The Senate Changeover—Implications for Democracy

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One of the core values of democracy is popular control of government. Between elections such control is exercised by parliament on our behalf. But in the Australian Parliament it has only been one house, the Senate, which has developed effective procedures for such executive scrutiny and legislative review.

The exceptional strength of party discipline in Australian parliaments, where almost every vote is the equivalent of a ‘three-line whip’, means that governments are safe from being held accountable while they hold a majority.

Over the last 24 years, however, neither government nor opposition has controlled the Senate. The balance of power has rested with minor parties and Independents who have a vested interest in increasing the power of the legislature vis-à-vis the executive, as they will never be part of government themselves.

Portfolio expertise has built up in the system of standing committees, which have the power to summon witnesses and require the production of documents. Independence increased from 1994, when each standing committee was divided for the different purposes of legislation and references—as references committees they have non-government majorities and chairs. As legislation committees they conduct estimates hearings, which have become the most effective means of scrutinising government performance and throwing light on the dark recesses of the bureaucracy.

In recent years the Senate has, on its own motion, set up major inquiries into matters of public interest, whether through select or standing committees. Sometimes sections of the community never previously involved in the legislative process have participated in such inquiries. A recent example is the inquiry by the Senate

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Community Affairs References Committee into treatment of children placed in care. This inquiry gathered harrowing evidence from those who had experienced ‘care’ as children and produced two consensus reports.

But all has not been well in the Senate committee system. While it has sometimes operated as a relatively non-partisan form of enquiry, this has rarely been the case with sensitive inquiries such as those into the GST. Rather than encouraging broader community participation in the legislative process, community witnesses have left public hearings feeling bruised and battered by extremely adversarial cross-examination by government Senators.

There are also the very delayed responses to committee inquiries—or no responses at all. Governments are formally required to respond within three months and presiding officers to report to parliament twice a year on this. But there have been no responses at all to 46 Senate inquiries, even where there have been consensus reports such as *Forgotten Australians*.

Over the last two decades the Senate has developed into what upper houses are supposed to be—a house of review. Much of this has been due to the role of minor parties and Independents. It was a Democrat Senator, for example, who introduced the deadline for introduction of Bills, to avoid the end-of-sitting rush of legislation. A Greens Senator introduced the double deadline in 1993 to prevent Bills being rushed through the House of Representatives to meet the Senate deadline. Both these initiatives enhanced the capacity for effective legislative review and negotiation of amendments to improve the quality of legislation.

Delegations from Canada and the UK have reported enthusiastically on the Australian Senate as a model of how upper houses can contribute to the legislative and executive scrutiny functions of parliament. An observer from the US Congressional Library wrote a book on how the ritual warfare and peremptory consideration of legislation in the House of Representatives turned into serious negotiation over legislative improvements in the Senate.
But will a government with a majority in the Senate from 1 July respect its independence and accountability mechanisms? What will happen about the composition and chairing of committees? There is no tradition in Australia of non-government chairs when the government has a majority—as with the Speakership or the Chair of the Public Accounts Committee in the UK. Will resources available for committee staff and time available for estimates hearings be further reduced? And what about the budget of the parliamentary library, a crucial research resource for non-government members and Senators?

Some commentators place their faith in government backbenchers flexing their muscles and defending Senate independence. With a government majority of only one, each government backbencher will have enhanced bargaining power. There are examples from the past of government Senators defying their party leadership. In 1981 Senator Alan Missen led six of his colleagues, including Senator Robert Hill, across the floor to support the establishment of the Scrutiny of Bills Committee.

Will there be similar revolts again? The government has foreshadowed it will push through electoral amendments previously rejected by the Senate. It wants to close the electoral roll on the issuing of writs, which will disenfranchise about 80,000 new voters judging from past performance. Many citizens put off enrolling until an election is announced. Other countries are trying to increase, not reduce the electoral participation of young people, with Canada allowing them to enrol when they turn up to vote.

It seems unlikely that government backbenchers will revolt on industrial relations reform, although it means dismantling a once proud Liberal creation. The fathers of conciliation and arbitration were Liberals like Alfred Deakin, Charles Kingston, Bernhard Wise and HB Higgins, all of whom believed wages and conditions were too important to be left to the higgling of the marketplace.

The future of the Senate as a brake on government is highly uncertain. Both Labor and Coalition governments have frequently expressed their impatience with this form of accountability. But slower government is often better government, and certainly more democratic in its process and outcomes.