RESOLVING DEADLOCKS:
A DISCUSSION PAPER ON SECTION 57 OF THE AUSTRALIAN CONSTITUTION
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Resolving deadlocks: A discussion paper on section 57 of the Australian Constitution

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CONTENTS

Executive Summary: The Case for Change 5
Chapter 1 The Dominant Intention of the Founding Fathers 9
Chapter 2 Resolving Deadlocks 15
Chapter 3 The Origin of Section 57 19
Chapter 4 The Application of Section 57 Since Federation 22
Chapter 5 Change in the Composition of the Senate 27
Chapter 6 A Minority-Led Senate 31
Chapter 7 Previous Suggestions for Reform to Section 57 34
Chapter 8 Current Options for Reform to Section 57 38
  Option 1 – Joint sitting without an election 39
  Option 2 – Joint sitting following an ordinary election 42
Conclusion 45
Glossary 57
TABLES

Table 1 – Existing Process under Section 57 18
Table 2 – Option 1 41
Table 3 – Option 2 44
Table 4 – Draft Constitutional Provision for Option 1 47
Table 5 – Draft Constitutional Provision for Option 2 48
Table 6 – Majorities in the Senate since Federation 49
Table 7 – Party Representation in the Senate 53
Table 8 – Party Representation in the House of Representatives 54
Table 9 – Party Representation in the Parliament before and after Double Dissolution Elections 55
Table 10 – Deadlock Provisions in the State Parliaments 56
EXECUTIVE SUMMARY: THE CASE FOR CHANGE

In a climate of emerging federalism, our founding fathers gathered in the 1890s to debate, draft and ultimately create the Australian Constitution. This document which came into force in 1901 has served Australia well. It has been the bedrock of stable, democratic government in this country for over 100 years.

But the Constitution is not immutable. It was consciously designed with a mechanism for change, the referendum process.

A referendum provides the means by which the Constitution can be amended to better reflect the will of the people and more effectively advance the workings of government.

Today, there is a case for change.

Two important legislative reforms have combined to alter the composition and function of the Senate fundamentally.
First, the introduction of proportional representation in 1948, taking effect in 1949, has fostered the development of minor parties.

This has been a valuable evolution in the representative character of the Australian Parliament.

In addition to the introduction of proportional representation, there was an amendment in 1983 which increased the number of senators elected in each state from five to six at a half-Senate election.

In practice, the election of an even number of senators at a half-Senate election, combined with proportional representation, has meant that it is virtually impossible for a government to obtain a majority in the upper house, no matter how large its majority is in the lower house.

The consequence is that the Senate holds effective control over the legislative and policy agenda upon which the government of the day has been elected.

In practice, the minority has assumed a permanent and absolute veto over the majority.

It is true that most of the government’s legislation is passed by the Senate. This is because most legislation is non-contentious.

The Senate’s record regarding legislation critical to the government’s reform agenda has been quite different. Here there is a pattern of frustration.

The problems created by this fundamental shift in the conduct of the Senate - which flows from the radical legislative change in its election and its composition - have been repeatedly identified by both sides of politics since 1950.

Perhaps most notably, in 1959 a bipartisan committee including future Labor Prime Minister Gough Whitlam and Liberal Minister Alec Downer outlined both the need for, and the elements of, reform to the Senate.

One of their key conclusions was to reform the relationship between the two houses in light of the change in the Senate’s composition and function.¹

¹ Australia, Parliament 1959, Report from the Joint Committee on Constitutional Review, 1959, Parl Paper 108, Chapters 3 and 4
Indeed, it was the view of the Joint Committee on Constitutional Review that:

‘section 57 needs to be amended in such a way as to maintain the principle of responsible government and to ensure the precedence of national interests over other interests.’

Almost a half a century later, those concerns have been reinforced by the 1983 reforms which effectively ended the potential for a government to obtain a majority in the Senate.

Unless we accept that a non-government majority in the Senate represents, in the absence of a double dissolution, a permanent veto on the legislative agenda of the government of the day, then we must pursue reform to section 57.

The experience of the last century in which section 57 has been invoked only six times and a resultant joint sitting held only once, indicates that section 57 in its current form is not a workable means of resolving deadlocks.

In this context, constitutional reform is needed to rebalance the relationship between the two houses and to ensure that where the houses are deadlocked, the Parliament as a whole may reconcile the difference as expeditiously as possible.

Without such reform, governments will be unable to implement policies which have both a popular mandate and are essential to promoting good government.

This paper outlines both the case for change to section 57 and the principal options for change.

The first option would allow the Prime Minister to ask the Governor-General to convene a joint sitting of both houses to consider a bill that has been blocked by the Senate twice during the life of the parliament, with the required three-month interval.

2 Australia, Parliament 1959, p 27
If the bill is passed by an absolute majority at the joint sitting, it could receive royal assent and become law.

This would remove the requirement for a double dissolution election as is currently the case under section 57.

The second option would allow the Prime Minister to ask the Governor-General to convene a joint sitting following an election to consider a bill that has been blocked by the Senate twice in the previous parliament, and is blocked again in the new parliament.

If the bill is passed by an absolute majority at the joint sitting, it could receive royal assent and become law.

Depending on the time the deadlock arose, the election could be either for the House of Representatives only, or for the House of Representatives and half of the Senate.

This option would remove the requirement to dissolve both houses, as is currently the case under section 57, but would require a House of Representatives election to break the deadlock.

Until such time as there is a more workable and efficient means of resolving deadlocks, the effectiveness of Australian governments will be impaired.

Perhaps more significantly, the will of the electorate will remain subject to a veto for which there is no practical resolution.

The solution must be to develop a model which more faithfully reflects the will of the people and the intentions of those who drafted the Constitution.

It is a proposal therefore deserving of careful consideration and a constructive public debate.
The founding fathers created a constitutional framework that is unique. It combines the United Kingdom’s Westminster model of responsible government with elements from the American model for a federal-state balance as embodied in its bicameral legislature.

The outcome has been the establishment of a hybrid system with two directly elected houses of parliament, the House of Representatives and the Senate, each provided with extensive powers to perform their quite different roles.

Often described as the ‘popular house’, the House of Representatives is the house of government.

In accordance with our system of responsible government, the political party (or coalition of parties) that wins the majority of seats across the nation forms the government of the day and its leader becomes the Prime Minister.
Members of the House are elected for three year terms in seats that are of roughly equal size based on population.

In contrast, the Senate was established with a dual function. It was to be a ‘states’ house’ and a ‘house of review’.

With the Senate comprised of an equal number of representatives from each state, it was envisaged that senators would act to protect the interests of the state from which they were elected.

This representation of the states was at the heart of the federal compact. However, as the Joint Committee on Constitutional Review concluded in 1959, at the birth of Federation it was not predicted that so many issues at the heart of governance would ultimately require national rather than state-based solutions.\(^3\)

Under section 7 of the Constitution, senators were given six year terms, double the length of those in the House of Representatives, as it was intended that the Senate would have a degree of continuity that would enable it to perform its role as a house of review.

In the words of Australia’s first Prime Minister, Edmund Barton, it was these particular features which would ensure senators:

‘a perpetual existence, combined with definite responsibility to the people of the State which shall have chosen them’.\(^4\)

Indeed, in 1901 two of Australia’s most noted constitutional observers, John Quick and Robert Garran, described the Senate as:

‘the chamber in which the States, considered as separate entities, and corporate parts of the Commonwealth, are represented. They are so represented for the purpose of enabling them to maintain and protect their constitutional rights against attempted invasions, and to give them every facility for the advocacy of their peculiar and special interests, as well as the ventilation and consideration of their grievances.’\(^5\)

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\(^3\) Australia, Parliament 1959, pp 11–12


In addition to providing for the Senate’s state-based franchise in section 7 of the Constitution, the founding fathers provided for the distribution of legislative power between the two houses in section 53.

It allocates to the House of Representatives and the Senate almost equal power in relation to legislation.

The only exception is that certain types of money bills cannot originate in the Senate and the Senate can only request, not make, amendments to some money bills.

Most importantly, a bill has to be passed in the same form by both houses before it can receive royal assent and become law.

Section 53 reads as follows:

‘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.’
Indeed, the unique character of section 53 is central to understanding the evolving relationship between the two houses.

As recently observed by Professor Jack Richardson:

‘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.’

While Australia shares a Westminster tradition with a number of other countries, the parliaments of those countries operate quite differently.

The United Kingdom Parliament’s upper house – the House of Lords – is not elected and its power to block bills is more limited than the Senate’s. For example, the House of Lords can block non-money bills originating in the lower house but, in most cases, if a year elapses with no solution to the impasse, the bill can become law without its consent.

The Canadian Parliament’s upper house – the Senate – is also unelected. While it has considerable power, most disagreements between the houses are resolved by negotiation, and the government can also appoint a limited number of additional senators to break a deadlock.

The upper house of the Indian Parliament – the Rajya Sabha or the Council of States – is mostly elected. While it can block legislation, the Indian Constitution provides for a joint sitting of both houses, without an election, if a bill is blocked even once (different procedures apply to money bills and bills amending the Constitution).

The New Zealand Parliament has no upper house.

At the time of the drafting of the Australian Constitution it was viewed as critical to the viability of the federal compact to create an upper house with the extensive legislative power set out in section 53.


7 Many Australian states also have powerful upper houses and some have adopted their own deadlock mechanisms. Table 10 provides information on deadlock mechanisms in the states
As Edmund Barton said at the Adelaide Convention debate in 1897:

‘you must take all pains, not only to have a Parliament consisting of two Chambers, but to have it constituted in those two Chambers in such a way as to have the basic principle of Federation conserved in that Chamber which is representative of the rights of the States; that is, that each law of the Federation should have the assent of the States as well as of the federated people.’

It therefore followed that if disputes were to arise between the houses it would have been a by-product of the states legitimately defending their own interests.

But in reality, the notion of a states’ house was always a function of how it was assembled but never a reflection of how it actually worked.

Soon after the birth of the Federation came the growth of major political parties.

United by philosophy and owing allegiance to their sponsoring party rather than their state, many senators quickly became advocates for party policy.

Casting their vote on legislation in accordance with their party’s position was more important than their home state’s interests.

Thus the Senate became the battleground for a conflict of wills between the major political parties.

As a participant in the constitutional convention of 1897, Alfred Deakin, later to become Prime Minister of Australia, predicted that:

‘any contention between the two houses, will not and cannot arise upon questions in regard to which states will be ranked against states....the whole of the states will be divided into two parties. Contests between the two houses will only arise

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* Official Record of the Debates of the Australasian Federal Convention, Adelaide, 1897, p 21
when one party is in possession of a majority in one chamber, and the other in the possession of a majority in the other chamber.”

With the benefit of hindsight, one can see how right Alfred Deakin was. In the words of the Joint Committee on Constitutional Review, ‘[t]he weapon of rejection, has, in other words, always been in party hands.’

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2 Australia, Parliament 1959, pp 15-16
The provision in the Constitution which sets out the process for resolving deadlocks between the House of Representatives and the Senate is section 57.

It provides for the Governor-General to call a double dissolution election for both houses, if the Senate twice blocks a bill passed by the House of Representatives.

If after the election the impasse still remains, a joint sitting of both houses can be held to vote on the legislation.

The terms of section 57 are as follows:

‘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 passed 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 the 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.’

Table 1 sets out the steps involved in section 57.

It needs to be emphasised that a deadlock is not just any disagreement.

Section 57 only applies if the House of Representatives has passed a bill and the Senate has either rejected it, failed to pass it, or passed it with amendments to which the House will not agree (referred to in this paper as ‘blocking’) at least twice.
The bill must also have originated in the House of Representatives and be fundamentally the same in both form and content upon each passage through the House.

There is also a requirement of at least a three month interval between the Senate blocking the bill for the first time and the House of Representatives passing it again.

This gives the two houses time to consider the bill and to negotiate a solution between themselves.

If a deadlock does arise, section 57 creates a two-step process for resolving it.

As a first step, the Prime Minister can advise the Governor-General to dissolve the House of Representatives and the Senate and to call an election for both houses (this course is not available if an election for the House of Representatives is due within six months anyway).

This is called a double dissolution election and it is the only time the whole of the Senate can be dissolved at the one time.

A double dissolution election might resolve the deadlock between the two houses, either because the government loses the subsequent election, or because the newly-elected Senate supports the bill.

The second step can be taken if the two houses are still deadlocked after the election.

If the Senate blocks the deadlocked bill again, the Prime Minister can advise the Governor-General to convene a joint sitting of both houses to consider the bill and any amendments on which the houses did not agree.

If an absolute majority of members and senators, sitting together, votes in favour of the bill it will become law.
Table 1 – Existing Process under Section 57

1. The House of Representatives passes a bill

2. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree

3. At least three months after the date the Senate acted (or failed to act), the House of Representatives passes the bill again

4. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree again

5. The Prime Minister asks the Governor-General to dissolve the House and the Senate, leading to an election (except where an election for the House is due within six months)

6. The House of Representatives passes the bill again

7. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree again

8. The Prime Minister asks the Governor-General to convene a joint sitting of the House of Representatives and the Senate

9. If an absolute majority of members and senators support the bill at the joint sitting, it can receive royal assent and become law
The deadlock provision in section 57 of the Constitution is evidence that our founding fathers foresaw that the Senate might use its power to block legislation initiated by the House of Representatives.

However, what many of the founding fathers did not anticipate was the nature of the conflict that would eventually take place between the two houses.

It was envisaged that if the Senate was to use its authority to block legislation it would be doing so in its capacity as a states’ house, representing state interests.

Indeed, it was particularly important to the larger colonies of New South Wales and Victoria that a deadlock provision be put in place to prevent the smaller states exercising disproportionate influence on issues that affected the population at large.
In the words of John Quick and Robert Garran the deadlock provision was:

‘designed to ensure that a decisive and determined majority in the national chamber shall be able to overcome the resistance of a majority in the provincial chamber.’

So important was the discussion over section 57 that a functional deadlock provision became for the larger colonies a condition precedent for their agreement to federate.

The need for a mechanism to resolve legislative deadlocks was raised at the first Convention in 1891, but the issue was not debated in detail until 1897.

In fact, it was the most debated clause at the Sydney Convention of that year.

Before agreeing on the final wording contained in section 57, the founding fathers engaged in an exhaustive debate as to the various options for resolving deadlock.

Among the options considered were:

■ a joint sitting of both houses;

■ an election for the House of Representatives followed if necessary by an election for the Senate;

■ a popular referendum on the deadlocked bill; and

■ a double dissolution followed if necessary by a referendum.

At the Melbourne Convention in 1898, delegates eventually voted in favour of a clause providing for a double dissolution followed by a joint sitting – with a three-fifths majority being required at the joint sitting.

Four colonies subsequently submitted the draft Constitution to a vote, but in New South Wales the referendum failed to elicit sufficient public support for its approval.

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11 Quick and Garran, p 339
Examining the means by which the New South Wales result could be reversed, a conference of premiers meeting in Melbourne in 1899 agreed to change the requirement for a three-fifths majority at a joint sitting to an absolute majority.

With this final amendment in place, section 57, together with the rest of the Constitution was re-submitted to the voters in the colonies and gained their approval.12

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A double dissolution election has been invoked under section 57 only six times since Federation, in 1914, 1951, 1974, 1975, 1983 and 1987.

Of those six occasions, only once, in 1974, was a joint sitting convened to pass the bills being blocked by the Senate.

The first double dissolution was called in 1914, when the Liberal government led by Prime Minister Joseph Cook advised the Governor-General to dissolve both houses on the basis of a deadlocked bill abolishing unionist preferences in Commonwealth public employment.

The government was defeated at the subsequent election and accordingly the bill was never reintroduced into the new parliament.

In 1951, the Coalition government led by Prime Minister Robert Menzies advised the Governor-General to dissolve both houses on the basis of a deadlocked bill relating to the Commonwealth Bank.
The government was returned with a majority in both houses, after which a similar bill was introduced into the new parliament and was passed by both houses without the need for a joint sitting.

In 1974, the Labor government led by Prime Minister Gough Whitlam advised the Governor-General to dissolve both houses on the basis that the Senate had rejected six bills twice.

These comprised a bill for one vote one value, two bills concerning representation of the territories in the Senate, two Medibank bills and the Petroleum and Minerals Authority Bill.

The government was returned with a majority in the House of Representatives, but without a majority in the Senate.

The new Senate rejected three of the bills and was evenly split on the other three – the Constitution providing in section 23 that bills are deemed not to have passed in the case of an even vote.

The government advised the Governor-General to convene a joint sitting of both houses which passed all six of the deadlocked bills. The High Court of Australia later held that one of these was invalid for constitutional reasons.

Indeed, 1974 was the first time a double dissolution had been held on the basis of more than one bill.

The High Court subsequently confirmed that this was consistent with the scope of section 57:

‘One instance of double rejection suffices but if there be more than one it merely means that there is a multiplicity of grounds for a double dissolution, rather than grounds for a multiplicity of double dissolutions.’

In 1975, the Governor-General commissioned the Leader of the Opposition, Malcolm Fraser, to form a caretaker government, on the condition that he recommended a double dissolution.

\[\text{13} \quad \text{Cormack v Cope (1974) CLR 432 at 469 per Stephen J}\]
The subsequent double dissolution was called on the basis of 21 deadlocked bills that the Senate had blocked twice in the period between 11 December 1974 and 8 October 1975.

At the subsequent election, the Fraser Government was elected with a majority in the House of Representatives and the Senate, but none of the deadlocked bills was reintroduced into the new parliament, given the change in government.

In 1983, the Coalition government led by Prime Minister Malcolm Fraser advised the Governor-General to dissolve both houses on the basis of 13 deadlocked bills, comprising nine sales tax bills, three education bills and a social service bill.

The government was defeated at the subsequent election and none of the bills was reintroduced into the new parliament.

In 1987, the Labor government led by Prime Minister Bob Hawke advised the Governor-General to dissolve both houses on the basis of a deadlocked bill dealing with the introduction of an ‘Australia Card’.

While the government was returned without a majority in the Senate it did have an absolute majority of members of the combined houses.

The Hawke Government did reintroduce the ‘Australia Card’ legislation into the House of Representatives, but ultimately did not pursue it in the Senate.

In the six double dissolutions to date, the blocked bills have been of varying degrees of importance to the legislative agenda of the government of the day.

On occasions section 57 has been used simply as a trigger for an election. However, there have also been times when the blocked bills were fundamental to the government’s reform programme.

For example, in 1951 Prime Minister Robert Menzies described the effect of the Senate’s actions as placing the Parliament in a position:
such that good government, secure administration, and the reasonably speedy enactment of a legislative programme are being made extremely difficult, if not actually impossible.”

He advised the Governor-General that:

‘the Government, with a new mandate from the people, has been in major affairs, constantly delayed and frustrated by the facts that the two Houses are of opposite political complexions and that in consequence the legislative machine, except in respect of relatively minor matters, has been materially slowed down and rendered extremely uncertain in its operation.”

Similarly, in 1974, Prime Minister Gough Whitlam advised the Governor-General that:

‘the Senate has twice rejected, failed to pass or unacceptably amended several proposed laws which are integral parts of the Government’s program of reform and development’.

He went on to advise:

‘the Senate has delayed and obstructed the program on the basis of which the Government was elected to office’.

These statements from both Robert Menzies and Gough Whitlam indicate that the Senate can equally frustrate the government of the day regardless of its political persuasion.

In essence, the unworkability of section 57 is borne out by an analysis of the previous occasions it has been invoked.

On three occasions, the government whose bill or bills had been blocked lost the election (1914, 1975 and 1983).

On one occasion (1987), the re-elected government did not proceed, as the Senate could in any event have frustrated the legislation through disallowance of separate regulations.
On only two occasions did a double dissolution lead to effective passage of the deadlocked bills – 1951 when the government was re-elected with a majority in both houses and 1974 when the joint sitting provision was employed for this purpose for the only time in 103 years.

Australia’s experience since Federation is that section 57, as a practical means of resolving deadlocks between the houses, has been all but unworkable.

Unless we accept that a non-government majority in the Senate represents, in the absence of a double dissolution, a permanent veto on the legislative agenda of the government of the day, then we must pursue reform to section 57.
Most Australian governments in the first 50 years of Federation also held a majority of seats in the Senate.

With government majorities in the Senate for 13 out of the first 18 governments, the issue of Senate obstruction was arguably less of an impediment to good government than it is today.

Elections for the Senate up to 1918 were conducted on a ‘first past the post’ and from 1919 on a preferential voting system.

These systems allowed for government majorities in the Senate to be formed far more easily than they are today.

For example, in the 1917 election, the Nationalist Party won a majority in the House of Representatives and all 18 vacant Senate seats with 55.4% of the Senate vote – taking their representation in the Senate to 24 out of 36 senators.
In 1943, the Australian Labor Party was elected to government winning all 19 vacant Senate seats with 55.1% of the vote – taking their total to 22 out of 36 Senate seats.

However, since 1948 there have been two very significant legislative changes that have impacted upon the composition and ultimately the operation of the Senate.

The first was the introduction of proportional representation for the Senate in 1948.

The impact of this change has been enormous.

For example, in the 1914 double dissolution election the Australian Labor Party won 31 out of 36 Senate seats with 52.1% of the vote whereas in the 1951 double dissolution election, the Coalition, with 49.7% of the vote, won only 32 out of 60 Senate seats.

Since the election of 1949, the government of the day has held a majority in the Senate on only 6 out of 26 possible occasions, and no government has held a majority in the Senate since July 1981.

The second critical legislative change to the Senate’s composition was the increase in the number of senators.

The original Senate of 1901 comprised 36 senators with six from each state.

From 1949 there were 60 senators with 10 from each state.

From 1975 there were 64 senators with an added two from each of the Northern Territory and Australian Capital Territory, and from 1984 to the present there have been 76 Senate seats with 12 from each state and two from each of those territories.

These increases to the number of senators were driven by the need to increase the size of the House of Representatives to cater for an Australian population that by 1948 had doubled since Federation.

As section 24 of the Constitution requires the numbers of members of the House of Representatives to be as nearly as practicable twice the
number of senators, a significant increase to the size of the Senate is a necessary precondition to an enlargement of the House.

Importantly, however, as the number of senators increases, the percentage of the vote required for election as a senator decreases.

The figures bear this out. From 1949 to 1983, a candidate needed a quota of 16.67% at a half-Senate election or 9.09% at a double dissolution election to be one of the 10 senators elected.

With 12 senators from each state, a candidate needs a quota of 14.29% of the vote at a half-Senate election, and 7.69% at a double dissolution election.

Critically, the increase to 12 senators means that at each election there will be six, not five, Senate spots available in each state.

Therefore it is much more difficult statistically for a political party to win a majority of Senate seats from an even number at each half-Senate election than the odd number that existed before the amendment was made in 1983.

When there were 10 senators from each state, a party at a half-Senate election could win a majority of seats in a particular state (ie three out of five) with 50.01% of the vote in that state.

However, now with 12 senators, a party needs 57.16% of the vote at a half-Senate election to win a majority of seats in a state (four out of six).

The principal beneficiaries from the introduction of proportional representation and the increases to the size of the Senate have been the minor parties and independents.

It is a sign of a healthy democracy that there is political choice.

Minor parties not only reflect the plurality of views within the electorate but also contribute to the maintenance of checks and balances within a robust democracy.

However, they have a responsibility to respect the basic mandate of a government’s stated agenda which has been endorsed by the electorate.
Indeed, one of the self-expressed purposes of minor parties has been to hold governments to account for their election promises.

It is inconsistent to demand fulfilment of election commitments on the one hand while thwarting the fundamental mandate on the other.

While the democratic compact encourages a diversity of views, to be effective it requires respect from those who hold the balance of power over the express platform upon which the government of the day was elected.
The changes in Senate composition and the subsequent rise of the minor parties have led to a fundamental shift in the way the Senate operates.

Opposition and minor parties in the Senate will now with damaging regularity, delay, amend and ultimately veto important elements of a government’s legislative programme, even if foreshadowed or announced at the time of the previous election.

It is true that most of the government’s legislation is passed by the Senate. This is because most legislation is non-contentious.

The Senate’s record regarding legislation critical to the government’s reform agenda has been quite different. Here there is a pattern of frustration.

A prime example of this has been the Senate’s repeated rejection of government attempts to provide relief for small business from unfair dismissal legislation.
This policy has been a specific part of the government’s election platform which has been endorsed at successive elections in 1998 and 2001. This is a reform that, if implemented, would help create thousands of new jobs and reduce costs to small business.

While governments often negotiate with opposition parties with a view to finding a workable compromise, there are times when minor parties and independents announce that they will block proposed legislation prior to them either seeing or debating the detail.

The government of the day is often acting to fulfil the mandate it won at the last election and seeking to implement important policies on economic management, social reform or national security.

In particular, policies where benefits will be enjoyed only in the longer term may not appeal to sectional interests looking for immediate gain.

It is thus contrary both to the principles of democracy and good government, that the will of the people as exercised through the ballot box can be repeatedly and completely frustrated by the opposition joining with minor parties pursuing sectional interests.

Why then in 103 years of federation has a double dissolution been used so sparingly? The answer is two-fold – cost and impracticality.

Governments from both sides of the political spectrum have generally been reluctant to interrupt the rhythm of the normal electoral cycle by having an election earlier than would otherwise have been the case.

Facing the possible loss of seats in a full-Senate election (because the percentage of votes required for election will be lower) and the potential loss of government altogether, it is a major risk for any government to call a double dissolution election.

Indeed, both the governments of Joseph Cook in 1914 and Malcolm Fraser in 1983 were defeated at a double dissolution election.
The last federal election in 2001 cost the taxpayer over $67 million. This cost is a factor militating against calling people to the polls earlier than would otherwise have been the case – particularly if the objective is to resolve a single, albeit significant, deadlocked bill.

It is these impracticalities that have rendered section 57 in its current form an ineffective and unworkable mechanism for resolving deadlocks.
In the absence of a viable means of resolving deadlocks, the Senate continues to function in a manner which is inconsistent with its intended role and contrary to the principle of responsible government.

Over the last 50 years, legal experts and representatives from both sides of the political spectrum have identified inadequacies with section 57 and suggested alternative means for resolving deadlocks.

**SENATE SELECT COMMITTEE ON THE CONSTITUTION ALTERATION (AVOIDANCE OF DOUBLE DISSOLUTION DEADLOCKS) BILL 1950**

In 1950, a Senate Select Committee comprising opposition senators recommended removing the requirement for a double dissolution election before a joint sitting.

The Committee had been appointed to examine a Menzies Government bill which proposed to change the method for electing senators at a double dissolution election to increase the chances that one party would win a majority of seats in the Senate.
Robert Menzies recognised at the time that the combination of proportional representation with an enlarged Senate made it:

‘highly probable that any double dissolution under this system would result not in the clearing of the air but in a further stalemate.’18

While the Committee opposed the Menzies reforms, they did recommend that in the case of deadlock, the Governor-General should be able to convene a joint sitting of both houses at which an absolute majority would prevail without first having to call for a double dissolution.19

JOINT COMMITTEE ON CONSTITUTIONAL REVIEW

In 1959, the Joint Committee on Constitutional Review which included future Labor Prime Minister Gough Whitlam and Liberal Minister Alec Downer found:20

‘that inexorable historical processes of the twentieth century have precluded the Senate from becoming the practical expression of the Founders’ intentions.’21

‘The Committee considers it to be quite inconsistent with the principle of responsible government at the Commonwealth level that a party or a coalition of parties returned with a clear majority in the House of Representatives and, for that reason, fully entitled and expected to form an effective government, may almost at once be unable to give effect to its policies because of a party political opposition in the Senate, unless it either threatens or obtains a double dissolution. One particularly adverse consequence is that a government may choose to forego the implementation of its

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18 Australia, House of Representatives 1950, Parliamentary Debates, vol 207, p 2217
20 The other members of the Committee were Senator N O’Sullivan, Senator PJ Kennelly, Senator NE McKenna, Senator RC Wright, Mr A Calwell, Mr DH Drummond, Mr LW Hamilton, Mr PE Joske, Mr RT Pollard and Mr EJ Ward
21 Australia, Parliament 1959, p 11
legislative policy rather than face another general election. In these circumstances, there is a danger that there will be government only in name and such a possibility is harmful to democracy.22

The Committee recommended that a government faced with a legislative deadlock between the houses should be able to choose between:

■ proceeding directly to a joint sitting without an election first. The Committee proposed that there should be a special ‘double majority’ required at these joint sittings. Before a bill could become law, it would need to be supported by a majority of the total number of members and senators. It would also need to be supported by a majority of the members and senators in a particular state, in half of the states. The Committee suggested that, if this joint sitting did not resolve the issue, the Governor-General should then be able to dissolve both houses; or

■ a double dissolution election followed, if necessary, by a joint sitting of both houses at which an absolute majority would prevail (in other words, the existing mechanism in section 57).

As a further alternative, the Committee suggested that the government should be able to advise the Governor-General to convene a joint sitting following an ordinary election for the House of Representatives, provided that the deadlock had arisen within 12 months of the expiry of the House of Representatives in the previous parliament.

They proposed that an absolute majority would be sufficient at this type of joint sitting as well.23

The Committee made recommendations about other aspects of section 57 too, including clarifying parts of its drafting and changing the definition of a deadlocked bill to, amongst other things, distinguish between money bills and other bills.

22 Australia, Parliament 1959, p 23
23 Australia, Parliament 1959, p 19-20
AUSTRALIAN CONSTITUTIONAL CONVENTION

The Australian Constitutional Convention was made up of federal, state and local government representatives and met several times from 1973 to 1985 to examine various constitutional issues.

In 1983, the Convention endorsed an amendment based on a proposal from Sir Charles Court, the former Premier of Western Australia.

This proposal dealt only with deadlocks over money bills. Under the proposal, if the Senate did not pass a money bill within 30 days, the Governor-General would be able to dissolve both houses.

Following the election, the bill could become law if it was passed by the House of Representatives alone.24

THE CONSTITUTIONAL COMMISSION

In 1985, the Hawke Government appointed a panel of experts whose proposals for section 57 were linked to some other recommendations for constitutional reform.

In the case of certain money bills, the Constitutional Commission recommended that, except in the final year of a parliamentary term, if the Senate rejected or failed to pass the bill within 30 days, it could nonetheless be presented for royal assent.25 In the case of other bills, the Constitutional Commission recommended that government should only be able to use a double dissolution in the final year of a parliamentary term.26

While the various reviews of the deadlock provisions produced their own distinct recommendations, they were in essence variants on a theme, namely that section 57 is in need of reform.


Building on the work done in these earlier reviews, this paper proposes two possible options for amending section 57, both of which are intended to offer moderate, sensible solutions to deadlocks between the houses.

These options are not meant to replace but rather to supplement the existing mechanism.

In other words, the option of calling a double dissolution election would remain available to the government of the day.

Unlike some of the earlier proposals for amending section 57, these options do not propose different mechanisms for dealing with deadlocks over money bills.

In a changing global environment we cannot predict the nature of those bills that may become indispensable to future governments.

In that context, any amendment to section 57 must address equally all forms of bills and not just a subcategory.
OPTION 1 – JOINT SITTING WITHOUT AN ELECTION

This option would allow the Prime Minister to ask the Governor-General to convene a joint sitting of both Houses to consider a bill that has been blocked by the Senate twice during the life of the parliament, with the required three month interval.

If the bill is passed by an absolute majority at the joint sitting, it could receive royal assent and become law.

Table 2 shows the steps involved in this option.

Table 4 contains a draft of a new constitutional provision which reflects the process proposed in option 1.

This option would offer a number of advantages:

■ it provides a simple, quick and low cost way to resolve deadlocks between the houses by removing the need for an election;

■ it still gives the houses significant time to resolve disagreements themselves because, as is the case at the moment, a deadlock would not arise until the Senate had blocked a bill twice, with an interval of three months in between;

■ it could be said to give greater recognition to the principles of responsible government, as it recognises that electors have a reasonable expectation that the government will provide adequate opportunity for Senate review but should be able to implement its policies without undue obstruction; and

■ it ensures that urgent money bills may be addressed without potentially crippling delays.

On the other hand, it might be argued that this option:

■ limits the effectiveness of the Senate as a house of review, because the government of the day will usually have majority support at a joint sitting and will be able to secure the passage of its bills more easily;

■ reduces the incentive for the government to negotiate a solution to the deadlock; and

■ does not give the electorate an opportunity to hold members and senators responsible for the deadlock accountable for their actions.
However, option 1 could be varied in a number of ways to provide additional safeguards and checks:

- amendments to certain legislation could be excluded from consideration at this type of joint sitting. This ‘designated’ legislation might include legislation that promotes government accountability, such as the *Freedom of Information Act 1982*, the *Ombudsman Act 1976* or the *Auditor-General Act 1997*. Amendments to this legislation would need to be made in the ordinary way with the agreement of the Senate;

- the government of the day could be required to wait for a longer period of time before convening a joint sitting of this type. For example, section 57 might be amended to provide that a joint sitting could not be held in the first 12 or 18 months of a government’s term. This would create more of an incentive for the government to negotiate a solution with the non-government parties and independent senators in the Senate;

- the Senate could be required to block a bill three times before a joint sitting, instead of the two times currently required. This would delay a joint sitting and would take up further parliamentary time, but would also give the government more of an incentive to negotiate a solution. This variation also reflects, to some extent, the existing requirements of section 57. At present, a bill has to be rejected twice by the Senate before a double dissolution election and once again after the election before it can be put to a joint sitting;

- this type of joint sitting could be limited to bills that implement election commitments. This variation is based on the argument that the electorate has had an opportunity to consider the proposal and has given the government a clear mandate to pursue it. However, unless the bill was public before the election, this may just lead to arguments about whether or not particular details of the bill were part of the election commitment. It also fails to address deadlocks over legislation that deal with important issues, like national security, that could not have been foreseen at the previous election.
Table 2 – Option 1

1. The House of Representatives passes a bill

2. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree

3. At least three months after the date the Senate acted (or failed to act), the House of Representatives passes the bill again

4. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree

5. The Prime Minister asks the Governor-General to convene a joint sitting of the House of Representatives and the Senate

6. If an absolute majority of members and senators support the bill at the joint sitting, it can receive royal assent and become law
OPTION 2 – JOINT SITTING FOLLOWING AN ORDINARY ELECTION

This option would allow the Prime Minister to ask the Governor-General to convene a joint sitting following an election to consider a bill that has been blocked by the Senate twice in the previous parliament, and is blocked again in the new parliament.

If the bill is passed by an absolute majority at the joint sitting, it could receive royal assent and become law.

Depending on the time the deadlock arose, the election would either be for the House of Representatives only, or for the House of Representatives and half of the Senate.

Table 3 shows the steps involved in this option in more detail.

Table 5 contains a draft of a new constitutional provision which reflects the process proposed in option 2.

This option offers the following advantages:

■ like the existing mechanism in section 57, it would give the electors an opportunity to express their views about the deadlocked legislation before any joint sitting;
■ it would remove the need for the government to call a special, possibly premature election to resolve a deadlock;
■ it would still encourage the houses to resolve disagreements themselves. If the government of the day is not able to convene a joint sitting until after an election, it has more of an incentive to resolve disputes in the current parliament;
■ if the election does not resolve the deadlock, there is still the option of proceeding to a joint sitting.

There are, however, a number of other issues which would need to be considered:

■ by retaining an election as a step in the process, it still involves a long and costly process for resolving deadlocks;
■ under section 13 of the Constitution, a half-Senate election can only be held in the last year of the six year Senate electoral cycle. If the deadlock were to arise early in the life of a government, the resulting election might therefore need to be for the House of Representatives only;

■ an election for the House of Representatives only would need to be followed within a relatively short period by a separate half-Senate election. This would put the elections for the House and the Senate out of kilter and add to the cost of the proposal;

■ section 13 of the Constitution also provides that senators who are elected at a half-Senate election do not take office until 1 July following the election. However, waiting for the new senators to take office would not be a necessary precondition for a joint sitting, once a further rejection of the deadlocked bill had occurred following the House election. While it might be seen as both logical and ‘democratic’ to defer the joint sitting until after the new senators take office where there was a House and half-Senate election, the delay in the passage of the deadlocked legislation might, in the case of urgent legislation, be sufficiently lengthy to defeat the purpose of the proposed amendment to section 57. Therefore, the senators voting at the joint sitting would not necessarily include those chosen at the election.
**Table 3 – Option 2**

1. The House of Representatives passes a bill

2. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree

3. At least three months after the date the Senate acted (or failed to act), the House of Representatives passes the bill again

4. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree

5. There is a general election for either the House of Representatives alone, or the House of Representatives and half of the Senate

6. The House of Representatives passes the bill

7. The Senate rejects the bill, fails to pass the bill or passes the bill with amendments to which the House does not agree

8. The Prime Minister asks the Governor-General to convene a joint sitting of the House of Representatives and the Senate

9. If an absolute majority of members and senators support the bill at the joint sitting, it can receive royal assent and become law
These two options provide a basis for possible reform to section 57.

Different as they are in a number of critical respects, they provide a focus for renewed public debate over the constitutional mechanism for resolving deadlocks between the Senate and the House of Representatives.

This paper does not seek to break the nexus between the House of Representatives and the Senate.

That approach was tried in the 1967 referendum and despite receiving support from both major political parties was rejected by the Australian people.

Similarly, this paper does not seek to change the application of proportional representation as a means of election to the Senate.

Proportional representation ensures a legitimate voice in the Parliament for a cross-section of interests.
What this paper does not accept is that there should be a permanent and absolute veto for minority interests.

Until such time as there is a more workable and efficient means of resolving deadlocks, the effectiveness of Australian governments will be impaired.

Perhaps more significantly, the will of the electorate will remain subject to a veto for which there is no practical resolution.

The solution must be to develop a model which more faithfully reflects the will of the people and the intentions of those who drafted the Constitution.

It is a proposal therefore deserving of careful consideration and a constructive public debate.
Table 4 – Draft Constitutional Provision for Option 1

57A DISAGREEMENT BETWEEN THE HOUSES

(1) If:

(a) the House of Representatives passes any proposed law; and

(b) the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree; and

(c) 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

(d) 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. But such joint sitting shall not take place after the next dissolution of the House of Representatives.

(2) 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. 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.

(3) 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.
Table 5 – Draft Constitutional Provision for Option 2

57A DISAGREEMENT BETWEEN THE HOUSES

(1) If:

(a) the House of Representatives passes any proposed law; and

(b) the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree; and

(c) 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

(d) the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree; and

(e) after a dissolution of the House of Representatives, 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

(f) 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.

(2) 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. 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.

(3) 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.
<table>
<thead>
<tr>
<th>YEAR</th>
<th>TYPE OF ELECTION</th>
<th>GOVERNMENT FOLLOWING THE ELECTION</th>
<th>ABSOLUTE MAJORITY IN SENATE?</th>
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<td>No</td>
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<td>ELECTION YEAR</td>
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<td>GOVERNMENT FOLLOWING THE ELECTION</td>
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<td>1954</td>
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* Shading denotes elections when the government gained an absolute majority in the Senate
## Table 7 – Party Representation in the Senate

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<th>Election</th>
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<th>FT</th>
<th>PROT</th>
<th>LIB</th>
<th>NAT</th>
<th>CP</th>
<th>UAP</th>
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Shading denotes elections when the government gained an absolute majority in the Senate.

Simultaneous dissolution election years are in **bold**.

(a) Government after election.

(b) Others include: various Independents such as Senators Turnbull and Harradine and Nuclear Disarmament Party members.

(c) Known as ‘Fusion’ in 1910.

(d) Separate House of Representatives election.


(f) Separate half-Senate election.

**Elections:** Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

**Voting system:** Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

**Voting system:** Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

**Voting system:** Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

Table 8 – Party Representation in the House of Representatives

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<tr>
<td>1980</td>
<td>LIB/NCP</td>
<td>51</td>
<td>54</td>
<td>19</td>
<td>1</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1</td>
<td>125</td>
</tr>
<tr>
<td>1983</td>
<td>ALP</td>
<td>75</td>
<td>33</td>
<td>17</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
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<td>125</td>
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<tr>
<td>1984</td>
<td>ALP</td>
<td>82</td>
<td>44</td>
<td>21</td>
<td>1</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1</td>
<td>148</td>
</tr>
<tr>
<td>1987</td>
<td>ALP</td>
<td>86</td>
<td>43</td>
<td>19</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1</td>
<td>148</td>
</tr>
<tr>
<td>1990</td>
<td>ALP</td>
<td>78</td>
<td>55</td>
<td>14</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1</td>
<td>148</td>
</tr>
<tr>
<td>1993</td>
<td>ALP</td>
<td>80</td>
<td>49</td>
<td>16</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>2</td>
<td>147</td>
</tr>
<tr>
<td>1996</td>
<td>LIB/NPA</td>
<td>49</td>
<td>75</td>
<td>18</td>
<td>1</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>5</td>
<td>148</td>
</tr>
<tr>
<td>1998</td>
<td>LIB/NPA</td>
<td>67</td>
<td>64</td>
<td>16</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1</td>
<td>148</td>
</tr>
<tr>
<td>2001</td>
<td>LIB/NPA</td>
<td>65</td>
<td>68</td>
<td>13</td>
<td>1</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>3</td>
<td>150</td>
</tr>
</tbody>
</table>

Shading denotes elections when the government gained an absolute majority in the Senate.

Simultaneous dissolution election years are in **bold**.

(a) Government after election.
(c) Known as ‘Fusion’ in 1910.
(d) Separate House of Representatives election.
(f) Separate half-Senate election.
(g) Includes the two Territory members who did not have full voting rights (hence the LIB/CP Government remained in office).

**Elections:** Except for simultaneous dissolutions, or as noted, elections are simultaneously held for the House of Representatives and half of the Senate.

**Voting system:** 1901–18 first-past-the-post voting; from 1918 preferential voting.

### Table 9 – Party Representation in the Parliament before and after Double Dissolution Elections

<table>
<thead>
<tr>
<th>HOUSE OF REPRESENTATIVES</th>
<th>SENATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gov’t Year</td>
<td>ALP</td>
</tr>
<tr>
<td>LIB 1913</td>
<td>37</td>
</tr>
<tr>
<td>ALP 1914</td>
<td>42</td>
</tr>
<tr>
<td>LIB/CP 1949</td>
<td>48</td>
</tr>
<tr>
<td>LIB/CP 1951</td>
<td>54</td>
</tr>
<tr>
<td>ALP 1972</td>
<td>67</td>
</tr>
<tr>
<td>ALP 1974</td>
<td>66</td>
</tr>
<tr>
<td>ALP 1975</td>
<td>66</td>
</tr>
<tr>
<td>LIB/NP 1976</td>
<td>36</td>
</tr>
<tr>
<td>ALP 1980</td>
<td>51</td>
</tr>
<tr>
<td>ALP 1983</td>
<td>75</td>
</tr>
<tr>
<td>ALP 1984</td>
<td>82</td>
</tr>
<tr>
<td>ALP 1987</td>
<td>86</td>
</tr>
</tbody>
</table>

Notes:
1. Proportional representation introduced for Senate election at 1949 election.
2. After the 1974 election, the Senate numbers were altered by the replacement of two ALP casual vacancies by non-ALP Senators.

<table>
<thead>
<tr>
<th>NEW SOUTH WALES</th>
<th>VICTORIA</th>
<th>QUEENSLAND</th>
<th>SOUTH AUSTRALIA</th>
<th>WESTERN AUSTRALIA</th>
<th>TASMANIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 5B of the Constitution Act 1902 provides for a series of possible successive steps to resolve deadlocks.</td>
<td>The Constitution Act 1975 provides for a series of possible successive steps to resolve deadlocks.</td>
<td>The Queensland Parliament has no upper house.</td>
<td>Section 41 of the Constitution Act 1934 allows the Governor to dissolve both houses if the upper house blocks a bill, there is an election for the lower house, and the upper house blocks the bill again.</td>
<td>The Western Australian Parliament has an upper house, but no constitutional provision for resolving deadlocks.</td>
<td>The Tasmanian Parliament has an upper house, but no constitutional provision for resolving deadlocks.</td>
</tr>
<tr>
<td>If a bill is deadlocked and cannot be resolved by a conference between managers of the houses, a joint sitting may be convened to deliberate, but not vote on the bill.</td>
<td>A disputed bill may be considered by a special parliamentary committee. If the committee cannot agree, or the houses fail to give effect to its recommendations, an election may be held for the lower house.</td>
<td>If the deadlock persists, a joint sitting may be convened, at which an absolute majority is required.</td>
<td>Alternatively, the Governor can issue writs for the election of two additional members for each upper house electoral district.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the deadlock persists, a referendum may be held on the bill.</td>
<td>If the deadlock persists, a joint sitting may be convened, at which an absolute majority is required.</td>
<td>Special provisions apply to money bills.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special provisions apply to money bills.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The parliaments in Australia’s self-governing territories — the Australian Capital Territory, the Northern Territory and Norfolk Island — do not have upper houses.
ABSOLUTE MAJORITY:  The term ‘absolute majority’ refers to a majority of the total number of members and senators, not just a majority of the members and senators who happen to be present at a joint sitting.

BILL:  The term ‘bill’ refers to a proposed law that has been introduced into the Parliament. A bill becomes law when it is passed by both houses and receives royal assent. When a bill becomes law, it is referred to as an ‘Act’.

CONVENTION DEBATES:  The Australian Constitution was debated and drafted at a series of constitutional conventions in the 1890s. The first convention was held in 1891 in Sydney. The other conventions were held in 1897 in Adelaide and Sydney and in 1898 in Melbourne. The debates of the delegates were recorded and published. An electronic version of the debates is available on the Parliament of Australia’s website at http://www.aph.gov.au/Senate/pubs/records.htm.

DISSOLUTION:  The term ‘dissolution’ refers to the termination of a house of parliament. Under the Constitution, the Governor-General must call an election within a certain period following a dissolution.
**FEDERALISM:** Federalism is a system of government under which power is divided between different levels of government, one of which is a central government and represents the nation as a whole and others that are regionally based. In Australia, power is divided between the Commonwealth, the states and the territories. Australia also has a system of local government, although this level of government is not recognised by the Australian Constitution.

**FOUNDING FATHERS:** The term ‘founding fathers’ is often used to describe the delegates who attended the constitutional conventions in the 1890s to debate and draft the Australian Constitution. Delegates to the 1891 convention were appointed by the colonial parliaments, and were joined by three delegates from New Zealand. At the 1897 and 1898 sessions, the delegates from New South Wales, Victoria, South Australia and Tasmania were elected. The delegates from Western Australia were again appointed by that colony’s parliament. Queensland did not send delegates to the 1897 and 1898 conventions. The founding fathers included future Prime Ministers Edmund Barton, Alfred Deakin and George Reid, as well as a number of future High Court judges.

**GENERAL ELECTION:** The term general election refers to an election for the House of Representatives alone, or the House of Representatives and half of the Senate. While the Constitution does not require House of Representatives and half-Senate elections to be held at the same time, it has become the practice in recent decades.

**MONEY BILL:** Under the Constitution, the government can only impose taxes, raise or ‘appropriate’ revenue, or spend Commonwealth money where that has been authorised by the Parliament through legislation. The term ‘money bill’ refers to a bill that:

- imposes taxes;
- raises or appropriates revenue; or
- appropriates or authorises the spending of money.

The Constitution does not allow the Senate to initiate or amend some types of money bills.
PREFERENCES AND PREFERENTIAL VOTING: Preferential voting is a system of voting under which electors vote for candidates in order of preference. The House of Representatives and the Senate both use systems of preferential voting, but they operate quite differently. Elections for the House of Representatives are designed to secure the election of one candidate with a majority of votes in each seat. A candidate who receives more than 50% of first preferences will automatically be elected. If no candidate receives more than 50% of first preferences, the second preferences of the least popular candidates are distributed, and so on, until one candidate has more than 50% of the votes. The Senate, on the other hand, uses a system of proportional representation. This system is described below.

PROPORTIONAL REPRESENTATION: Proportional representation attempts to ensure that political parties are represented according to their share of the overall vote. In the Senate, where the people of the states and territories vote to elect several candidates to represent them, this is achieved by means of a quota system. A quota is a percentage of votes that a candidate needs to be elected. It is calculated using a formula that divides the total number of formal votes by one more than the number of candidates to be elected, then adds one to the result. At the moment, the quota required for a senator to be elected in a state is 14.29% at a half-Senate election and 7.69% at a double dissolution election. Once a particular candidate reaches the required quota, they are elected. Any additional votes for that candidate are then distributed to the other candidates in order of the electors’ preferences. If some positions in a state are still unfilled at the end of this process, then the second preferences of the less popular candidates are distributed until all the vacancies are filled.

RESPONSIBLE GOVERNMENT: Responsible government is a particular form of government that was inherited from Great Britain. A great deal has been written about responsible government. At its simplest, it means that the government of the day is accountable to the lower house of parliament. The party or parties that win the most seats in the lower house of parliament, or has the support of the majority of members in that house, forms the government of the day. The members of that
government, the Prime Minister and ministers, are also members of parliament and are not elected separately. The government remains in office while it has the support or ‘confidence’ of the majority in the lower house.

**WESTMINSTER SYSTEM**: The term ‘Westminster system’ refers to the system of parliamentary government that is practised in the United Kingdom and many former British colonies. Amongst other things, the Westminster system is characterised by responsible government (see above).
RESOLVING DEADLOCKS: A DISCUSSION PAPER ON SECTION 57 OF THE AUSTRALIAN CONSTITUTION