“REFORM” OF THE SENATE

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Proposals for “reform” of the Senate are back on the political agenda, with Prime Minister Howard recently announcing his own proposal at a Liberal Party conference.

What is wrong with the Senate that it needs reform? The answer is that it does not pass some government legislation, or passes it with amendments. The aim of “reform” is to ensure that government legislation is passed.

This aim is closely related to the mandate theory of government, also supported by Mr Howard (but not when he was in Opposition). This theory is that governments win a mandate to pass their legislation by winning elections, and to have a House which rejects or amends their legislation is undemocratic.

The most obvious flaw in this argument is that governments normally win office with only 40 per cent of the popular vote, sometimes less, and sometimes less than the “losing” party (as in 1998). Due to the proportional representation system for election of the Senate, party numbers there more closely reflect the votes of the electors, and a majority in the Senate is more likely to reflect the support of a majority of voters.

Of the approximately 200 government bills passed by the Parliament each year, only a handful, less than 2 percent, is rejected by the Senate (either rejected outright or amended in a way the government will not accept). Many others pass with amendments when the government compromises with other parties.

This process is usually seen as producing better laws. For example, the recent bill to give the Australian Security and Intelligence Organisation (ASIO) the power to detain and question non-suspects about terrorism was widely regarded as draconian and dangerous in its original form. It passed only after safeguards were agreed to by the government to make it acceptable to a majority of the Senate.

Mr Howard’s proposal is that whenever government legislation is not passed unamended by the Senate, a joint sitting of the two Houses could be held to pass the legislation without an intervening general election. This would mean that all government legislation would pass
with a minimal delay. Both Houses, rather than just the House of Representatives, would be a government rubber stamp.

A government with this power would soon turn its attention to legislation to perpetuate itself in office and reduce its accountability. The current government has already toyed with the idea of abolishing compulsory voting, a measure which, it is thought, would be devastating to the Labor Party. The whole of the electoral law would be at the government’s mercy. It will be remembered that the Kennett government, with a majority in both houses in Victoria, dismantled the state Auditor-General’s Office. The federal Audit Office has offended the federal government with exposures of waste and mismanagement. Other tempting targets would be the freedom of information legislation and administrative and judicial review provisions (the government has long been locked in a struggle with the courts over judicial review of migration decisions).

It has been said that these kinds of abuses did not occur in periods when there were government majorities in the Senate. Over the past 50 years, only two governments have had party majorities in the Senate, the Menzies government from 1951 to 1956 and from 1959 to 1962, and the Fraser government from 1976 to 1981. During those periods, there were government backbenchers in the Senate who were famous for their willingness to vote against their government when it attempted any assaults on the Senate or accountability. When the Fraser government proposed a constitutional amendment in 1977 to alter the term of the Senate, nine government senators voted against the proposal and succeeded in having it defeated at the referendum. Coalition governments’ control over their senators was then relatively weak. Since those times, it appears that all governments have controlled their Senate backbenchers to the same extent as their House of Representatives members.

The kind of “elective dictatorship” involved in the Howard proposal is said to be supported by the business community, because it would enable governments to take actions believed to be necessary to ensure economic competitiveness. This argument, however, was largely refuted by research by Arend Lijphart, which shows that countries based on proportional representation, where parties win only the share of power their share of votes entitles them to, and usually have to compromise with other parties in order to govern, perform rather better in economic growth and much better on a range of other indicators.

In response to Mr Howard’s proposal, the Labor Party has seen the danger in it, but has suggested that perhaps only “budget bills” could be passed by the proposed mechanism. The term has not been defined, and could hardly be made justiciable in the Constitution. A government could turn any bill into a “budget bill” simply by adding provisions appropriating money for some purpose associated with the bill.
The chances of success of the Howard proposal at a referendum would appear not to be great. If the electors would not swallow the abolition of the monarchy, they are unlikely to swallow this far more radical change in the system of government.

Further reading

Evans, H., ed, *Odgers' Australian Senate Practice*, 10th ed, 2001, Chapter 1


Sharman, C., ‘Australia as a compound republic’, *Politics, 25(1)*, 1990