

Senate Amendments and Legislative Outcomes in Australia, 1996–2007

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There has been a recurring argument in Australia about how the Senate should exercise its constitutional power to amend government legislation that it receives from the House of Representatives. Much less attention has been paid to how the Senate has exercised this power, and how often Senate amendments have resulted in legislative changes that governments otherwise would not have made. This article explores the legislative record and finds that, during the Howard ministry, Senate amendments did not often provoke negotiations leading to bicameral compromise. Most often, the House either agreed to the Senate's amendments, many of which were government proposals, or disagreed to them. In the latter cases, the Senate most often gave way, instead of insisting on the legislative changes it already had approved.

Introduction

Probably the most striking feature of Australia's national political system is its combination of a cabinet government that is formally responsible to the House of Representatives and a Senate that is directly elected and constitutionally powerful. The Constitution gives the Senate and the House of Representatives the same legislative powers, except that the Senate cannot originate certain money bills nor can it make amendments to bills imposing taxes or appropriating funds for the ordinary annual services of the government. Instead, however, the Senate can request that the House make the very amendments the Senate is barred from making itself, and no such money bill can become law until any Senate requests for amendments have been resolved in one way or another. Otherwise, the two houses enjoy the same powers with respect to legislation.

The authors of the Constitution understood that this sharing of power could give rise to legislative disagreements. Their chosen means for addressing any

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such disagreements were the complex procedures of sec. 57 that can result in a double dissolution followed by a joint sitting of the two houses. It must have been obvious to the authors that these procedures were not suitable for frequent use, that they would be very time consuming, and, therefore, that they could not be used to resolve bicameral disagreements over time-sensitive money bills. It would seem, therefore, that they must have expected either that the Senate would not use its legislative powers very assertively or that the two houses would not have much difficulty in resolving whatever disagreements did arise.

These matters were of little practical import during most of the first half-century under the Constitution when governments typically enjoyed dependable majorities in the Senate. With the introduction in 1949 of proportional representation for Senate elections and the later arrival of non-government Senate majorities, the potential for legislative conflicts between the House and Senate emerged as a much more serious concern. Not surprisingly, therefore, there has been a recurring argument in recent years as to if, when and how the Senate should exercise its legislative powers. Those on either side of this debate can point to well-known cases – for example, the workplace relations bill in 1996, the ASIO terrorism bill in 2002 and, of course, the supply crisis of 1975 – to buttress arguments over whether the Senate has used or abused its constitutional powers to amend government bills from the House or decline to pass them at all.

What has been missing is a less anecdotal and more systematic exploration of the Senate's impact on legislation. How exceptional were the three instances just mentioned? How often has the Senate, in recent years, amended government bills it has received from the House of Representatives? In turn, has there been a consistent pattern over time in how the House has responded to the Senate's amendments? Has the House typically accepted or refused to accept the legislative changes that the Senate has proposed? When the House has declined to accept Senate amendments, has it also opened the door to bicameral negotiation by proposing amendments or alternatives to the Senate's proposals, or has it simply rejected those proposals, presumably with the hope that the Senate would not insist on its own amendments? Do we find a similar or different pattern with respect to the ultimate fate of Senate requests for amendments to money bills?

This article begins to address these and related questions by examining the fate of all the Senate's amendments (and requests for amendments) to the government bills that the Senate received from the House of Representatives throughout the Howard ministry, the 12-year period from 1996 through 2007. This period includes 9.5 years during which there were non-government majorities in the Senate and the last 2.5 years when the Coalition government had majorities in both houses. The effect of the 2004 Senate elections, therefore, also allows us to ask if and how the change in partisan control of the Senate affected the Senate's legislative influence.¹

We shall find that the House often has accepted the Senate's legislative amendments but that this, in itself, does not tell us very much about the

¹What follows extends the analysis to be found in Bach (2003), which contains fuller descriptions of some of the parliamentary procedures discussed here and some of the data presented here.