

Democracy in Australia – Senate, a legislative brake

In an article first published in the Australian Financial Review, Richard Denniss, Executive Director of The Australia Institute, writes that,

The senate is often describe as obstructionist and causing chaos but it is there for good reasons and governments have to learn to deal with it.

In business and media circles the idea that the senate in general, and crossbenchers in particular, create ‘chaos’ and make governing ‘impossible’ has become widely acceptable. Business, we are told, needs certainty. While that’s understandable, history, and our constitution, suggest that not only will never get it, but they wouldn’t like it if they did.

In their recent book ‘minority policy’, Dennis and Dr Brenton Prosser place recent instances of ‘minority government’ into context and point out that what is happening in the Senate at the moment isn’t unusual, but rather the norm. For 27 of the past 30 years the Commonwealth government of the day has lacked a majority in the Senate. Additionally, no state government currently holds a majority in its upper and lower house.

Much of the narrative about the Senate causing ‘chaos’ stems from the fact that debate about how policy should be made has departed so far from reality. Denniss argues that,

Academic talk of an orderly, evidence-based ‘policy cycle’ and media commentators demands for Prime Ministers to exhibit decisiveness and implement simple policies with ‘cut through’ messages - both ignore the Constitutional necessity for new laws to pass through two Houses of Parliament. While prime ministers of the past were frequently frustrated by the Senate, Kevin Rudd and Tony Abbott appear to be the first to completely forget it was there.

Moreover, the Australian Constitution does not facilitate the election of a supreme leader (or ‘Captain’) who, for three years, makes all the big decisions. Parliamentary democracy was explicitly designed to diffuse power and

ensure that proposed legislative changes were widely supported. An upper house, elected in a different way from a lower house, and with the power to block legislation results in a conservative institution that is slow to respond to popular opinion.

Strengthening the role of the Senate

Australia’s political system has been described as a unique hybrid combining British and American norms of governance. Members of the federal Parliament are elected to the House of Representatives using a preferential voting system (the alternative vote). This leads to clear cut political outcomes and subsequently, strong government. As in Britain, governments are formed by parties with the largest number of members elected to the lower house; in Britain to the House of Commons and in Australia to the House of Representatives. The voting system in Australia makes it very difficult for candidates of minor parties and independents to win seats in the House of Representatives.

Senators are elected to the Senate, Australia’s upper house, using what is called a Single Transferable Vote system (a somewhat unusual preferential form of proportional representation). This leads to a more broadly representative chamber, typically including several Senators from minor parties and one or more independents. As in the United States, the Senate acts as a house of advice, review and consent.

The structure and powers of the Senate

The Senate has limited control over the actions of the Government of the day, except to the extent that the Senate must pass legislation introduced by the Government before that legislation becomes law. By its review of all proposed legislation the Senate can ensure that under-represented groups are not completely excluded from the attention of the Parliament. When independent Senators and the minor parties hold the balance of power in the Senate, as has occurred very frequently in Australia’s political history, they can and regularly do exert a major influence by ensuring that amendments to legislation are properly

debated and *in extremis* by teaming with the Opposition in the Senate to block the passage of legislation.

The Senate Committee system

The committee system has traditionally been the centre of review activity in the Federal Parliament in Australia but was considerably weakened by the Howard government during its term in office; it dismantled the system of legislative and reference committees with their balanced memberships and instead the chairs of government and Senate legislative committees were given to government Senators. The committees were also given a government majority membership. Combined with the Howard government reluctance to send legislation to committees, and frequent disregard of the reports of reference committees, the impact of Senate Committees was greatly reduced.

The Rudd and Gillard Governments have acted to restore many of the previous roles of Senate Committees. Currently there are sixteen Senate Committees, as well as several select and joint committees. These are variously chaired by Senators from the Government, the Opposition, minor parties and independent Senators.

The importance of Senate Committees

Parliamentary, and specifically upper house committees, provide an opportunity for in-depth scrutiny and consideration of proposed legislation. Committees can consider information and evidence from other sources, allowing individuals to give testimony in person and organisations with special expertise to present evidence.

Committees provide an open and transparent way for Parliaments to conduct their policy debates as deliberations are conducted by members in public and evidence is available for the public to access.

A third benefit of committees is that they can take a longer term view of public issues because committee members have the time to both become expert in the area of their interest and to consider a broad range of issues.

Senate Inquiries

Another role of great potential importance for the Senate is the carrying out of Parliamentary Inquiries. Parliamentary Inquiries not only have the scope to inform the Parliament and the Government on matters of public

significance but, as has been observed about the US Senate, they also have the scope to inform the nation. In the US, the progressive broadening of congressional investigative powers and roles has more and more strengthened the outreach of the Senate's roles.

Examples of inquiry systems from other countries

In Germany, two different types of parliamentary committee and inquiry systems carry out analysis and research. Committees of inquiry are constituted of members of parliament only. They investigate public affairs of immediate significance to the Bundestag (Parliament). Study commissions, by contrast, comprise members of parliament and an equal number of outside experts. Their task is to collect as much information as possible on complex, long term policy issues facing the nation. The outside experts enjoy the same rights as members of parliament on these commissions.

The Parliamentary Office of Science and Technology (POST) in the United Kingdom is also a broadly based standing parliamentary body. It has membership from both the House of Commons and the House of Lords and like the German study commissions includes outside experts. The agreed definition of science and technology is very broad. POST, for example, carries out studies in areas such as defence, transport, environment and health as well as science policy.

In the UK, the Parliament funds committees through a parliamentary commission. Committees and inquiries are provided with staffing and resources to carry out their roles. In Australia, by contrast, the government of the day determines the funding available to the Senate through its annual budget allocations. It therefore has the scope to place considerable budget restrictions on the activities of the Senate should it so wish.

A strong Senate Committee system for the future

Five changes would greatly help to strengthen the work of committee and inquiry systems in federal and state parliaments:

- A committee dedicated to reviewing the budget and economic strategy would be an ideal forum to harness bipartisan ideas and long term planning. A strong

committee covering these areas would raise the status of all committees. Such a committee could be well supported by the new Parliamentary Budget Office established in 2012.

- Rationalisation of committees is necessary. There are a limited number of Senators and Members available for committee work.
- Independent funding through a parliamentary commission in the style of the UK would reduce the influence of the executive over committee resources.
- Increased funding would allow a broader and longer term scope for committees.
- A system of public inquiries on long term issues with equal membership of Senators (members of state upper houses) and external experts should be introduced.

Unlike the US Senate, the Australian Senate has never realised its full potential. Every effort should be made to help it do so in the future.

State upper houses

Similar arguments apply to all the state upper houses (the legislative councils and their counterparts). It should be noted, however, that Queensland abolished its upper house in 1922 making it the only unicameral (single chamber) parliament in Australia. There have been frequent calls for the reintroduction of the Legislative Council.

Sources

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