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Resolving Deadlocks in the Australian Parliament

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Resolving Deadlocks in the Australian Parliament

The Vision in Hindsight: Parliament and the Constitution: Paper No. 9

Vision in Hindsight

Vision in Hindsight is a Department of the Parliamentary Library (DPL) project for the Centenary of Federation.

The Vision in Hindsight: Parliament and the Constitution will be a collection of essays each of which tells the story of how Parliament has fashioned and reworked the intentions of those who crafted the Constitution. The unifying theme is the importance of identifying Parliament's central role in the development of the Constitution. In the first stage, essays are being commissioned and will be published, as IRS Research Papers, of which this paper is the ninth.

Stage two will involve the selection of eight to ten of the papers for inclusion in the final volume to be launched in conjunction with a seminar, in November 2001.

A Steering Committee comprising Professor Geoffrey Lindell (Chair), the Hon. Peter Durack, the Hon. John Bannon and Dr John Uhr assists DPL with the management of the project.



Centenary of Federation 1901-2001

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Contents

Major Issues	i
Introduction	1
Sharing Legislative Power	1
Disagreements Between the Houses	2
The Convention Debates—1891 and 1897–98	3
Sydney Constitutional Convention of 1891	3
Adelaide Convention of 1897	4
Sydney Session in 1897	6
Decision in Favour of a Deadlock Clause.....	6
Popular Referendum.....	6
Consecutive Dissolutions	7
Double Dissolution Plus a National Referendum	7
Referendums Defeated	8
Melbourne Session in 1898.....	8
Premiers' Conference in Melbourne in 1899.....	8
Deadlock Debate in Retrospect.....	9
The Double Dissolutions.....	10
First Double Dissolution in 1914	11
Second Double Dissolution in 1951.....	11
Third Double Dissolution in 1974.....	11
Legal Issues Arising from the Third Dissolution.....	12
Fourth Double Dissolution in 1975.....	14
Fifth Double Dissolution in 1983.....	14
Role of the Governor-General.....	15
Sixth Double Dissolution in 1987	16

A Seventh Double Dissolution?.....	16
Proposals for Constitutional Change	17
Senate Select Committee in 1950	17
Report of the Joint Committee on Constitutional Review in 1959.....	17
When a Deadlock Occurs.....	17
Joint Sitzings as an Alternative to Dissolution.....	18
Let Sleeping Dogs Lie	18
Australian Constitutional Convention 1973–1985	19
Constitutional Commission in 1988	19
Ordinary Bills.....	19
Money Bills.....	20
The Future	21
The Senate as a House of Review	21
Money Bills.....	21
Other Bills.....	22
The Price of Federalism	23
Constitutional Change.....	23
Endnotes.....	24
Appendix 1: Simultaneous Dissolution Proclamations	31
Appendix 2: Tables—Election Results	37

Major Issues

Colonial politicians who met at a Constitutional Convention in 1891 and again in 1897–1898 created the Australian Federal Constitution. They agreed without argument that there should be a bicameral Legislature consisting of a Senate and a House of Representatives but it took exhaustive debates extending over many days to determine the respective powers of the two Houses and their relationships with each other.

The small Colonies, South Australia, Western Australia and Tasmania, (Queensland was absent after 1891) fearing domination by Victoria and New South Wales, were determined that the Senate should be seen as a House designed to protect the interests of the separate Colonies. Accordingly, the States were to be accorded equal representatives in the Senate. Today Tasmania has only five Members of the House of Representatives but it has 12 Senators.

Under the guidance of Sir Henry Parkes in 1891, all Colonies agreed that the Senate should also be a House which would independently review Bills passed by the House of Representatives. Eventually the Senate was given the power to reject any Bill transmitted to it from the Lower House, even budget measures, which the Convention acknowledged should originate in the House of Representatives where governments were formed.

The Senate's role as a House of Review was further strengthened by giving Senators six year terms with half retiring every three years. Delegates from New South Wales and Victoria, on becoming more aware of the scope of the concessions made to the other Colonies, began to press for some means of resolving deadlocks between the two Houses. The result was section 57. It provides that if the Senate twice rejects a Bill passed by the House of Representatives the Governor-General may dissolve both Houses. If, after general elections, the dispute continues the matter is to be resolved at a joint sitting of the two Houses.

This paper examines the Convention dialogues and concludes that the agreed constitutional fabric outlined above was fashioned in an era of political conservatism which by 1900 was nearing its end. The Founders of the Constitution as a whole failed to anticipate the growth of centralised major political parties, which would present a united front and dominate debates in parliaments throughout Australia.

There have been six double dissolutions following unresolved disputes between the two Houses of Parliament, five of them since 1950. None has involved a State issue nor been the result of independent review. All six have occurred because the Government was

outnumbered in the Senate by the parties in Opposition. In the most celebrated case in 1975 the Governor-General dismissed the Whitlam Labor Government because the Senate would not pass two Appropriation Bills necessary for carrying on the ordinary annual services of the Government. The action created an intense controversy across the country which few would want to see repeated.

It is now a recurrent feature of the Australian Parliament that the government of the day usually does not have a majority in the Senate and that it has to engage repeatedly in negotiation with opposition parties or one or two independent Senators to modify Bills rather than have them rejected outright. Such a state of affairs gives rise to the question whether Senate power should be abridged in some way which recognises that proceedings in the Upper House should not be dominated by repeated divisions along party lines.

Federalism involves compromise and provides a natural haven for the expression of checks and balances appropriate to a society which has opted for a federal rather than a unitary form of government. Thus conflicts between the Senate and House of Representatives can be seen as reflecting the true spirit of federalism. Viewed in another way, however, there is a contest between the cabinet system of responsible government and the exercise of Senate constitutional power in the hands of political parties which have failed to win government.

There have been two major constitutional reviews undertaken since 1950. The first was by a joint all party Committee of the Australian Parliament, known as the Constitution Review Committee, which reported in 1959. The other was the Constitution Commission which completed its task in 1988. Both bodies were on common ground in pointing to the potentially dangerous impact of the Senate flexing its muscle to reject Taxation Bills and budgetary measures such as Appropriation Bills. As an alternative to a double dissolution, the Committee advocated a joint sitting of the two Houses if the Senate had not passed such a measure within 30 days. The Commission preferred that the Senate should only have a suspensory veto but in the context of a four year Parliament instead of three as at present, with a double dissolution being possible in the fourth year.

In the case of ordinary Bills not to do with finance, the Constitutional Commission's approach stood in stark contrast to the Constitution Review Committee's recommendation which was again to have a joint sitting as an option to a dissolution. The Commission proposed to dispense with double dissolutions altogether in the first three years of a four year Parliament. The view expressed in this paper is that this proposal would have an inherent capacity to encourage a Senate majority in opposition to greater intransigence if section 57 no longer exposed that House to the threat of dissolution.

At the end of this paper there are the writer's own suggestions for revision of section 57 which abandon all resort to a double dissolution because it disrupts responsible government. Section 57 read together with the Senate's powers defined in section 53 in a party dominated political system is, it is submitted, not consistent with the position the Commonwealth now occupies in the Federation. It is the dominant entity not only fiscally speaking but also because federal legislation permeates the daily lives of all members of

the Australian society without regard to State boundaries. Federal voters see government as being led by a Prime Minister who is a member of the House of Representatives with a Ministry consisting mainly of members of that House. It is this elected body of Parliamentarians that the electorate regards as being answerable to it.

Experience has shown that Australian voters are reluctant to approve changes to the Constitution. If section 57 is to be changed it will need to enjoy the full support of strongly led major parties in the Federal Parliament to have any hope of success.

Introduction

The Australian Senate is the distinctive product of a nineteenth century grass roots federal movement. Its powers are such that it can coerce even a recently elected government commanding a solid majority in the House of Representatives into modifying the legislative program it successfully espoused on the hustings. No other upper chamber in parliamentary democracies of the Westminster type has greater powers. When the political representatives of the youthful Australian Colonies decided to federate for reasons of kinship, commerce and defence they had no intention of granting to the new Commonwealth Parliament any greater legislative powers than were necessary, and none that might threaten the integrity of the States as equal and separate components of the federal system. They saw the Senate as paramountly the protector of their interests in the forthcoming Federal Parliament, at the same time acting as an independent chamber of review.

Sharing Legislative Power

Section 53 deals with the allocation of legislative power between the Senate and House of Representatives. It recognises that proposed laws appropriating revenue or money or imposing taxation, known as Money Bills, must originate in the House of Representatives and it states that though the Senate may suggest amendments it may not amend proposed laws imposing taxation or appropriating revenue or moneys for the ordinary annual services of the government. But the section concludes by saying that, except as provided in the section, the Senate should have equal power with the House of Representatives in respect of all proposed laws.

It seems beyond argument that the last paragraph of the section accords to the Senate full power to pass or reject any Bill, including a Money Bill, transmitted to it from the House of Representatives. The Senate has always acted on that assumption without any formal challenge from the House of Representatives and it is perfectly plain from the Convention debates in the 1890s that this was the Founders' intention.¹

Section 53 reads:

Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the

imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Disagreements Between the Houses

During the Convention debates it took some time for participants to appreciate that the power given to reject measures passed by the House of Representatives could give rise to irreconcilable differences between the two Houses. In the upshot, section 57 was written into the Constitution to provide a means of resolving deadlocks by resort to a simultaneous dissolution of both Houses.

Section 57 is the third longest section in the Constitution. It was not made for easy reading. In general terms it provides that if the Senate, with an interval of three months intervening, twice rejects a proposed law or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve both Houses simultaneously. If the disagreement persists after the election of a new Parliament the Governor-General may convene a joint session of the two Houses to vote on the proposed law. If it is passed by an absolute majority of the total number of members of both Houses it becomes law after receiving the Royal assent.

Section 57 reads:

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six

months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.²

There have been six double dissolutions under section 57 but Senate muscle has had a much greater impact than the number suggests. This paper explores the factors which led to eventual agreement during the Convention debates that deadlocks should be resolved according to the processes of section 57 and assesses whether the section is apposite to a federation now 100 years old.³ The starting point is the first National Australasian Convention which met in Sydney in 1891.⁴

The Convention Debates—1891 and 1897–98⁵

Sydney Constitutional Convention of 1891

In 1891, after a conference of colonial political leaders in Melbourne in 1890, all six colonial legislatures sent seven representatives each, all politicians, to a Convention in Sydney to see if they could conjure up agreement on a federal union. Astonishingly, under the impressive leadership of Sir Henry Parkes and his deputy, Sir Samuel Griffith, the Convention, working through committees, produced a draft Constitution after only seven days' debate.⁶

The draft document provided for a Senate and a House of Representatives with the Senate composed of eight Senators from each State to be chosen by their Parliaments. Money Bills were a major topic of debate. Adamant that the Senate should be the protector of their interests, delegates from the small Colonies, notably South Australia, urged upon the Convention that the Senate and the House of Representatives should have equal legislative power. After two days of intensive debate, however, they conceded that Money Bills

should originate in the Lower House. In return, the Convention agreed upon a clause expressly stating that the Senate was to have equal power with the House of Representatives in respect of all proposed laws:

except for laws imposing taxation and laws appropriating the necessary supplies for the ordinary annual services of the government, which the Senate may affirm or reject, but may not amend.⁷

The clause became known as the compromise of 1891.

Shortly before the closure a Victorian delegate, Mr Wrixon, made the first suggestion for a deadlock clause, oddly enough to deal with a situation in which the House of Representatives would not accept a Senate suggestion to amend a Money Bill.⁸ His proposal received short shrift, Sir Samuel Griffith, the Chairman of the Constitutional Committee, saying that the suggestion was dangerous and that he had no love for artificial means of settling differences between the two Houses.⁹

The Convention ended with a decision that each Colonial Legislature should submit the draft Federal Constitution for the approval of the people of the Colony. Discontent permeated subsequent discussions in the various Chambers, encouraged by misgivings among communities which had little understanding of the issues at stake. By the end of 1892 no Legislature had taken the necessary action. News that the discussion had broken down completely in the key Colony of New South Wales resulted in all Colonial Legislatures failing to carry out the task allotted to them by the 1891 Convention.

Adelaide Convention of 1897

Over the next few years an economic depression swept across the Colonies highlighting their weakness as separate entities. At the same time popular federal movements gained strength and in 1895 a Premiers' Conference agreed to another convention to consist of ten delegates from each Colony this time directly chosen by the electors and not the Legislatures.¹⁰

Delegates from all Colonies except Queensland assembled at Adelaide in March 1897. Edmund Barton, appointed leader of the Convention¹¹, introduced discussion with a set of federal resolutions not dissimilar to those propounded by Sir Henry Parkes in 1891. However, unlike Parkes, Barton, quite specifically described the Senate as a States' Assembly with representatives chosen in such a way as to secure to it 'a perpetual existence, combined with definite responsibility to the people of the State which shall have chosen them.'¹²

All but three of the colonial representatives were members or former members of their Legislatures which meant that discussions about relationships between the two Houses were certain to occupy much debating time. In fact, there was a concerted challenge to the compromise of 1891, led by the South Australian contingent which gave rise to a two day

debate described by Quick and Garran in their prestigious work on the Australian Constitution as the most momentous in the Convention's whole history.¹³ The compromise was preserved only by a margin of two votes—25 votes to 23.

By 1891 there had been several examples of disputes in the Legislatures of the Australian Colonies. In Queensland in 1885–86 there was a dispute about whether the nominee Legislative Council should be guided by the conventional rule against amending Money Bills which the hereditary House of Lords accepted in Britain. There had been controversies in Victoria over the Legislative Council's exercise of its legal power to reject but not to alter Money Bills. In South Australia there were similar struggles. The culmination was reached in 1881 when the South Australian Parliament passed an Act to resolve legislative conflicts, by firstly, a dissolution of the House of Assembly to be followed, if necessary, by a double dissolution or the election of additional members of the Legislative Council.¹⁴

A few delegates said that some mechanism to settle disputes between the two Houses was essential. Taking the initiative, Bernhard Wise of New South Wales moved for a clause to provide in the event of a dispute over any Bill that in the first instance the House of Representatives should be dissolved and secondly if, following the election the Senate rejected the same Bill for a second time, the Senate should be dissolved.¹⁵ Then H. B. Higgins of Victoria moved an amendment to provide for a simultaneous dissolution of both Houses instead of consecutive dissolutions.¹⁶ Both proposals provoked hostility from the small Colonies, and were not helped by Convention leader Barton, himself from New South Wales, saying that past struggles in the Colonies had nearly always been over attempts to conceal in Taxation Bills matters on other subjects. He saw no need for a deadlock clause.¹⁷ Senior spokesman for South Australia, Sir John Downer, said that the Senate's powers had already been weakened on financial matters and it was wrong for that House representing the States as individual entities to be placed under pressure to submit to the House of Representatives on pain of dissolution. Such a proposal was unsuited to a federation.¹⁸ The two proposals were decisively beaten.¹⁹

Undeterred, Isaac Isaacs, in conjunction with Sir George Turner, both of Victoria, then moved that in lieu of a dissolution of either House, the disputed law should be submitted to a popular referendum of electors and, if approved by requisite majorities, it should be submitted for the Royal assent. The proposal had the advantage from the small States' point of view that it would leave the continuity of the Senate undisturbed. Nevertheless the motion was defeated by 18 votes to 13. Isaacs then said 'We will carry it next time.'²⁰ He was wrong.

With its work on a new Convention completed, the Convention adjourned. Plainly, in a discussion dominated by State rights and Money Bills, the majority were still to be convinced that a deadlock clause was required. W. A. Trenwith of Victoria was one of the few who visualised, at this stage, that deadlocks could arise on matters of policy unconnected with finance as had happened in Victoria a few years before over a Factories Act.²¹

One decision at Adelaide was to have unforeseen consequences for the future Federal Parliament and that was to substitute the direct election of Senators by the electors of a State, voting as one electorate, for the election of Senators by the State Parliaments as agreed in 1891.²² Only a handful of delegates at Adelaide had any real experience of party politics and few were capable of predicting that voting patterns on party lines would invade all Australian political systems soon after Federation as fledgling Labor parties grew in strength.

Sydney Session in 1897

Four months elapsed before the Convention met again, for a second time, in Sydney. In the meantime the Legislative Assemblies of New South Wales, Victoria, South Australia and Tasmania produced a variety of deadlock clauses, with some reluctance in the case of the latter two Colonies. Thus the scene was set for a major debate. In fact, the debate lasted six days and accounted for some 400 of the 1100 pages of the official record, making deadlocks easily the most debated single subject in the entire series of Convention debates.

Decision in Favour of a Deadlock Clause

Before the deadlock debate began, the Convention, after a long and torrid debate, overwhelmingly rejected a New South Wales proposal to displace equal representation of the States in the Senate in favour of proportional representation.²³ John Symon of South Australia likened the New South Wales action to the cassowary bird which:

On the plains of Timbuctoo,
Ate up the missionary,
Body, bones and hymn-book, too.

A contrary decision would have completely disaffected the small Colonies. A consequence, however, was that more delegates were encouraged to think there should be some limit placed on the Senate's veto. After two days the Convention inevitably decided by 30 votes to 15 that there had to be a deadlock clause.²⁴ Thereafter, however, there was a strong cleavage of opinion as to its nature. Broadly speaking, delegates divided into two camps—those favouring a popular referendum and others who thought that inter-House disputes should be resolved by the dissolution process.

Popular Referendum

Debate commenced with a proposal by the New South Wales Legislative Assembly for a popular or so-called mass referendum. If either House twice rejected a Bill passed by the

other in two sessions of the same Parliament the Bill should be submitted to a national referendum at which a simple majority vote would decide whether the measure should become law.²⁵ The proposal differed from the Isaacs-Turner proposal defeated at Adelaide which, in addition to a national majority, required separate majorities in a majority of States. Smaller Colony delegates saw the proposal as favouring the interests of the two most populous Colonies at their expense. It attracted the vociferous opposition of South Australian, John Symon, who countered with a proposal that in the event of a deadlock there should first be a dissolution of the House of Representatives and, if the deadlock persisted, a double dissolution should follow.²⁶

Consecutive Dissolutions

In the face of opposition from delegates from New South Wales and Victoria, Symon eventually amended his proposal by dispensing with the double dissolution and providing instead for the Senate alone to be dissolved if the conflict continued after the House of Representatives had been dissolved. However, in the eyes of delegates from the two large Colonies a consecutive dissolution lacked finality and, furthermore, placed the Senate in a redoubtable position by enabling it to witness without immediate risk to itself a dissolution of the lower House and an ensuing election. Nevertheless the Symon proposal was carried by 27 votes to 22.²⁷ Since the operative effect was to displace the New South Wales proposal for a popular referendum there were obviously rugged times ahead. The majority vote included only four delegates from New South Wales and Victoria.

Double Dissolution Plus a National Referendum

Proponents of a popular referendum refused to lie down. William J. Lyne of New South Wales moved for a national referendum if disagreement continued after a double dissolution²⁸, whilst Sir George Turner kept Victorian hopes alive by seeking to resurrect the Isaacs-Turner proposal for a dual referendum previously defeated at Adelaide.²⁹ Bernhard Wise of New South Wales attempted to straddle various camps by moving, by way of amendment of the Turner motion, for the settlement of deadlocks in the first instance by a double dissolution and if this failed to resolve the crisis by resort to a national referendum.³⁰

The Convention, to some extent entrapped by its own procedures, became engulfed in a debate which ended rather surprisingly in the Wise amendment being carried by 25 votes to 20.³¹ Thus an important decision had been made—if there were to be a referendum at all it should only be after a dissolution whether simultaneous or consecutive.

Referendums Defeated

In the following debate, the smaller Colonies rallied enough support to oust first the Lyne proposal involving a mass referendum, and then the Turner proposal for settling deadlocks by the sole means of a dual referendum.³² Taking advantage of the situation, J. H. Carruthers of New South Wales moved for the omission of a national referendum from the Wise proposal in favour of a joint sitting of the two Houses with a three-fifths majority vote being required if the conflict continued after double dissolution. He was successful.³³ Yet as a final act the Convention kept on foot Symon's proposal for consecutive dissolutions without a joint sitting to follow.

Melbourne Session in 1898

Opening a two day debate the leader of the Convention, Edmund Barton, moved at once to strike out Symon's proposal for consecutive dissolutions but surprisingly he was easily defeated.³⁴ This prompted Symon in his turn to move for the removal of a simultaneous dissolution of the two Houses from his amended proposal but this was also defeated.³⁵ The debate itself had become deadlocked and there were now murmurs of support for resolving conflicts by a joint sitting of the two Houses without resorting to a double dissolution at all.

Isaac Isaacs made a final plea for his much loved referendum. He said he knew of nothing more useless than a joint sitting and yet the very fact that it was proposed showed that a dissolution was an unsatisfactory way of dealing with inter-House conflicts. Accordingly, the Convention should think again about his proposal for a referendum to meet the case in which the parliamentary institution had broken down. Isaacs had Victorian and South Australian support and even Carruthers supported him, but after a long debate, the proposal was beaten by 30 votes to 15.³⁶

With participants at the point of exhaustion, Symon acknowledged wider support for a simultaneous dissolution and agreed to the withdrawal of a consecutive dissolution from his proposal and this was done.³⁷ However, it was not before the Convention had rejected a proposal by Victorian H. B. Higgins to substitute a bare majority for the three-fifths majority required at a joint sitting.³⁸ And so there emerged from the Melbourne session a clause very like section 57 except to require a three-fifths joint sitting majority. But New South Wales was to have the last laugh. The Melbourne session ended with agreement on a draft Constitution and cheers for the Queen and Australia.

Premiers' Conference in Melbourne in 1899

The draft Federal Constitution was submitted to popular vote in four Colonies but the total affirmative vote in New South Wales at the referendum held on 3 June 1898 was less than

required by the *Australasian Federation Enabling Act 1898* of the Colony. Defeat made federation impossible. A Premiers Conference convened in Melbourne at the request of New South Wales considered several suggestions to make federation acceptable. One was that the three-fifths majority at a joint sitting should be replaced by an absolute majority of the total number of members of the two Houses. This was accepted and became the final amendment to section 57.³⁹

Deadlock Debate in Retrospect

Sections 53 and 57 emerged from the Conventions as hybrids—the result of a succession of compromises in which responsible government on the British model, so well-known to Australian colonial politicians, had to be reconciled with the particular interests of the separate Colonies, as expressed by their representatives, if they were to become components of a federation. The sections were fashioned in the background of a conservative political environment which by 1900 was in decline, especially in New South Wales where a militant Labor movement was well under way.

In 1891 Sir Henry Parkes saw Senators taking their places as independently minded persons in a Senate primarily devoted to being a House of review. In 1897 Edmund Barton, as leader of the Convention, impressed upon the new assembly of delegates the role of the Senate as a States' Assembly and the entire deadlock debate bore the imprint of his opening speech.

Among the few who prophesied that the Senate would not function effectively as a House of the States was the prescient Alfred Deakin. Deakin said at Sydney in 1897:

... the contentions in the Senate or out of it, and especially any contention between the two houses, will not and cannot arise upon questions in regard to which states will be ranked against states. As was pointed out by the Hon. Member Mr. O'Connor in the United States, and also in Switzerland, and in Canada, as here, the whole of the states will be divided into two parties. Contests between the two houses will only arise when one party is in possession of a majority in the one chamber, and the other in the possession of a majority in the other chamber. We have had it submitted to us that probably the Senate will be the more radical house of the two. I am willing to accept that suggestion for the purposes of my argument, though the argument is equally good either way. The House of Representatives would then be the more conservative body, and it is possible that a more conservative party in the House of Representatives would be confronted by a more radical party in the Senate. In both cases the result after a dissolution would be the same. The men returned as radicals would vote as radicals; the men returned as conservatives would vote as conservatives. The contest will not be, never has been, and cannot be, between states and states ... it is certain that once this constitution is framed, it will be followed by the creation of two great national parties. Every state, every district, and every municipality, will sooner or later be divided on the great ground of principle, when principles emerge.⁴⁰

The conclusion is inescapable that the Founders created a Senate to serve purposes which would be either unattainable or would lose much of their significance in a nascent Commonwealth. Nevertheless the Senate has always sustained itself as a formidable component of the Australian bicameral Parliament. Various factors beyond the scope of this paper will ensure that it remains so in the foreseeable future.⁴¹

The Double Dissolutions

In 1913 Bernhard Wise, who had been so prominent in the deadlock debate, echoed Deakin's sentiments. At the same time he wondered what all the fuss over deadlocks had been about. He wrote:

It is difficult for us, who have had twelve years' experience of the working of Federation, to understand why so much stress was laid on these provisions for resolving deadlocks; and why even those delegates who at Adelaide thought that conflicts between the two Houses would be infrequent, and that, if they did occur, a deadlock might not be disadvantageous, ultimately came round to the opinion that some provision, in the nature of a safety-valve, would be desirable. The explanation is that the perception of the true character of the Senate was obscured by the memories of traditional conflicts between the two Chambers of the local Legislatures. The ghosts of dead controversies still walked the political field; and 'Liberals' and 'Conservatives' alike discussed the functions of a Federal Senate as though it were a local Upper House! Thus, the strange spectacle was presented of 'Conservatives' demanding the fullest authority for a body elected by the whole people of each State upon the widest possible franchise, and of 'Liberals' insisting upon a limitation of its powers, in the name of democracy! Only one delegate ventured to suggest that the question was of antiquarian rather than practical interest, and that any disputes between the two Houses would be over measures of social reform, and not over points of constitutional etiquette! Public opinion set steadily against this view; and the Bill was opposed both in New South Wales and Victoria, because the provision requiring a three-fifths majority at the Joint Sitting did not make the concession of equal representation wholly illusory, but permitted the remote possibility that a majority of the States might be able to protect themselves against coercion by the representatives of a larger population ... There never has been, nor, so far as we can see, will there ever be, a division of opinion upon State lines; and the establishment of a Senate, in order to protect State interests, appears now, as it appeared to Sir Henry Parkes, to have been an unnecessary precaution.⁴²

Contrary to Wise's expectations, a year later a deadlock occurred but, as he predicted, it was not over the protection of State interests. Five double dissolutions have followed since.⁴³

First Double Dissolution in 1914

In 1913 Liberals headed by Joseph Cook won office but with a majority of only one which was lost after providing for a Speaker. Besides frustrations in the House of Representatives, the Government faced a hostile Senate in which it held only seven of 36 seats. In 1914 after suffering reverses in both Houses, a weary Cook despatched a Bill to the Senate abolishing preference to unionists in Commonwealth public employment which the Senate twice rejected. The Governor-General, Sir Ronald Munro-Ferguson, granted a double dissolution a few days before the Great War broke out. The Government was decisively beaten at the general elections by Labor which won a majority in both Houses. Thus the deadlock was resolved by the defeat of the proponent Government, but at least the incoming Government enjoyed the stability which Prime Minister Cook had sought. The dissolution did not occur for any of the reasons adumbrated by the majority of the Founders during the Convention debates.

Second Double Dissolution in 1951

Between 1914 and 1950 governments for most of the time had working majorities in both Houses. Even so, the Scullin Labor Government, which took office in 1929, faced an adverse Senate during the whole of its term. In these times of national economic depression, the Government suffered frequent defeats of its measures in the Upper House without any thought of risking a double dissolution.

In 1949 a Liberal-Country Party coalition won a substantial majority in the House of Representatives and most Senate vacancies but, because of Labor success at an earlier half Senate election and a change in the method of electing senators, it held only 26 of 60 Senate seats. Prime Minister Robert Menzies was soon in trouble and, declining to put up with the impasse, he presented a Bill to the Senate to re-establish the Commonwealth Bank Board. This was a touchy subject because the previous Chifley Labor Government had, for technical legal reasons, failed in its attempts to nationalise the banks. The Senate twice failed to pass the Bill and the Prime Minister sought and obtained a double dissolution. The Bill itself was merely the catalyst by which the Government hoped to increase its numbers in the Senate. In the event, it was returned with a majority in both Houses which made a joint sitting unnecessary. The Senate passed an equivalent Bill.

Third Double Dissolution in 1974

Until the end of 1973, the Senate passed all the Government's annual Appropriation and Supply Bills, even though in 19 of the 72 years of Parliament the Government did not have a majority in the Senate.⁴⁴

In 1973–74 Mr Whitlam's Labor Government's legislative policy program suffered disruption by the Senate twice rejecting six Bills transmitted to it from the House of Representatives. In April 1974 the Leader of the Opposition announced in the House of Representatives that his party intended to oppose the Government's Appropriation Bills in both Houses and force the Government to an election. The Prime Minister replied that if the Senate rejected any Money Bill he would advise the Governor-General to dissolve both Houses.

Following an indication by the non-Government parties in the Senate that they would defer consideration of the Money Bills until the Government agreed to an election for the House of Representatives, the Prime Minister advised the Governor-General to dissolve both Houses on the ground that the six other Bills satisfied the requisite conditions for a double dissolution. The Senate then avoided a financial crisis by passing the Appropriation Bills and the Governor-General granted the dissolution on 11 April.

Although the Government was returned to office it failed to win a majority in the Senate. The six Bills were passed at the first and only joint sitting convened under section 57.⁴⁵ Party alignments in the Senate brought about the entire situation and were to do so again in the following year.

Legal Issues Arising from the Third Dissolution

The occasion did not pass without some litigation. Shortly before the joint sitting, two opposition Senators challenged the validity of the double dissolution in the High Court in the case of *Cormack v Cope*.⁴⁶ The main argument was that a dissolution could only be granted in respect of one Bill and not a cluster of Bills. Certainly the Founders discussed section 57 in terms of a single Bill and moreover the section uses the words 'any proposed law'. However, the court held that the section had a distributive operation and a dissolution could apply to any number of proposed laws which met its requirements.⁴⁷ This means that a Government defeated in the Senate may accumulate a storehouse of Bills and choose when it should bring about a double dissolution.

Further questions arose but were not settled in *Cormack v Cope*, including the extent to which the section was justiciable in the Courts, given that it referred not to a law but to a proposed law, and that the courts had not intervened in Parliament's law making procedures.

Shortly afterwards there were two other cases. In *Victoria v Commonwealth*,⁴⁸ four States challenged the validity of the *Petroleum and Minerals Exploration Act*, one of the Bills passed at the joint sitting on the ground that the requisite three months had not passed between the first and second occasions on which the Bill had met its fate in the Senate. The plaintiffs succeeded.

In *Western Australia v Commonwealth* (the Territory Senators' case),⁴⁹ two States challenged three other Acts passed at the joint sitting, one of the grounds being the length of time which had elapsed before the double dissolution had occurred after their rejection. The court held that section 57 did not require that a double dissolution occur without undue delay.

In 1988 a Constitutional Commission appointed by the Government in 1985 to review the Constitution reported that as a result of the three cases the following points were settled:

- (a) The provisions of section 57 are justiciable in relation to whether an occasion has arisen on which a joint sitting is valid. In the *PMA Case* the High Court ruled that one of the six Bills passed at the joint sitting, the Petroleum and Minerals Authority Bill 1973, was invalid on the basis that the requisite three months had not passed between the Senate's failure to pass the Bill and its second passage by the House of Representatives. The majority judges indicated, however, that they did not regard the dissolution of the Parliament as justiciable. In their view, if the double dissolution had been granted on the basis of the *Petroleum and Mineral Authorities Bill* only and thus unauthorised by section 57, the ensuing elections would ensure that the new Parliament would be legitimate. This means that the legitimacy of the Parliament elected following a double dissolution under section 57 cannot be challenged, but a law enacted by a joint sitting of that Parliament may be ruled invalid on the basis of events preceding the double dissolution.
- (b) The section operates distributively, so that a double dissolution may be granted or a joint sitting convened in relation to more than one Bill. This means that a Government can build up a 'stockpile' of Bills on which to base a double dissolution and, potentially, have them all passed at a joint sitting. It is an open question whether a declaration as to the invalidity of the dissolution could be obtained before a proclamation dissolving both Houses.
- (c) There is no time limit within which a double dissolution must occur following the second rejection of a bill by the Senate (provided that, as specified by the section, it does not take place within six months before the expiry of the House of Representatives).
- (d) The three months interval which must elapse before the second passage of the Bill by the House of Representatives runs from the Senate's rejection of, or failure to pass, the Bill. The expression 'fails to pass' involves the notion that a time has arrived when, allowing for a reasonable period for deliberation, the Senate ought to decide whether or not to pass the Bill or make amendments to it for the consideration of the House of Representatives.⁵⁰

To the foregoing may be added that it seems clear that the Courts would almost certainly treat the Senate as having the power to reject Appropriation Bills and Money Bills if the question were to arise directly in connection with section 57. Neither is it necessary in order to establish a deadlock that the inter-house conflict should be over a measure of vital importance to the Government or bring the work of Parliament to a standstill. As the cases show, however, several questions about the interpretation and application of the section still arise.⁵¹

Fourth Double Dissolution in 1975

There was an extraordinary application of section 57 in 1975, the occasion of the most momentous of all six double dissolutions. The Whitlam Government faced a Senate seemingly as hostile as in the year before. Proposed laws covering many subjects continued to be twice rejected. Meanwhile it seemed to the opposition parties that some Government financial policies and ministerial actions were causing serious misgivings in sections of the community and the media, leading to a decline in the Government's hard won popularity in 1974.

On 11 October the opposition parties announced that their Senators would again vote against two Appropriation Bills which were measures essential for the funding of the ordinary annual services of the Government. The Opposition asserted that there was no convention or understanding that the Senate should not exercise its constitutional power to reject Money Bills and it proceeded to have the two Bills deferred in the Senate. On 23 October two further Appropriation Bills were deferred and the Government had a financial crisis on its doorstep but the Prime Minister was unwilling to advise a double dissolution.

In an unprecedented action in Australian federal history, on 11 November, the Governor-General, Sir John Kerr, invoked the so-called reserve powers of the Crown and his constitutional responsibilities and dismissed the Government. At the same time he commissioned the Leader of the Opposition, Malcolm Fraser, to be Prime Minister on the understanding that he would secure the passage of the two Bills in the Senate and advise a double dissolution.

The financial crisis was resolved when the Senate passed the two Bills whereupon Prime Minister Fraser advised a double dissolution. He could only do so, however, by invoking the fact that the Senate had twice rejected the 21 Bills which the Whitlam Government had transmitted to it. It would have been beyond the wildest dreams of the framers of the Constitution that any government could invoke a double dissolution by relying on proposed laws which its members had deliberately prevented from becoming laws when in opposition.

The Fraser Government won a majority of seats in both Houses at the elections and section 57 had thus achieved the purpose of restoring stability to government. On the face of it, of course, the section had been invoked simply as a means of the Opposition gaining government.

Fifth Double Dissolution in 1983

In October 1980 the Fraser Government was returned to office but it lacked a majority in the Senate. Between September 1981 and March 1983 the Senate twice rejected or failed to pass 13 Bills transmitted to it, including nine Sales Tax Bills. At the time a struggling

Australian economy and a prolonged drought were affecting the Government's popularity but the Prime Minister sought and obtained a double dissolution.

As this event was occurring there was a sudden and dramatic change in the leadership of the Labor Party. The Government was defeated at the elections and Labor took office under Prime Minister Robert Hawke. In hindsight, the fifth double dissolution was an occasion in which sound political judgement deserted the outgoing Government.

Role of the Governor-General

It was established practice before 1983 for a Prime Minister to inform the Governor-General of the circumstances leading him to advise a double dissolution. There is no public record of a Governor-General resisting the advice given him.

In 1983, in responding to the Prime Minister's request, the Governor-General, Sir Ninian Stephen, wrote to him saying:

Such precedents as exist, together with the writings on section 53 of the Constitution, suggest that in circumstances such as the present, I should in considering your advice, pay regard to the importance of the measures in question and to the workability of Parliament.⁵²

After noting that the 13 proposed laws had been rejected or not passed for a considerable time and referring to further information he had sought from the Prime Minister the Governor-General granted the dissolution.

There is a question as to how far the Governor-General can or should go in satisfying himself that the requirements of section 57 have been satisfied before dissolving the two Houses. Legal issues may be involved, for example, as to when the Senate fails to pass a Bill. The Governor-General would, however, be entitled to rely on the advice given by the Prime Minister.

There is also a question whether the Governor-General may ultimately refuse a request for a double dissolution once the requirements of section 57 have been fulfilled, the answer to which is probably 'No'. Otherwise, the exercise of reserve powers aside, the Governor-General would be in breach of the well established convention that the powers of the Governor-General should be exercised in accordance with ministerial advice. Nevertheless the precise role of the Governor-General under the section remains unsettled and controversial.⁵³

Sixth Double Dissolution in 1987

In 1987 the Senate rejected for the second time the Australia Card Bill presented to it by the Hawke Government. The Bill sought to institute a system of personal identification mainly in an effort to combat tax evasion.

Seeking a double dissolution the Prime Minister informed the Governor-General, Sir Ninian Stephen, that the Bill was a critical measure in its economic impact and the principle of equity. The dissolution was granted and the Government was returned with a substantial majority but remained in a minority in the Senate.

Belatedly, the Government became aware that to bring the Bill into operation required the making of regulations which the Senate could and would disallow.⁵⁴ The popular vote at the elections failed to persuade the Senate to change its attitude to the Bill and the Government neither sought a joint sitting nor persevered with the conflict by re-introducing an amended version of it. The Government carried on without the Australia Card, much to the relief of many members of the community. Apart from allowing the Government to increase its lower House majority, the employment of section 57 was a wasteful exercise.

A Seventh Double Dissolution?

The six double dissolutions show that a formal mechanism was necessary to resolve inter-House conflicts and that section 57 has provided it in the sense of overcoming the immediate cause of deadlock. However, the third and sixth dissolutions failed to overcome the root cause of conflict, namely the lack of a government majority in the Senate.

In all elections after dissolution the rejected legislation was of little consequence as the political parties competed with each other on the hustings. In the fourth dissolution the rejected Bills were completely irrelevant.

In fact the six double dissolutions have confirmed Alfred Deakin's prophecy of 1897. State interests, which dominated the Convention debates, have not surfaced, and will not. Deadlocks occur simply through shows of strength by rival political parties in the Senate with combined numbers greater than the Government.

From the point of view of the Government with its majority in the House of Representatives, the idea of a double dissolution may constitute a greater deterrent than for Opposition parties since a dissolution may afford the Opposition an opportunity to win government, as happened in 1914 and 1983.

Since it first came to office in 1996 the Howard Liberal-National Party Government has frequently negotiated with its Senate opponents to keep its legislative policies afloat and though a double dissolution has been there for the asking, none has occurred. The Senate may reject but not amend a proposed law imposing taxation. In 1999, the Government

introduced legislation for a goods and services tax as an essential component of major taxation reform. The Goods and Services Tax Act which the Senate eventually passed was of much modified scope to meet the demands of Australian Democrats Senators. This was the only way, short of a double dissolution, in which the Government could implement its new taxation system.

Clearly it is a matter of political judgement by the Prime Minister when to advise a double dissolution but as section 57 has been interpreted, it allows a government that freedom of action. Equally, the Opposition must exercise political judgement in deciding how far it can go without precipitating a double dissolution or when to go the whole distance. This state of affairs will continue because the system of proportional representation adopted for the election of senators in 1948 will ordinarily result in a closely divided Senate.⁵⁵

Proposals for Constitutional Change

Senate Select Committee in 1950

In 1950 a Senate Select Committee, in the absence of any government representation, recommended that if the Senate did not pass an ordinary Bill within six months of receiving it or, in the case of a Money Bill, two months, the dispute should be referred to a joint sitting of the two Houses at which the will of an absolute majority should prevail. Double dissolutions were to be abolished.⁵⁶ The proposals greatly reduced Senate power and influence and, not unexpectedly, the Menzies Government would have none of it.

Report of the Joint Committee on Constitutional Review in 1959

An all party Committee consisting of Senators and Members of the House of Representatives, known as the Constitution Review Committee, first established in 1956 undertook an extensive review of the Constitution between 1957 and 1959. Its report in 1959 included proposals extensively amending section 57.⁵⁷ The Committee concluded that the Senate had not functioned as a House of the States or a Chamber of Review, as the Founders intended⁵⁸, and that section 57 needed to be modified in the interests of maintaining the principle of continuous responsible government.⁵⁹

When a Deadlock Occurs

The Committee's first concern was to modify the conditions necessary to create a deadlock. For the purpose, it separated Money Bills, that is to say Bills imposing taxation or appropriating revenue for the ordinary annual services of the government, from other

Bills. As to the former, a deadlock was deemed to arise if the Senate had not passed the measure within 30 days of receiving it. Other Bills had to be twice rejected by the Senate but, if it did not pass the measure within 90 days and the House of Representatives again submitted the Bill and the Senate did not pass it within 30 days, a deadlock was deemed to arise.

Joint Sittings as an Alternative to Dissolution

In the event of a deadlock occurring in respect of any Bill, the Committee recommended that it should be open to the Government to advise the Governor-General to convene a joint sitting of the two Houses as an alternative course of action to a double dissolution. If the joint sitting failed to resolve the dispute it was to remain open to the Government to proceed to a double dissolution. However, if the proposed law causing the deadlock was affirmed by an absolute majority of the total membership of the two Houses and, in addition, by at least half the Members and Senators of a State in at least half the States, it should be presented for the Queen's assent.

Let Sleeping Dogs Lie

The Constitution Review Committee's recommendations were well supported by both Government and Labor members of the Committee and there was some optimism that its work would receive serious attention in the party rooms and the Parliament. However enthusiasm evaporated as the Government, influenced by its new Attorney-General, Garfield Barwick, did not take any positive steps to bring the Committee's work before Parliament. When the Committee was first formed, political gossip was that Mr Menzies' main concern was to find a means of resolving deadlocks without necessarily incurring the disruption which attended a double dissolution. In 1964 the Leader of the Opposition in the Senate, Senator McKenna introduced a Bill to give effect to the Committee's proposals and a debate occurred but no vote was taken.

If the Constitution Review Committee's proposal about Money Bills had become part of Australian constitutional law the divisive events of 1975 would not have happened. The amendment would also have alleviated disquiet arising from the 1975 experience about the exercise of reserve powers of the Crown in the hands of a president of an Australian Republic. The question came to the fore during the campaign for a republic in 1999. With the Committee's proposal in place, the president of an Australian republic would not be called upon to exercise a reserve power to dismiss a Prime Minister and his Government in order to overcome a financial crisis such as occurred in 1975.

Australian Constitutional Convention 1973–1985

On the initiative of Victoria, all States and the Commonwealth agreed to have a Convention to examine the working of the Commonwealth Constitution. The idea stemmed from the States' dissatisfaction about their financial position and the need to make annual pilgrimages to Canberra to obtain necessary funding. The Convention first met in Sydney in 1973. Membership consisted of Commonwealth and State politicians from the major parties plus Local Government representation. The Convention met in different capital cities on six occasions between 1973 and 1985 in the course of which a Standing Committee set up in 1973 turned its attention to sections 53 and 57.

At Hobart in 1976 Mr Gough Whitlam moved that the Senate's power under section 53 to amend Money Bills or Bills imposing taxation should be removed. Sir Charles Court, the Premier of Western Australia moved, in effect, a counter proposal that if the Senate had not within 30 days passed a Bill appropriating money for the ordinary annual services of the Government, there should be a double dissolution. If, after the elections, the Representatives again passed the Bill, it should receive the Royal assent. Both proposals were referred to the Standing Committee. In the upshot, the Convention at a session in Adelaide in 1983 endorsed a Bill which the Standing Committee had prepared and was based on the Court proposal.⁶⁰

In 1983 and again in 1984 Senator Rae introduced a Bill to give effect to the Convention's suggestion but the Government opposed it. The Bill failed to proceed to a second reading. By 1985 the Convention's fortunes had declined, in large part from lack of Commonwealth commitment, and it is yet to be resurrected.⁶¹

Constitutional Commission in 1988

In 1985 the Labor Government appointed a six person independent Constitutional Commission to review the Constitution comprehensively.⁶² It too tackled the deadlock question as well as Senate power under section 53. It reported in 1988, ninety years after the conclusion of the Convention debates.⁶³

Ordinary Bills

As to ordinary Bills, at first the Commission had in mind to discard double dissolutions altogether. Instead, the Government should be able to proceed to a joint sitting if a deadlock occurred. The idea was completely consistent with the Commission's belief that section 57 had been used to bring about a double dissolution rather than to resolve a deadlock over proposed legislation and that section 57 was detrimental to stable government. Subsequently, the Commission changed its mind. It decided that the House of Representatives should have a minimum term of three years and a maximum term of four

years and that elections for members of the House and Senators should be simultaneous. It then recommended that in the first three years there should be no formal provision at all for resolving disputes between the two Houses but that the two Houses should be left to sort out their own problems. In the fourth year a double dissolution could occur.⁶⁴

As things are, it is more likely than not that a newly elected government will lack a Senate majority. To face a Senate secure for three years from the threat of dissolution could be a daunting prospect and become a potential formula for weak government.

Money Bills

As to Bills which the Senate may not amend, that is Appropriation Bills and the like, the Commission observed:

It is now widely recognised that the provisions of the Constitution concerning the Senate's powers over Money Bills are not satisfactory and should be altered. Precisely how they should be altered the political parties have yet to agree upon.

The essential issue, it seems to us, is how long a Government which has the confidence of the House of Representatives should be entitled to govern and who is to decide when it is to face an election? Is the Government to be held responsible to both Houses so that if the Senate chooses to deny the Government the financial authority required to enable the functions of government to be carried out, the Government must resign or risk dismissal and the House of Representatives dissolved? In our view the primary principle to which the Constitution should give expression is that Governments are formed, effectively, by the House of Representatives and are entitled to govern so long as they have the confidence of that House.⁶⁵

The Commission recommended that in the first three years of a four year Parliament the Senate should only have a suspensory veto over Bills providing for the imposition, assessment or collection of taxation as well as for Bills appropriating money for the ordinary annual services of the government, capital works, and the acquisition of land or equipment. If the Senate should reject such a Bill or fail to pass it within 30 days of its transmission the Bill should be presented for Royal assent.⁶⁶ In the fourth year of Parliament, however, the Commission proposed that any dispute should be dealt with by resort to a double dissolution according to the formula it proposed for ordinary Bills. Like its predecessor, the Constitution Review Committee, the Commission's report lies quietly on the shelves as the country retreats from the failure in 1999 of the referendum to establish an Australian Republic.

The Future

The Senate as a House of Review

Speaking to his introductory Federal Resolutions in 1891, Sir Henry Parkes said of the proposed Senate:

What I mean is an upper chamber, call it what you may, which shall have within itself the only conservatism possible in a democracy—the conservatism of maturity of judgement, of distinction of service, of length of experience, and weight of character—which are the only qualities we can expect to collect and bring into one body in a community young and experienced as Australia is.⁶⁷

The function of review is the core feature of an upper House in a bicameral Parliament and the Senate may undertake a review of the kind Parkes envisaged when it refers a House of Representatives Bill to one of its Standing Committees or a Select Committee as is often the case.⁶⁸

In an era when there is an inevitability about the outcome of Parliamentary debates in the House of Representatives in respect of Bills introduced by the Government of the day, the work of the various Senate Committees has ensured an active role for the Senate as the senior component of the Parliament. Ultimately, however, the fate or form of a contentious Bill will usually be determined by the respective voting strengths of the parties on the floor of the House, which is not what Parkes envisaged.

Money Bills

The Commonwealth and the States were intended to be equal partners under the federal compact and the likely cost of the Commonwealth was not a serious debating point. Indeed Sir Samuel Griffith, vice president of the 1891 Convention, speculated that the annual cost of the Commonwealth would be less than the price of a dog licence per head of population.

The 20th century has been a different story. In 1995–96 Commonwealth revenue from taxation was \$117 000 million compared with \$30 000 million raised by all State and Territory Governments. In the same year, total Commonwealth general government expenditure was \$127 000 million including \$35 000 million transferred to the States mainly under income tax sharing arrangements. State and Territory general expenditure totalled \$64 000 million.⁶⁹ The figures demonstrate not only Commonwealth fiscal ascendancy but also the need for any federal government enjoying the confidence of the Representatives to have control of its annual budget.

Section 57 is not suited to dealing with a major financial crisis. It takes some five months from the Senate first rejecting a Bill to the time when the issue can be resolved, if at all, by the next Parliament after a double dissolution.⁷⁰

Unless there is change in the method of electing senators, a Senate closely divided politically will continue to be a feature of the Australian Parliament contrary to the expectations of its creators. Taking into account the extent of the Commonwealth's fiscal responsibilities, the Senate should not exercise the power to reject Bills it may not amend nor can the Australian community afford a repeat of the financial crisis which occurred in 1975.

The submission in this Paper is that in the case of Money Bills the restriction of the Senate's power of veto to a suspensory veto lasting 30 days would be overwhelmingly in the interest of responsible and stable government. The suspensory veto would extend to Bills appropriating money for the ordinary annual services of the Government, including capital items, and Bills providing for the imposition, assessment and collection of a tax.

Other Bills

A double dissolution is a disruptive event and occurs as a result of a breakdown in the Parliamentary process. In 1959 the Constitutional Review Committee recommended a joint sitting of the Houses as an alternative to a double dissolution. As the years pass it is not unlikely that the community will become disenchanted by incessant party struggles in the Senate and political negotiations conducted outside the Chamber which do little to promote the prestige of the Parliament.

Section 57 could be amended in a manner which would give the Senate a sufficient opportunity, perhaps in the order of 90 sitting days, to consider a Bill when first sent to it. In the event of the Bill being rejected for a second time, the Governor-General in Council should be able to convene a joint sitting. If an absolute majority of Senators and Members and separate majorities in half the States affirm the Bill it should then be presented for the Royal assent. The separate State majorities would compensate the Senate for its inferior numerical strength in the joint sitting.

The Clerk of the Senate and an ardent exponent of its welfare, Harry Evans, complained in the authoritative work, *Odgers' Australian Senate Practice*, that the High Court's expanded interpretation of section 57⁷¹ coupled with its misuse by Prime Ministers over the years had given the Government a de facto power of dissolution over the Senate which it was not intended to have. The result was to greatly increase the possibility of Executive domination of the Senate as well as the House of Representatives. A joint sitting in lieu of a dissolution would dispose of the complaint.⁷² It would also put to one side many of the uncertainties of meaning and operation associated with the present text of section 57.

The Price of Federalism

Federalism connotes a contract between the parties to it. It denotes legalism, conservatism and weaker government than in a unitary system. It provides a natural haven for the expression of checks and balances against excesses of legislative and executive power in a society which has set its mind against a unitary form of government. Viewed in this light, conflicts between the Senate and the House of Representatives, whatever their cause or the intention of the Founders, may be seen as reflecting the true spirit of federalism and worth the cost. Thus things may be left as they are now.

Institutions of British origin sometimes do not perform efficiently but they usually have an enduring quality about them and this can be said about the Australian Parliament. The major political parties, generally speaking, see parliamentary executive government as a continuous process and the present combination of federalism and responsible government has worked for a century. In the bicameral system the function of review belonging to the Senate is not necessarily to be discounted simply because voting on a bill coming from the House of Representatives is on party lines.⁷³ In the long run, however, the question is the extent to which responsible government in the hands of a parliamentary executive should be subjected to veto by the exercise of Senate legal power residing in the hands of parties whose policies have failed to win government. There are no longer other national parliamentary democracies of the Westminster type where popularly elected governments have to face an upper house with powers matching those of the Senate under section 53 of the Constitution.

This writer submits that the suggested changes to section 57 recognise the much expanded and still expanding role of national government since Federation requiring legislative support, at the same time leaving the basic constitutional bicameral fabric intact.

Constitutional Change

Referendums to change the Constitution usually fail.⁷⁴ Irrespective of their merits they have invariably failed when not supported by the major parties in the Australian Parliament. Any proposed change perceived to weaken Senate power and influence is bound to create controversy in Canberra. Beyond Canberra, in the States, such an occasion would give rise to impassioned pleas about the true nature of the federal compact and the threat which Canberra offers to it. Heirs to the Founders will have to be found if a change is to be effected during the second century of Australian Federalism.

Endnotes

1. For a detailed discussion see J. E. Richardson, 'The Legislative Power of the Senate in Respect of Money Bills', *Australian Law Journal*, vol. 50, 1976, pp. 273–90, and Dennis Pearce, 'The Legislature Power of the Senate', *Commentaries on the Australian Constitution*, ed., L. Zines, Butterworths, 1977, chapter 4, pp. 119–149.
2. For an account of the position in some other countries and provisions for the resolution of deadlocks in State Parliaments see the Final Report of the Constitutional Commission, AGPS, 1988, vol. 1, pp. 225–9, (Money Bills) and pp. 253–5, (other Bills).
3. Section 57 applies only to Bills originating in the House of Representatives which include, of course, Money Bills. Disagreements of the kind described in section 57 have not arisen over Bills originating in the Senate.
4. This paper will refer to the Convention Debates as follows:

Official Report of the National Australasian Convention Debates, Sydney, 2 March to 9 April 1891, Government Printer, Sydney, 1891.

Official Report of the National Australasian Convention Debates, Adelaide, 22 March to 5 May, 1897, Government Printer, Adelaide, 1897.

Proceedings of the Australasian Federal Convention held at Parliament House, Sydney, 2 September to 24 September, 1897, Government Printer, Sydney, 1897.

Official Record of the Debates of the Australasian Federal Convention, third Session, Melbourne, 20 January to 17 March 1898, Government Printer, Melbourne, 1898, vol. 1., 20 January to 22 February 1898, vol. 2., 22 February to 17 March 1898.
5. For a history of section 57 in the Convention Debates see J. E. Richardson, 'Federal Deadlocks: Origin and Operation of section 57', *Tasmanian University Law Review*, 1962, pp. 706–36.
6. For the text of the draft bill to constitute the Commonwealth of Australia see Official report of the National Australasian Convention debates, Sydney, 2 March to 9 April 1891, op cit., pp. 943–964.
7. *ibid.*, pp. 953–4.
8. *ibid.*, pp. 759–60.
9. *ibid.*, p. 760.
10. J. Quick and R. Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus and Robertson, Sydney, 1901, pp. 158–9 and 163–5. The Western Australian Parliament later departed from the agreement and elected its representatives from among its own membership.
11. Official report of the National Australasian Convention debates, Adelaide, 22 March to 5 May, 1897, op. cit., pp. v–vi.
12. *ibid.*, p. 17.
13. Quick and Garran, op. cit., pp. 172–3.

14. For a short account see J. E. Richardson, *op. cit.*, pp. 717–8.
15. Official report of the National Australasian Convention debates, Adelaide, 22 March to 5 May, 1897, *op. cit.*, pp. 1150–1.
16. *ibid.*, pp. 1152–3.
17. *ibid.*, pp. 1151–2.
18. *ibid.*, pp. 1161–2.
19. *ibid.*, pp. 1168–9.
20. *ibid.*, pp. 1169–73.
21. *ibid.*, pp. 1157–61.
22. *ibid.*, p. 1223.
23. Proceedings of the Australasian Federal Convention held at Parliament House, Sydney, 2 September to 24 September, 1897, *op. cit.*, pp. 258 *et. seq.*, and p. 355.
24. *ibid.*, pp. 708–9.
25. *ibid.*, p. 709.
26. *ibid.*, pp. 709–11.
27. *ibid.*, pp. 734–8 and 932.
28. *ibid.*, pp. 924–7.
29. *ibid.*, pp. 928–30.
30. *ibid.*, p. 758.
31. *ibid.*, pp. 923–4.
32. *ibid.*, pp. 927 and 930.
33. *ibid.*, pp. 930, 932–3 & 974–5.
34. Official record of the debates of the Australasian Federal Convention, third session, Melbourne, 20 January to 17 March, 1898, *op. cit.*, pp. 2, 104–9 and 2123.
35. *ibid.*, p. 2124.
36. *ibid.*, pp. 2, 172–2222.
37. *ibid.*, pp. 2247–9.
38. *ibid.*, pp. 2222–6.
39. For an account of the Conference see Quick and Garran, *op. cit.*, pp. 218–220.
40. Proceedings of the Australasian Federal Convention held at Parliament House, Sydney, 2 September to 24 September, 1897, p. 584. See also Isaac Isaacs, Official report of the National Australasian Convention debates, Adelaide, 22 March to 5 May, 1897, *op. cit.*, pp. 173–5.

41. The number of Senators is required to be half the number of Members of the House of Representatives and the ratio must be maintained when the size of the Lower House is increased (Constitution s. 24). Senators and Members from the ACT and the NT are not counted in the application of the constitutional nexus.

Thus Tasmania which at the time of Federation had six Senators and a constitutional minimum of five seats in the House of Representatives (Constitution s. 26) still has five Members but has twelve Senators. Since the system of proportional representation for the election of Senators was introduced in 1948 (Constitution s. 7) the Senate has always been closely divided and the balance of power has sometimes been held by an independent Senator or Senators belonging to the Australian Democrats Party. Senators have six year terms (Constitution s. 7) and half retire every three years (Constitution ss. 13, 14) which means that half the Senators have been in place for about three years when a new government wins office after a general election for Members of the House of Representatives.

42. B. R. Wise, *The Making of the Australian Commonwealth 1889–1900*, Longmans, Green & Co., London, 1913, pp. 245–6.
43. The six double dissolutions are described in J. R. Odgers, *Odgers, Australian Senate Practice*, Harry Evans, ed., 9th ed., Dept of the Senate, Canberra, 1999, chapter 3, albeit from the standpoint of a committed supporter of undiluted Senate strength. For a different account see *House of Representatives Practice*, L. M Barlin, ed., 3rd ed., AGPS, Canberra, 1997, chapter 3. See also R. D. Lumb and G. A. Moens, *The Constitution of the Commonwealth of Australia Annotated*, fifth edition, Butterworths, 1995, pp. 320–331.
44. Final Report of the Constitutional Commission, AGPS, 1988, vol. 1, p. 224.
45. *ibid.*, p. 249.
46. (1974) 131 CLR 432.
47. For a commentary on the decision see G. Sawyer, 'Singulars, Plurals and Section 57 of the Constitution', (1976) 8 *Federal Law Review*, pp. 45–56.
48. (1975) 134 CLR 81.
49. (1975) 134 CLR 201. For a discussion of the three cases see Lumb and Moens, *op. cit.*, pp. 325–6.
50. Final Report of the Constitutional Commission, *op. cit.*, vol. 1, pp. 250–1.
51. The Constitutional Commission made several suggestions for the clarification of the language of section 57 and its operation covering such aspects as elucidation of the expression 'fails to pass', and the extent to which a proposed law considered at a joint sitting can vary from the measure twice rejected by the Senate without losing its identity. It also recommended that the High Court be vested with an advisory jurisdiction relating to the manner and form of enacting a proposed law including compliance with the requirements of section 57 and its equivalent provision in section 128 dealing with proposed laws to amend the Constitution. Final Report of the Constitutional Commission, *op. cit.*, vol. 1, pp. 259–62 and 414–21. The extent to which the High Court should be involved in the legislative process and by way of advisory opinion are controversial questions. The suggestions made in this paper by the author for amendment of section 57 would make several suggested clarifications of section 57

unnecessary, including, it is submitted, the need to seek an advisory opinion from the High Court. For a discussion of questions as to the extent to which dissolution controversies are justifiable and problems about the consequences which could flow from the possibility of an invalid double dissolution because of non-compliance with section 57 see L. Zines, 'The Double Dissolutions and Joint Sitting' in *Labor and the Constitution 1972–1975*, ed., G. Evans, Heinemann, 1977, chapter 7, pp. 217–50. See also C. K. Comans, 'Constitution, Section 57—Further Questions', (1985) 15 *Federal Law Review*, p. 243.

52. Odgers, 9th ed., op. cit., pp. 82 & 108.
53. The function of the Governor-General is described in the Final Report of the Constitutional Commission, op. cit., vol. 1, pp. 258–9. See too *Resolutions of the Australian Constitutional Convention* described at pp. 93–5 and 253–4. The part played by the Governor-General in granting the various double dissolutions is also discussed in *Odgers*, 9th ed., op. cit., pp. 80–4.
54. The occasion illustrated the technical nature of section 57. To have amended the proposed law to bring it into operation independently of the making of regulations by the Senate may have meant that it could no longer be identified as the proposed law which the Senate had twice rejected, even though its operative passions remained the same.
55. Subject to other constitutional provisions dealing with the composition of the Senate and the qualification of electors, the Australian Parliament may change the method of choosing Senators under section 9 of the Constitution. The change in the method of electing Senators made in 1948 was to obtain representation in the Senate more in proportion to the votes cast for candidates of various parties than under the previous block preferential system. See the report of the Joint Committee on Constitutional Review, F 8051/59, 1959, pp. 24–27. The committee's prediction, *ibid.*, p. 25, that the likelihood of a deadlock arising would be much greater than in the past and could become a recurrent feature of Parliaments, has been sustained by subsequent events. However, because under section 13 of the Constitution only half the number of Senators for a State retire each three years, deadlocks would continue to be a possibility under any probable system of selection. A suggestion to reduce the likelihood of deadlocks occurring by dividing the electoral rolls for each State into two notional districts is made by Margaret Healy, 'Deadlock? What Deadlock? Section 57 at the Centenary of Federation', Department of the Parliamentary Library, *Research Paper no. 2*. 2000–01, pp. 15–17.
56. Senate, Report of the Select Committee on the Constitution Alteration (Avoidance of Double Dissolution Deadlocks) Bill, Commonwealth Government Printer, Canberra 1950 (Parliamentary Paper no. S. 1 of 1950–1).
57. Report from the Joint Committee on Constitutional Review, 1959. Its members were the Prime Minister and the Leader of the Opposition, as ex officio, members and Messrs Calwell, Downer, Drummond, Hamilton, Joske, Pollard, Ward and Whitlam from the House of Representatives and Senators O'Sullivan (Chairman), Kennelly, McKenna and Wright.
58. *ibid.*, pp. 11–16.
59. The Constitution Review Committee's recommendations to change section 57 and its reasons are given at some length, in chapter 4 of the Report.

60. For a detailed examination of the Court and Whitlam proposals, see the Official Record of Debates of the Australian Constitutional Convention Perth 1977–Special Report of Standing Committee D, 5782/79, *The Senate and Supply*.
61. For a short account of the Convention, see the Final Report of the Constitutional Convention, op. cit., vol. 1, pp. 253–4.
62. A Commission of six was appointed with Sir Maurice Byers as chairman. One member resigned shortly afterwards to become a justice of the High Court of Australia.
63. The Commission's recommendations for amendment of sections 53 and 57 are discussed in vol. 1, pp. 218–62 of the final report.
64. In the event of a joint sitting the Commission's proposal required not only an absolute majority of members but also separate majorities of members from at least half the States in order to affirm the disputed Bill. Final Report, vol. 1, pp. 247–8.
65. *ibid.*, pp. 236–7.
66. The Commission's recommendation was expressed subject to the qualification that the removal of the Senate's veto power should not apply to Bills appropriating revenue or money for a 'new purpose' which it defined. Final Report, vol. 1, pp. 218–9 and 240–1. Its application would be bound to cause controversy.
67. Official report of the National Australasian Convention debates. Sydney, 2 March to 9 April, 1891, op. cit., p.26.
68. Two Senate Standing Committees, one on Regulations and Ordinances and the other for the Scrutiny of Bills, provide examples of the independent review process at work.
69. See Australian Bureau of Statistics, *Year Book Australia*, 1998, pp. 678–85.
70. If the Senate should refuse to grant supply and the conditions for a double dissolution have not arisen, the Governor-General, acting on advice from the Prime Minister, could dissolve the House of Representatives under section 5 of the Constitution. Such a course of action was explicitly rejected during the Convention debates as inappropriate in the process for resolving deadlocks because it favoured the Senate at the expense of the House of Representatives.
71. A contrary view is that the High Court has given section 57 a literal rather than expansive interpretation. Nevertheless it allows a government considerable flexibility as to timing and subject matter when contemplating a double dissolution. See G. Lindell, 'Federal Institutions and Processes. A Legal Perspective', *Australian Federalism*, ed., B. Galligan, Longman Cheshire, 1989, pp. 158–165.
72. Odgers, 9th ed., op. cit., p. 115.
73. Contemporary writers do not see the Senate as performing the functions of a house representing state interests but some writers consider that the Senate has functioned well as a House of Review under the current preferential system for the election of senators. See the discussion in B. Galligan, *A Federal Republic: Australia's Constitutional System of Government*, Cambridge University Press, 1995, chapter 3. See also the discussion about the Senate and supply in the events of 1974 and 1975 in G. Lindell, 'The Australian Constitution: Growth, Adaption and Conflict—Reflections about some Major Cases and Events', (1999) 25

Monash University Law Review, pp. 256 and 285–9. An examination of the Australian Parliaments' political parameters and political developments since the last double dissolution in 1987 appears in Margaret Healy, 'Deadlock? What Deadlock? Section 57 at the Centenary of Federation' *op. cit.*, pp. i–iv, pp. 3–8. The author states that significant political and constitutional problems still exist but that under present political conditions where there are minor party and independent Senators a double dissolution is less likely to resolve a deadlock one way or another than in previous years. She suggests that in time this may lead to a more consensual approach to policy formulation. This was not the approach of Mr Paul Keating as leader of the previous government. The shifting sands of political attitudes are, it is submitted, likely to remain part of the Federal political scene.

74. Constitution section 128. Either House may initiate a Bill to amend the Constitution. Section 128 contains a counterpart to section 57. If the other House will not support it, the Bill, after being twice rejected, may be submitted to a referendum of electors. In 1974 the House of Representatives alone passed four proposed laws to amend the Constitution. All were defeated in the subsequent referendums.

Appendix 1: Simultaneous Dissolution Proclamations

Both Houses of the Australian Parliament have been dissolved simultaneously on the following occasions:

1. On 30.7.1914, by the Rt Hon. Sir Ronald Craufurd Munro-Ferguson, when both Houses of the Fifth Parliament were dissolved prior to the general elections of 5.9.1914.

PROCLAMATION

Commonwealth of Australia to wit. R. M. Ferguson, Governor-General	By His Excellency the Right Honorable Sir Ronald Craufurd Munro Ferguson, a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General and Commander-in- Chief in and over the Commonwealth of Australia.
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WHEREAS by Section 57 of the Constitution of the Commonwealth of Australia it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

And whereas on the eighteenth day of November One thousand nine hundred and thirteen the House of Representatives passed a Bill for an Act to prohibit, in relation to Commonwealth employment, preferences and discriminations on account of membership or non-membership of an association, and the Senate on the eleventh day of December One thousand nine hundred and thirteen rejected the said Bill.

And whereas on the twenty-eighth day of May One thousand nine hundred and fourteen the House of Representatives in the next session again passed the said Bill, and the Senate on the twenty-eighth day of May One thousand nine hundred and fourteen rejected the said Bill:

And whereas it is expedient to dissolve the Senate and the House of Representatives simultaneously:

Now therefore I, the Governor-General aforesaid, do by this my Proclamation dissolve the Senate and the House of Representatives.

Given under my hand and the Seal of the Commonwealth of Australia this thirtieth day of July in the year of our Lord One thousand nine hundred and fourteen, and in the fifth year of His Majesty's reign.

(L.S.)

By His Excellency's Command
JOSEPH COOK

GOD SAVE THE KING!

2. On 19.3.1951, by the Rt Hon. Sir William John McKell, when both Houses of the Nineteenth Parliament were dissolved prior to the general elections of 28.4.1951.

PROCLAMATION

Commonwealth of Australia to wit. By His Excellency the Governor-General in and over the Commonwealth of Australia.

W. J. McKELL
Governor-General.

WHEREAS by section fifty-seven of the Constitution of the Commonwealth of Australia is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

And whereas on the fourth day of May, One thousand nine hundred and fifty, the House of Representatives passed a proposed law, namely, a bill for an Act to repeal the *Banking Act 1947-48* and to amend the *Commonwealth Bank Act 1945-1948*.

And whereas on the twenty-first day of June, One thousand nine hundred and fifty, the Senate passed the proposed law with amendments:

And whereas on the twenty-second day of June, One thousand nine hundred and fifty, the House of Representatives disagreed to the amendments:

And whereas on the eleventh day of October, One thousand nine hundred and fifty, the House of Representatives, in the same session, again passed the proposed law:

And whereas the Senate has failed to pass the proposed law:

Now, therefore, I, the Governor-General aforesaid, do by this my Proclamation dissolve the Senate and the House of Representatives.

Given under my hand and the Seal of the Commonwealth this nineteenth day of March, in the year of our Lord, One thousand nine hundred and fifty-one, and in the fifteenth year of His Majesty's reign.

(L.S.)

By His Excellency's Command.
ROBERT G. MENZIES.
Prime Minister.

GOD SAVE THE KING!

3. On 11.4.1974, by the Rt Hon. Sir Paul Meernaa Caedwalla Hasluck, when both Houses of the Twenty-eighth Parliament were dissolved prior to the general elections of 18.5.1974.

PROCLAMATION

Australia

By His Excellency

PAUL HASLUCK

the Governor-General of Australia

Governor-General

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the several proposed laws intituled—

Commonwealth Electoral Act (No. 2) 1973
Senate (Representation of Territories) Act 1973
Representation Act 1973
Health Insurance Commission Act 1973
Health Insurance Act 1973
Petroleum and Minerals Authority Act 1973

NOW THEREFORE, I Sir Paul Meernaa Caedwalla Hasluck, the Governor-General of Australia, do by this my Proclamation dissolve the Senate and the House of Representatives.

(L.S.) Given under my hand and the Great Seal of Australia on 11 April 1974.

By His Excellency's Command,

E.G. WHITLAM
Prime Minister

4. On 11.11.1975, by the Hon. Sir John Robert Kerr, when both Houses of the Twenty-ninth Parliament were dissolved prior to the general election of 13.12.1975.

PROCLAMATION

Australia

By His Excellency

JOHN R. KERR

the Governor-General of Australia

Governor-General

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the several proposed laws intituled—

Health Insurance Levy Act 1974
Health Insurance Levy Assessment Act 1974
Income Tax (International Agreements) Act 1974
Minerals (Submerged Lands) Act 1974
Minerals (Submerged Lands) (Royalty) Act 1974
National Health Act 1974
Conciliation and Arbitration Act 1974
Conciliation and Arbitration Act (No. 2) 1974
National Investment Fund Act 1974
Electoral Laws Amendment Act 1974
Electoral Act 1974
Privy Council Appeals Abolition Act 1975
Superior Court of Australia Act 1974
Electoral Re-distribution (New South Wales) 1975
Electoral Re-distribution (Queensland) 1975
Electoral Re-distribution (South Australia) 1975
Electoral Re-distribution (Tasmania) 1975
Electoral Re-distribution (Victoria) 1975
Broadcasting and Television Act (No. 2) 1974
Television Stations Licence Fees Act 1974
Broadcasting Stations Licence Fees Act 1974

NOW THEREFORE, I Sir John Robert Kerr, the Governor-General of Australia, do by this my Proclamation dissolve the Senate and the House of Representatives.

(L.S.) Given under my hand and the Great Seal of Australia on 11 November 1975.

By His Excellency's Command,
MALCOLM FRASER
Prime Minister

GOD SAVE THE QUEEN!

5. On 4.2.1983, by the Rt Hon. Sir Ninian Martin Stephen, when both Houses of the Thirty-second Parliament were dissolved prior to the general elections of 5.3.1983.

PROCLAMATION

Commonwealth of Australia

By His Excellency the Governor-General

N. M. STEPHEN

of the Commonwealth of Australia

Governor-General

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the several proposed laws intituled—

Sales Tax Amendment Bill (No. 1A) 1981

Sales Tax Amendment Bill (No. 2A) 1981

Sales Tax Amendment Bill (No. 3A) 1981

Sales Tax Amendment Bill (No. 4A) 1981

Sales Tax Amendment Bill (No. 5A) 1981

Sales Tax Amendment Bill (No. 6A) 1981

Sales Tax Amendment Bill (No. 7A) 1981

Sales Tax Amendment Bill (No. 8A) 1981

Sales Tax Amendment Bill (No. 9A) 1981

Canberra College of Advanced Education Amendment Bill 1981

States Grants (Tertiary Education Assistance) Amendment Bill (No. 2) 1981

Australian National University Amendment Bill (No. 3) 1981

Social Services Amendment Bill (No. 3) 1981.

NOW THEREFORE I, SIR NINIAN MARTIN STEPHEN, the Governor-General of the Commonwealth of Australia, do by this my Proclamation dissolve the Senate and the House of Representatives.

(L.S.) GIVEN under my hand and the Great Seal of Australia on 4 February 1983.

By His Excellency's Command,

MALCOLM FRASER

Prime Minister

GOD SAVE THE QUEEN!

6. On 5.6.1987, by the Rt Hon. Sir Ninian Martin Stephen, when both Houses of the Thirty-fourth Parliament were dissolved prior to the general elections of 11.7.1987.

PROCLAMATION

Commonwealth of Australia

N. M. STEPHEN

Governor-General

By His Excellency the Governor-General

of the Commonwealth of Australia

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the proposed law intituled *Australia Card Bill 1986*:

NOW THEREFORE I, SIR NINIAN MARTIN STEPHEN, the Governor-General of the Commonwealth of Australia, do by this my Proclamation dissolve the Senate and the House of Representatives at 5.00 o'clock in the afternoon on Friday, 5 June 1987.

(L.S.) GIVEN under my hand and the Great Seal of Australia on 5 June 1987:

By His Excellency's Command,
R.J.L. HAWKE
Prime Minister

GOD SAVE THE QUEEN!

Appendix 2: Tables—Election Results

5.9.1914

House of Representatives				
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>IND</i>	<i>Total</i>
1913	37	38	–	75
1914	42	32	1	75
Gain/Loss	+5	–6	1	
Senate				
<i>Election</i>	<i>ALP</i>	<i>LIB</i>		<i>Total</i>
1913	29	7		36
1914	31	5		36
Gain/Loss	+2	–2		
Result	Government loss (Cook's Liberal Government loses to Fisher's ALP Opposition)			

28.4.1951

House of Representatives					
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>CP</i>	<i>IND</i>	<i>Total</i>
1949	48	55	19	1	123
1951	54	52	17	–	123
Gain/Loss	+6	–3	–2	–1	
Senate					
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>CP</i>		<i>Total</i>
1949	34	20	6		60
1951	28	26	6		60
Gain/Loss	–6	+6	–		
Swing	0.3% swing against the Government*				
Result	Government win (Menzies' LIB–CP Coalition wins against Evatt's ALP Opposition)				

*Two Party Preferred Vote (House of Representatives)

18.5.1974

House of Representatives						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>CP</i>			<i>Total</i>
1972	67	38	20			125
1974	66	40	21			127
Gain/Loss	-1	+2	+1			

Senate						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>CP</i>	<i>DLP</i>	<i>Others</i>	<i>Total</i>
1970	26	21	5	5	3	60
1974	29	23	6	-	2	60
Gain/Loss	+3	+2	1	-5	-1	

Swing	1.0% swing against the Government*					
Result	Government win (Whitlam's ALP Government wins against Snedden's LIB-CP Coalition Opposition)					

13.12.1975

House of Representatives						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>NCP</i>	<i>CLP</i>		<i>Total</i>
1974	66	40	21			127
1975	36	68	22	1		127
Gain/Loss	-30	+28	+1	+1		

Senate						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>CP</i>	<i>Others</i>		<i>Total</i>
1974	29	23	6	2		60
1975	27	27	8	2		64
Gain/Loss	-2	+4	+2	-		

Swing	7.4% swing against the Government*					
Result	Government loss (Whitlam's ALP Government loses to Fraser's LIB-CP Coalition)					

*Two Party Preferred Vote (House of Representatives)

5.3.1983

House of Representatives						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>NPA</i>	<i>CLP</i>	<i>Total</i>	
1980	51	54	19	1	125	
1983	75	33	17	–	125	
Gain/Loss	+24	–21	–2	–1		

Senate						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>NPA</i>	<i>AD</i>	<i>Others</i>	<i>Total</i>
1980	27	28	3	5	1	64
1983	30	24	4	5	1	64
Gain/Loss	+3	–4	+1	–	–	

Swing	3.6% swing against the Government*					
Result	Government loss (Fraser's LIB–NPA Coalition Government loses to Hawke's ALP Opposition)					

11.7.1987

House of Representatives						
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>NPA</i>	<i>CLP</i>	<i>Total</i>	
1984	82	44	21	1	148	
1987	86	43	19	–	148	
Gain/Loss	+4	–1	–2	–1		

Senate							
<i>Election</i>	<i>ALP</i>	<i>LIB</i>	<i>NPA</i>	<i>CLP</i>	<i>AD</i>	<i>Others</i>	<i>Total</i>
1984	34	28	5	–	7	2	76
1987	32	27	6	1	7	3	76
Gain/Loss	–2	–1	+1	+1	–	+1	

Swing	1.0% swing against the Government*					
Result	Government win (Hawke's ALP Government wins against Howard's LIB–NPA Coalition Opposition)					

*Two Party Preferred Vote (House of Representatives)

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