	LIB/CP	26	21	5	–	5	–	–	–	3	60
1972[d]	ALP	26	21	5	–	5	–	–	–	3	60
1974	ALP	29	23	6	–	–	–	–	–	2	60
1975	LIB/NCP	27	27	8	–	–	–	–	–	2	64
1977	LIB/NCP	26	29	6	–	–	2	–	–	1	64
1980	LIB/NCP	27	28	3	–	–	5	–	–	1	64
1983	ALP	30	24	4	–	–	5	–	–	1	64
1984	ALP	34	28	5	–	–	7	–	–	2	76
1987	ALP	32	27	6	1	–	7	–	–	3	76
1990	ALP	32	29	4	1	–	8	1	–	1	76
1993	ALP	30	30	5	1	–	7	2	–	1	76
1996	LIB/NPA	29	31	5	1	–	7	2	–	1	76
1998	LIB/NPA	29	31	3	1	–	9	1	1	1	76

Shading denotes elections when the Government gained an absolute majority in the Senate.

Simultaneous dissolution election years are in bold.

(a) Government after election.

(b) *Others* include: Various Independents such as Senators Turnbull and Harradine, Nuclear Disarmament Party members and former Liberals.

(c) Known as 'Fusion' in 1910.

(d) Separate House of Representatives election.

(e) Country Party (CP) until May 1975; National Country Party (NCP) from May 1975 to October 1982.

(f) Separate half-Senate election.

Elections: Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

Voting system: 1901–18 First-past-the-post voting; **1919–48** Preferential voting; **from 1949** Proportional representation.

Appendix 2: Party Representation in Parliament at Election Before and After Double Dissolutions

		House of Representatives					Senate						
Gov't	**Year**	**ALP**	**LIB**	**CP/ NPA**	**Other**	**Total**	**ALP**	**LIB**	**CP/ NPA**	**DLP**	**AD**	**Other**	**Total**
LIB	1913	37	38	–	–	75	29	7	–	–			36
ALP	**1914**	42	32	–	1	75	31	5	–	–	–	–	36
LIB/CP	1949	48	55	19	1	123	34	20	6	–	–	–	60
LIB/CP	**1951**	54	52	17	–	123	28	26	6	–	–	–	60
ALP	1972	67	38	20	–	125	26	21	5	5	–	3	60
ALP	**1974**	66	40	21	–	127	29	23	6	–	–	2	60
ALP	1974	66	40	21	–	127	29	23	6	–	–	2	60
LIB/NP	**1975**	36	68	23	–	127	27	27	8	–	–	2	64
LIB	1980	51	54	20	–	125	27	28	3	–	5	1	64
ALP	**1983**	75	33	17	–	125	30	24	4	–	5	1	64
ALP	1984	82	45	21	–	148	34	28	5	–	7	2	76
ALP	**1987**	86	43	19	–	148	32	27	7	–	7	3	76

Notes: 1 Proportional representation introduced for Senate election at 1949 election.

2 After the 1974 election, the Senate numbers were altered by the replacement of two ALP casual vacancies by non-ALP Senators.