

# Parliament – the Senate

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The Australian Senate has often been described as unique in both its structures and powers (Bach, 2003; Taflaga, 2021, p.55). Despite some historical Westminster roots in the UK's (still completely unelected) House of Lords (Kippin and Campion, 2018), Australia's directly elected upper house has strong similarities to the powerful Senate in the USA. For instance, it was designed as a chamber to protect the interests of the states against a potentially over-powerful federal government. It also sought to protect the smaller states and territories from the influence of more populous states. However, as party discipline has strengthened in the Senate, its members have increasingly become nationally-orientated party politicians.

The design of the Senate was intended as a check and balance. Twelve senators are (re)elected from each state to serve for a six-year term. To provide extra stability, they have normally been replaced half at a time (along with two senators from each of the territories every three years when House of Representatives elections occur). A proportional election system (the Single Transferable Vote (STV)) is used to choose members. Since the 1950s, no major party has won an outright majority of seats (although the Liberal Party secured a majority in 2004 in coalition with the National Party). As a result, Labor and conservative dominance has been constrained for six decades. Internationally, the powers of the Australian Senate are second only to that of the USA (Parliament of Australia, 2023a).

## In a bicameral legislature, what does democracy require from the second or upper chamber?

- ◆ If an elected upper chamber has *fully equal powers* to the lower house, it should act to represent voters in much the same way as the lower house, broadening the range of interests that have to be considered before policy is finalised. It may revise, delay, decide or even initiate legislation in its own right.

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- ◆ If instead an elected upper house has *lesser powers* than the lower house, it is mainly seen as a check and balance constraining the majority in the lower house, and enhancing public and parliamentary accountability through conditionally supporting the government, and articulating reasoned opposition. Scrutiny by the upper house should offer a safeguard against ill-advised legislative changes. This is especially the case where new legislation could breach liberal democratic principles, impair civil rights, change the nature of the federation, or make long-run alterations in how the political process operates that favour the lower house majority party.

*Australia's Senate lies somewhere between these two models.*

- ◆ An elected Senate where the election districts are states within a federation (as in Australia) should re-balance the geographical representation of different parts of the country compared with the lower house – to secure more equal influence for all states (and to provide some additional representation for territories).
- ◆ Any upper house should improve the accountability of the executive to the legislature and to public opinion, as well as facilitate and improve the technical operation of legislative drafting, scrutiny and amendment. Upper house proceedings should provide an important focus of national political debate and articulate ‘public opinion’ in ways that provide useful guidance to the government in making complex policy choices.
- ◆ Having a bicameral legislature should increase access channels from civil society to the executive, in equitable and accountable ways. Individually and collectively, senators (like MPs) should seek to uncover and publicise issues of public concern and citizens’ grievances, giving effective representation both to majority and minority views, and showing a consensus regard for serving the public interest.
- ◆ An upper house elected in a different way from the lower house should broaden the representation of different social groups in the legislature.
- ◆ Where elected senators have longer terms of office, this is often intended to increase the range of expertise available among legislators and within the pool of potential ministers, by attracting different kinds of people to stand from those contesting the shorter-cycle lower house elections. Senators’ roles should foster a degree of greater policy continuity, especially on issues where civil society actors must make decisions with some long-run predictability (for example, investing in pensions).
- ◆ Any elected Senate should be able to scrutinise and maintain full public control of government services and state operations as much as the lower house, assessing the current implementation of policies, and the efficiency and effectiveness of government services and policy delivery.

*In theory and design, Australia's Senate meets all the above requirements.*

## Recent developments

The founders of the Australian Federation examined the nature of upper houses in other countries in the 1890s and then selected features for their Senate. Such is its unique blend of qualities, that the commentator Stanley Bach (2003) likened it to a platypus (a unique Australian mammal that Europeans first thought must be a hoax combination of features from multiple species). European and American political scientists are often surprised by descriptions of the Australian parliament as a ‘Westminster system’, given its many exceptions to the rule – the Senate being among the most notable. On his retirement in 2021, the then Senate President, Scott Ryan, described the Australian Senate as ‘one of the most powerful upper houses in the democratic world’ (Murphy, 2017). It is distinctive in both its parliamentary structures and legislative strength.

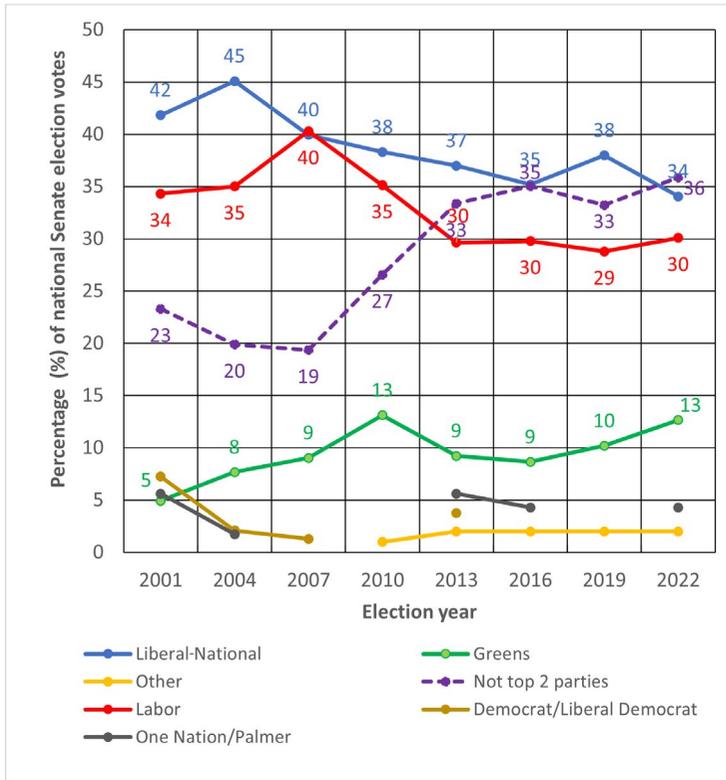
The Senate was deliberately designed to have almost equal powers to the House of Representatives. It has been a house that both introduces and reviews legislation. By convention, the Prime Minister (PM) and most ministers come from the House of Representatives, but senators do provide (a minority of) Cabinet ministers. Another key feature of the modern Senate has been the prolonged presence of third or fourth party, micro party and independent senators. These parliamentarians make up the ‘crossbench’, which apart from one period of three years, have held or shared the deciding vote (‘balance of power’) in the Senate since 1981. The Senate also has a robust committee system outside of the legislative process, which provides scrutiny to bills, examines issues of public interest and holds the public/civil service to account. These factors explain why Australia’s upper house has been an important check on the government’s executive, legislative powers and (via its committees) on wider public administration.

This chapter begins by discussing two key factors affecting how the Senate now works – changes in party fortunes and voting patterns in Senate elections to May 2022, and the Senate’s role during the COVID-19 pandemic. Next, the Senate’s strengths, weaknesses, opportunities and threats are summarised from a democratic point of view. Following this SWOT analysis, the remainder of the chapter delves deeper into three selected aspects of the Senate’s operations.

### Senate elections

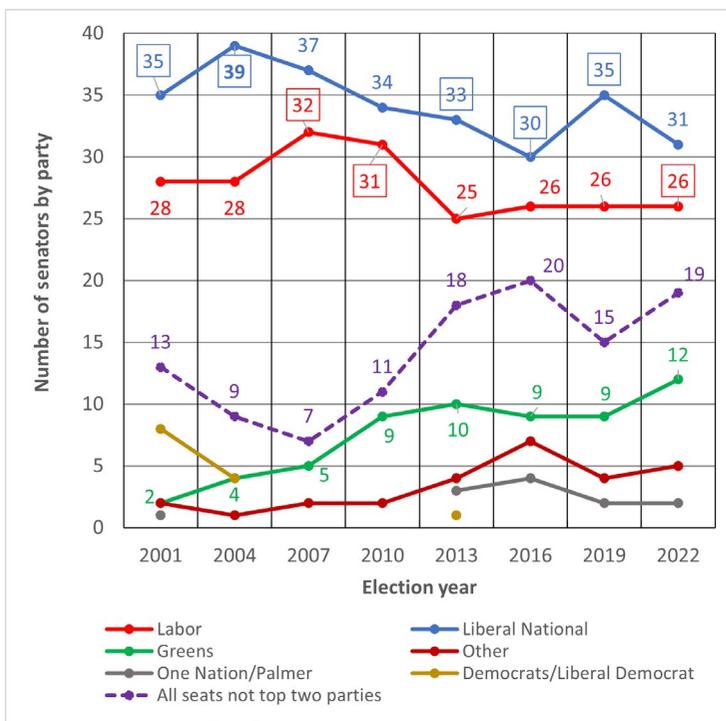
Using the STV system to elect multiple senators in each state encourages Australian voters to behave differently in upper house elections. A wide range of parties and candidates have stood for the Senate and won voters’ support. First-preference votes for the top two ‘major’ parties (the conservative Liberal-National Coalition, and the progressive Labor Party) has been less. Many voters choose to support upper house candidates from third parties, but also a range of single-issue micro-parties or independents. In terms of democratic fairness, the Senate election is best analysed at the individual state and territory level since the results reflect only the pattern of votes in each sub-national area (see Chapter 5). Yet it remains interesting to consider the national vote shares of the major parties in upper house elections, which differ from the House of Representatives pattern. They show a clear trend away from the major parties (Figure 12.1). Notably, the first-preference vote for non-major party senators exceeded the Labor Party’s votes for the upper house over the last decade.

**Figure 12.1: The national first-preference vote shares of parties in Senate elections by party, 2000–2022**



Source: Compiled from summary data in Parliament of Australia (2017) 'Federal election results 1901–2016' and Australian Electoral Commission (2023). [https://www.aec.gov.au/elections/federal\\_elections/](https://www.aec.gov.au/elections/federal_elections/)

**Figure 12.2: The number of senators by party, 2000–2022**



Source: Compiled from summary data in Parliament of Australia (2017) 'Federal election results 1901–2016'; Parliament of Australia (2020) 'Parliamentary Handbook for the 46th Parliament, p.465; and Senate of Australia (2023) 'The Parliament of the Commonwealth of Australia: The Senate – List of Senators, 47th Parliament as at 30 May 2024'.

Note: There are 76 seats, so a majority requires 39 senators, obtained only once in this chart, by the Liberal-National Coalition in 2004. The party holding the ministry is shown boxed. The 2016 election was an unusual 'double dissolution' of the whole Senate, when all 12 seats in each state were contested at the same time.

The story for most of the last 40 years of the Senate has been that of a third minor party (early on the Australian Democrats and then later the Australian Greens) having enough numbers to hold (or share) the ‘balance of power’ in the Senate. The exception to this was in 2004, where only four senators (5 per cent) were elected from outside the two major parties. This was due in no small part to the electoral demise of the Australian Democrats third party after supporting the Howard Government to introduce a controversial goods and service tax. That said, over a sixth of the votes still went to third parties, small parties or independent candidates at that election.

This high vote across non-major party groups has not always translated directly into more seats. It should be noted that in six member, state-wide contests, the formal quota needed to win a seat is the total votes divided by the number of seats plus one, which equals 14.3 per cent (or 33.3 per cent in the two-seat territories). These levels have been a tall order for small parties or independents to reach, even if they attract considerable preferences via the STV system. But it is not unprecedented. South Australian Independent Senator, Nick Xenophon, alone won almost 25 per cent support in 2013, while Independent Senator, David Pocock, won the second Australian Capital Territory (ACT) seat ahead of the Liberals in 2022.

That said, [Figure 12.2](#) shows that the Liberal-National Coalition has had the largest representation in the Senate this century, followed by Labor. The Greens have been continuously represented in the chamber over the last 20 years, growing from 2 to 12 senators. The number of seats for non-major parties has also trended upwards, peaking at 20 out of 76 senators in 2016, and 19 senators in 2022. Other parties winning seats across the period have included the Australian Democrats (early on) and Liberal Democrats, centrist micro parties like Family First and Xenophon team, and right-wing groupings like One Nation and Palmer United. All have experienced difficulties in building a stable party organisation to support sustained electoral performance. All the trends covered here have longer term roots that we analyse after the SWOT analysis below.

### **Post 2022 developments**

Labor returned to power at the May 2022 Federal Election, with a very slim majority in the House of Representatives and a minority share in the Senate. The strong performance of the Greens meant that with their backing the government only needed the vote of one additional senator to pass ‘progressive’ legislation (although this number increased with a Labor senator leaving the party in mid 2024). Early post-election commentary identified a more participatory and democratic orientation by the new Albanese Labor Government than under his Coalition predecessors, Morrison and Abbott ([Dennett, 2022](#)). As noted above, a Labor and Independent senator were elected for the first time to the ACT’s two seats at the 2022 election. This contributed to removing a long-held inconsistency in the legislative powers between states and territories, a move that the ACT government had long campaigned for ([Evans and Jervis-Bardy, 2022](#); [Neale, 2022](#)). This was one example of the changing composition of the Senate contributing to more democratic practices.

Another issue after the 2022 election revolved around a national referendum to include an Indigenous Voice to Parliament in the Constitution. Set for late 2023, it was a key commitment made by the Albanese Government. In early 2023, tensions over the issue changed the composition in the Senate with one Greens member splitting from the party, requiring the government to then secure two votes in addition to the Greens. Hopes were raised that, if successful, this constitutional change, along with the emergence of community-based ‘Teal’ conservative-environmental (blue-green) Independents with grassroots mandates ([Wallace, 2022](#); [Wahlquist, 2022](#)), could contribute to new demands for culturally appropriate and diverse

public engagement by government and public administrators. However, the Voice proposal was convincingly defeated in October 2023 (see [Chapter 4](#)). For the moment then, the Senate's role in shaping the renewal of Australia's democratic foundations has remained unchanged.

### The Senate and the COVID-19 pandemic

During the 2020 to 2022 COVID-19 pandemic period, the Senate provided significant questioning of ministers' performance in a relatively independent manner. A powerful Senate committee was set up to monitor how the Coalition government was performing. In April 2022, its extensively critical final report called for a Royal Commission to examine federal policy-making during the period ([Senate Select Committee on COVID-19, 2022a](#)). However, the Liberal-National Coalition senators on the committee issued their own dissenting report, arguing both that the government's performance was appropriate and that a further investigation was not needed ([Senate Select Committee on COVID-19, 2022b](#)). At the time of writing, the Albanese Government has rejected a recommendation made for a Royal Commission ([Hevesi, 2023](#)), but this example illustrates the potential national influence of the Senate committee system (see also [Senate of Australia, 2024](#)).

## Strengths, weaknesses, opportunities and threats (SWOT) analysis

Current strengths	Current weaknesses
<p>The Senate's STV electoral process is a proportional one, which responds to the public's state-wide votes and counts multiple preferences, creating a reasonable match of votes cast and seats won.</p>	<p>Voting at Senate elections is usually mostly driven by national party positions and issues, rather than by distinctive state or regional interests. The formal quota of votes needed to win a seat is quite high (over 14 per cent), which favours the larger parties. They are often somewhat over-represented at the expense of seats for fragmented micro- or very small parties.</p>
<p>The overall make-up of the Senate state and territory vote often matches the national breakdown of votes cast (<a href="#">Trudgian, 2016</a>). Such results have been happy accidents (rather than predictable or justified outcomes of state-wide contests). But they have tended nonetheless to enhance the upper house's legitimacy with the public.</p>	<p>Senate seats are not distributed according to population size, and the number of constituents per senator varies very markedly across the most and least populous states, contributing to very different work demands and practices for senators.</p>
<p>There is evidence that substantial numbers of citizens are content to see no overall party majority in the Senate, viewing it as a check on the power of an executive with a House majority. Some voters may actively adjust their Senate preferences to help achieve this outcome.</p>	<p>Crossbench (or potentially backbench) senators hold the balance of power in passing new legislation between the Liberal-National Coalition and Labor, which leaves the Senate open to (often unfounded) claims that these senators are able to exploit their pivotality to 'pork barrel' for their state or territory.</p>

Senate procedures and conventions protect against partisan and populist extremes, both from major parties' over-reach and unreasonable crossbench demands.	Strongly observed major party discipline can result in the deciding vote on amendments or passage of a bill being held by one unaffiliated senator. This may seem to make them excessively powerful, but only if their demands have been more reasonable than the opposition's position, and so long as major party discipline has been maintained.
Senators have genuine powers to hold ministers and the executive to account, and have utilised them in independent and critical ways (especially when in opposition).	The staffing quota for advisers to assist senators were originally based on backbencher workloads, but this has improved as governments have recognised the legislative workload of crossbenchers and potential delays. However, understaffing can constrain the capacity of senators to hold the executive to account, as does the limited formal induction and training for senators and their staff on these genuine powers.
The Senate committee systems have considerably developed in activity levels and salience and in recent decades have contributed in important ways to improve policy scrutiny, public accountability and national debate.	Senate committees cannot direct the activities of the executive. Committee reports (and dissenting reports) often emerge along party lines, which can dilute the power of committee findings back in the chambers. Increasingly, committees investigate matters prior to parties stating their formal position at second reading, which encourages partisan committee behaviour and inhibits debate.
<b>Future opportunities</b>	<b>Future threats</b>
The Senate and its committees have embraced extensive evidence-gathering (for example, for its 2022 COVID-19 report) and new ways of working with citizens. Embracing more deliberative processes through new technologies or citizens' assemblies could enhance this innovativeness.	The emergence of a National Cabinet involving the PM and state and territory premiers in high-level discussions occurred in response to COVID-19 but has continued under both the major parties. Its role raises acute questions about whether the historic role of Senate (as the primary representative of the states and territories) will continue or decline in significance (see below).
There has been a growing diversity in social representation in the Senate, which could be further encouraged in dimensions beyond gender balance.	Presidential-style politics, declining major party membership and traditional party conventions all present a challenge to more socially diverse contributions by major party senators, as well as encouraging diversity and balance across the Senate.
As more parties establish an enduring Senate presence, share the deciding vote and dissolve major party dominance, conventions around party discipline, executive direction and public administration may need to loosen to win Senate support, potentially opening the door to more deliberative and inclusive community approaches to public engagement.	Intense media coverage and/or the 24-hours news cycle places pressure on crossbench senators to take up positions on legislation early, often prior to full examination of evidence, public engagement or the parliamentary process being enacted. For a senator to subsequently be seen to change their public position ('back-flip') has been considered a significant risk for senators whose election was not protected by a major party label.

The remainder of the chapter looks in more detail at four aspects of the Senate's operations – its purposes, powers and processes, including committee activity; the electoral and party influences on its composition, and effects on governance; the Senate's role on 'democracy' issues; and some tensions around and possible reforms to the upper house's operations.

## Purposes, powers and processes

One key purpose of the Senate has been to act as a safeguard against dramatic or undemocratic legislative changes. As a distinctively constituted elected chamber that produces its own legislation, it acts as an influential check and balance. Because Australian governments generally have had a majority in the House, but not the Senate, the latter became a key locus for parliament to fulfil its role of holding the executive to account. The Senate can also facilitate the technical operation of legislation, through independent drafting, review, amendment and passage of laws. The Senate's committee system has been particularly important here. It can provide a wider range of social perspectives among upper house legislators due to the presence of members from smaller parties, particularly those holding the balance.

The powers of the Senate to introduce, amend or block legislation have made it central in ensuring public and parliamentary accountability. Although there are no specific procedures that prevent the Senate rejecting Budget supply bills, the convention since the 1975 dismissal of Labor PM Whitlam by the Governor-General has been that the Senate cannot hold the government 'to ransom'. Should resistance still occur, a government with a majority has the strategic option of calling a 'double dissolution' of all members and a combined vote across both houses should any bill be blocked twice (with double the number of MPs meaning that they are likely to be able to override a Senate deadlock). These factors restrict the use of Senate powers in ways that might obstruct governments.

An important power to scrutinise the implementation of policies and the actions of governments has been the Senate's ability to order ministers to provide information on issues of public concern. This can be through formal orders to produce documents or amending legislation to include provisions for appropriate disclosure. In practical terms, these powers by far exceed those within Freedom of Information laws and are so broad that they can require documents to be created. These powers include a further measure under a standing order that requires governments to make public all provisions of any Act that have been proclaimed each year. Failure to comply can come with sanctions on ministerial powers (effectively to 'bench' ministers). The Senate also has the power to censure ministers, an important integrity measure that has resulted in ministerial resignation. That said, these measures have rarely been applied. A more frequently applied sanction has been delaying legislative activity and the government's progress on its agenda until relevant information is produced. Time has always been a vital and finite resource for governments on a three-year electoral cycle.

### The legislative process

Despite the Senate's formal powers to hold up government activity, the vast majority of legislation passes with the support of both major parties and/or the crossbench members. However, the extent that this occurs in a climate of fruitful deliberation that seeks to maximise a national consensus has been less clear. There has been a growing partisan and populist element within the Senate in recent years, while contributions within the chamber (even after second reading stage) have become more partisan. For instance, a new convention to refer legislation to Senate committees immediately on entering the upper house (rather than after second reading) has reduced constructive deliberation. This change has resulted in senators remaining silent on proposals in committee until the official party position has been made public at second reading. This misses the opportunity to link chamber and Senate committee deliberation and amendment prior to the third reading. Such trends towards partisanship in Australian politics have presented a threat to the Senate's democratic contribution.

The chamber also plays an important role in shaping national political debate through floor proceedings and questions. Members have introduced measures to encourage the democratic use of time for chamber business, such as placing time limits on answers at question time and publishing a roster of numbers of questions per party. The chamber also produces reports on speaking time by party per session to demonstrate relative parity across all parties. It has established set time limits for government to respond to parliamentary reports. Another procedural contribution was the establishment of deadlines for introducing legislation in each session (the ‘cut off’). This procedure has prevented the introduction of a large numbers of bills at the end of a sitting period with a demand for immediate passage and addressed concerns about lack of proper scrutiny due to an ‘end-of-session rush’.

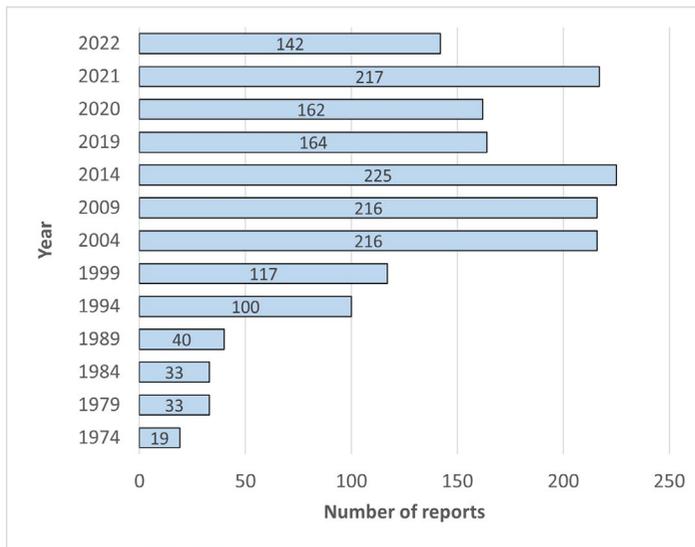
## Senate committees

While both houses in parliament have committees, the Senate committees have secured more prominence and influence. Committees date from the first year there was a Senate, and a system of permanent (‘standing’) committees was introduced in 1970. These standing committees complement an earlier ‘scrutiny’ committee process and take two forms, ‘legislation’ and ‘references’. The ‘legislation’ committees, with chairs from the government, inquire into bills before the Senate and are often mini-partisan forums. In the 20 years from 1970 to 1989, only 55 bills were referred to committees, but in the next 30 years (1990 to 2019) this number passed 2,400 (Browne, and Oquist, 2021, p.26). The ‘references’ and select committees, with non-government chairs, look into specific topics referred to them by the Senate. These inquiries are typically conducted over a period of months and depending on the subject matter tend not to be partisan (or not *as* partisan). In the modern period many more committee reports have been issued, typically now between 150 and 230 a year (Figure 12.3).

Conventions play a big role in determining how committees operate as John Uhr (2005, p.20) noted:

*Conventions are fragile things but the Senate conventions seem to imply that whenever there is not a government majority, then the preferred practice is to share power among all represented political groupings: including a share of the power to control Senate committees. Since 1994 the Senate standing committees have been divided into references committees, with non-government chairs and non-government majorities, and legislation committees where the government retains control.*

The Scrutiny of Delegated Legislation Committee (which was originally established in 1932) allows the parliament to review regulations that are not made by the parliament but by a minister acting under authority granted to them by existing laws. These ‘legislative instruments’ may not attract much attention in the full chamber or with the public, but they can generally be disallowed by parliament. A recent example of the Committee’s work was a September 2021 report on regulations governing the Australian Charities and Not-for-Profits Commission (ACNC). Notwithstanding assurances from the Assistant Treasurer, the Committee felt that the regulations unduly limited the ability of charities’ staff to engage in political advocacy. The Committee recommended that the Senate disallow the instrument. This was a good example of how the committee’s work in examining and drawing attention to regulations has made an important democratic contribution.

**Figure 12.3: The total number of reports issued in a year by Senate committees, from 1974–2022**

Source: Chart from data in [Browne and Oquist, 2021](#), *Representative, Still – The role of the Senate in our Democracy*, Research report, Canberra: The Australia Institute, March, p.26; and [Senate of Australia, 2024](#).

Senate committees also meet for ‘estimates’ hearings where the senators have the chance to question senior public servants directly about programs, activities and spending within their departments. Often feared by senior public/civil servants for their depth of information and quality of questioning, these committees have played an important democratic role in extending national political debate and the accountability of federal public administration.

## The emergence of National Cabinet

Prime Minister Scott Morrison’s creation of a new National Cabinet in April 2020 included himself, State Premiers and Territory Chief Ministers, and was a major change in federal-state government relations (covered elsewhere in [Chapters 13](#) and [16](#)), superseding the Council of Australian Governments (COAG). The stated aim of this change was so that National Cabinet would meet more regularly, avoid excessive bureaucracy and make national decisions more rapidly (particularly in response to the global pandemic). However, a less evident aim could be to sideline an increasingly complex Senate that has not been controlled by major party partisanship, with more non-major party senators representing distinctive regional interests in Canberra.

The ‘National Cabinet’ has no constitutional basis. At its formation, it was characterised by PM Morrison as effectively a sub-committee of the PM and federal cabinet, and thus not subject to direct scrutiny by parliament. The National Cabinet members are not part of the federal parliament. Yet, given its composition, the new body may present a threat to the Senate and suggest a further diminishing of its role as the key representative of state and territory interests, which had already occurred under the weakened COAG arrangements that the National Cabinet replaced (see [Chapter 16](#)). Of particular concern has been that its deliberations have been secret and not subject to the level of democratic scrutiny provided by Senate procedures and provisions.

However, the Senate used its powers to push back. In August 2021, Senate crossbencher, Rex Patrick, brought a case before the Administrative Appeals Tribunal (AAT) that the PM had been incorrect to suggest that federal cabinet confidentiality could be extended to National Cabinet

meetings. Subsequently, Coalition ministers introduced legislation into the parliament that would extend secrecy provisions in the Freedom of Information (FOI) Act to extend the secrecy provisions of Federal Cabinet to the ‘National Cabinet’. Senators were critical of this move, accusing the PM of attempting to block public scrutiny of deliberation and decisions affecting federal, state and territory governments. This provides a clear example of the way in which the Senate’s presence, powers and ongoing demands for transparency and accountability can challenge executive power. In July 2022, the Albanese Labor government indicated that it would continue to use the vehicle of a ‘National Cabinet’ and these debates remain ongoing.

## Senate elections, party competition and ‘hung’ politics

As the voice of the states, the Senate was intentionally designed to provide a different style of geographical representation from the lower house. Seats in the House of Representatives are allocated in a strict, population-proportional way, and constituency sizes are regularly adjusted to maintain the (broadly) equal influence of citizens’ votes across the country. As noted earlier, Senate seat numbers are permanently fixed and ‘malapportioned’ in population terms as a deliberate constitutional decision. The ratio of senators to state populations shows a strong variation with NSW having over 680,000 people per senator, and Tasmania fewer than 144,000 (Figure 12.4). If citizens want to take an issue only to senators from the same political party, then even for the top two parties the Figure shows that the number of people per senator are higher still. The democratic implications of this design have often been hotly contested, not least from Labor and left-wing perspectives that have at times seen the upper house as a conservative force thwarting the popular will for progressive change policies. For instance, in 1992, former Labor PM Paul Keating proclaimed in the lower house (with characteristic hyperbole) that he ‘would forbid [the Treasurer] going to the Senate to account to [those] unrepresentative swill’ (Ricketts, 2013).

The allocation of seats is invariant and not reviewed. The only change in the Senate electorate’s sizes occurs with population growth, and the only variation in seat numbers contested at once occurs when a federal PM uses their rarely used power to precipitate a ‘double dissolution’ of both the House and the Senate (reducing the quota for election). This has only happened once this century, in 2016, when the PM Turnbull called a double dissolution, but failed to get a stronger number of major party senators as he had hoped.

In a perceptive analysis, Willumsen, Stecker and Goetz (2019) showed that voters in different states formed different expectations of their senators. Tasmanians expect to interact personally with their senators, while in the biggest states: ‘[Overload] makes those activities which allow representatives to be responsive to a large number of people at one time more attractive’ (p.3). The study also found two effects in behaviour of senators. As the size of their states increased, senators asked more questions of ministers, perhaps anxious to demonstrate activity on voters’ behalf. But at the same time, as diversity of their state’s population and economy rose, senators also moved fewer amendments and bills in the chamber, perhaps because the collective interests of the state were more complex. Further, the study found that the more senators their party had in a given state, the less that senators tended to be active in the chamber (Willumsen, Stecker and Goetz, 2019).

**Figure 12.4: The number of people represented by each senator across the states and territories in September 2022**

State/territory	Population (in 000s)				
	per senator	per Coalition senator	per Labor senator	Liberal-National senators	Labor senators
New South Wales	682	1,366	2,048	6	4
Victoria	554	1,331	1,664	5	4
Queensland	446	1,071	1,785	5	3
<i>All Australia</i>	<i>344</i>	<i>843</i>	<i>1,005</i>	<i>32</i>	<i>26</i>
Western Australia	234	561	561	5	5
Australian Capital Territory	230	na	459	0	1
South Australia	152	305	457	6	4
Northern Territory	125	251	251	1	1
Tasmania	47	143	143	4	4

Source: Computed using data in **Australian Bureau of Statistics (2023)** 'National, state and territory population'.

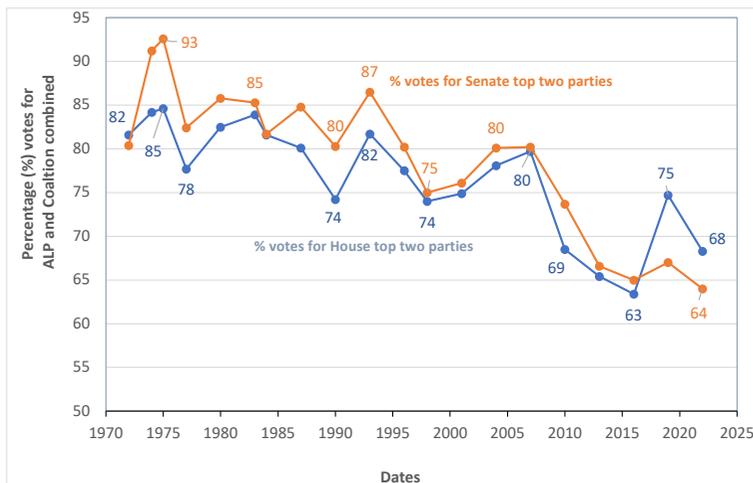
Note: All population per senator numbers are shown in thousands, and are also rounded to the nearest 10,000 people. States have 12 senators each, and territories two each.

In this analysis, opposition senators asked more questions and moved more amendments than those on the government side, as did senators with more education or previous occupations of higher or professional status (**Willumsen, Stecker and Goetz, 2019**). When there was a hung parliament overall, or an evenly split Senate, legislators as a whole also asked more questions to the government. Ministers in the Senate were generally the least active members, presumably because they had additional executive roles and could not ask questions outside their briefs. However, they were very active in the chamber in managing government business and moving amendments. Although only one study, this work points to important ways that Senate composition contributes to forms of democratic activity by senators.

## Political development and the Senate's character

Over and above the impact of constitutionally fixed features, the long-run development of the Senate's operations has been affected by some slower, 'glacial' changes in Senate politics (since proportional representation for its elections was first introduced in 1951). The chamber has slowly come to better reflect the diversity of political views within the Australian community. We noted above a strengthening tendency for Australian voters to choose different parties in the two houses in recent years, resulting in a lower major party first-preference vote in the Senate elections (see [Figure 12.1](#)). This pattern has longer term roots. [Figure 12.5](#) shows that since the 1980s there have generally been fewer major party primary votes for the Senate than for the House of Representatives and with a more consistent recent decline in this trend line. In the past many smaller or even micro parties historically did not run in the House of Representatives districts where they stood little chance of winning the single seat. However,

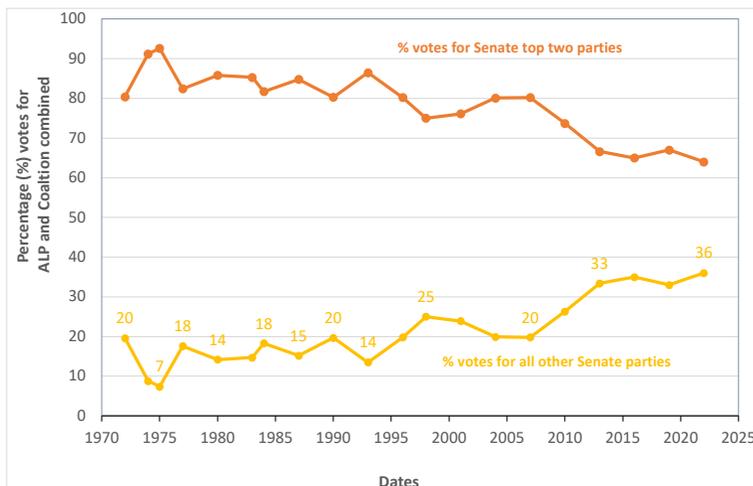
**Figure 12.5: Comparing the primary (first-preference) vote for the top two parties (Labor and the Liberal-National Coalition) in Senate and House of Representatives elections, from 1970–2022**



Source: Compiled from summary data in Parliament of Australia (2017) 'Federal election results 1901–2016'; and Figures 12.1 and 12.3 above.

Note: The dates on the horizontal axis show five-year intervals, not the dates of elections. The vertical axis starts at 50 per cent here, to show over-time changes more clearly. Only select vote share numbers are given for the two lines to show variations.

**Figure 12.6: The long-run trends in national vote share for the top two parties, versus the combined vote share for all other parties and independents in Senate elections, 1970–2022**



Source: Compiled from summary data in Parliament of Australia (2017) 'Federal election results 1901–2016'; Parliament of Australia (2023b) 'The representation of small parties and independents'; and Figure 12.3 above. See also Ghazarian (2017).

Note: The dates on the horizontal axis show five-year intervals, not the dates of elections. Only select numbers are given for the two vote share lines to show variations.

even this pattern of candidacies has also changed markedly in recent years, especially with the rise of Teal and other independents in the 2022 Federal Election (see Chapters 5 and 11).

The growing support for a third or minor party and independent candidates in Senate elections has also seemed to be a strategic decision by the electorate (Ghazarian, 2017). Some voters have wanted the Senate to provide an accountability and legislative check on the government. For many years, one minor party successfully ran in the Senate on a slogan of 'keeping the bastards honest'. This sentiment has continued to resonate in the attitudes of many Australians to the role of the Senate. Figure 12.6 demonstrates that the trend for more pluralised Senate election voting also goes back a long way (although with some bobbing up and down) and has created a long-run decline of the two major parties' combined vote share. However, these voters' preferences were previously fragmented rather ineffectually between small parties or independents championing particular state issues.

## The accountability of crossbenchers

Some observers have criticised the shift toward micro-party or ‘single-issue’ senators and argued that it has been an unwelcome change when considered in combination with the major parties increasingly needing crossbench support to pass new laws. In addition, the smaller micro party that won Senate seats in a given state has sometimes generated surprises, especially because they can have significant influence if the two major parties are closely tied, or if either has needed a few votes to secure a majority.

For the most part, the party that has held a majority in the House of Representatives has not also held a majority in the Senate. Until 1972, this was not a major problem for the Government as the party holding the ‘balance of power’ in the Senate generally supported policies similar to those of the Government. The election of the Rudd Labor Government in 2007 represented a further tipping point for the Australian Senate when it formed in 2008. Previously, the deciding vote had resided with a single established minor party (the Democratic Labor Party (DLP), or Australian Democrats or Australian Greens). Labor’s task in managing legislation through the Senate became more challenging as there was now more than one party with whom to negotiate. From 2008, the Senate’s ‘balance of power’ was shared by a mix of the Greens small party, the Family First micro party and Independent Senator Nick Xenophon. The period from 2011 saw further growth in micro parties and independent senators, while the number of crossbenchers peaked at 20 senators in the 2016 double dissolution, and Labor returned to government in 2022 needing not only the Greens but one or two more senators in order to pass contested laws.

These trends have not been welcomed by the major parties, as the Keating comment quoted above demonstrated. Some public leaders and commentators have described the fragmentation trend as undemocratic because of the potential for one or a small number of senators to ‘hold the nation to ransom’ in ‘balance of power’ situations. In fact, such situations are solely produced by strict voting whips operating in the major party vote blocs. That is, minor parties only have the ‘balance of power’ when it has been given to them by the disciplines of the major parties. This nuance has often been lost in public commentary.

The most often cited cause for concern has been that independent senators can receive disproportionate concessions (pork-barrelling) for their states in return for giving support on critical votes – a factor alleged to have applied in the cases of Tasmania Senator Brian Harradine with the sale of public communications company (Telstra) under the Howard government ([Grattan, 2014](#)) and Senator Nick Xenophon with economic concessions in response to the global financial crisis of 2008 to 2010 ([Siegal, 2016](#)). In practice, however, the potential for ‘balance of power’ situations to produce undemocratic results has been overstated. When the demands of single senators exceed what has been deemed reasonable by the government, the multi-party nature of the ‘balance of power’ typically has resulted in unreasonable demands being rejected. In short, the crossbench only has power as long as its demands are more palatable than the Opposition.

Meanwhile, the practical politics of the ‘balance of power’ can also result in expanded (and arguably more representative) legislative activity. Vital to this contribution have been the parliament-funded Office of the Clerk Assistant (Procedure) and the Parliamentary Library (and more recently the Parliamentary Budget Office) – which all provide expert advice and rigorous research to non-government senators that can support them in exercising their legislative responsibilities. There have been notable examples where Private Member Bills (PMBs),

instigated by senators outside of the government, have won the support of opposition parties to move to the House of Representatives, and a handful of Senate-initiated PMBs have even passed successfully through both houses. However, far more commonly, non-government senators have introduced PMBs to draw attention to a national issue, following which the government has introduced its own comparable bill. Another possible channel of influence has occurred when a PMB moved by an opposition gets converted into government policy on their return to majority in the House.

## The Senate’s role on ‘democracy’ issues

To explore how Senate operations have fostered the democratic quality of Australian democracy in positive ways, three case studies are illuminating. The first is historical and illustrates the role of senators from outside the two major parties. The second demonstrates the unique role and operation of Senate committees. The third case is a recent example where the Senate was instrumental in holding the executive to account.

### **Government in minority and the Fair Work Act**

As noted earlier, the government in the House of Representatives has usually been in the minority in the Senate. However, there was one notable exception with one-party majorities in both Houses, namely the Coalition government under PM John Howard between 2004 and 2007. This was a period where the government sought to make significant changes to industrial relations, including exemptions to unfair dismissal, through its *Work Choices* legislation, which used national corporation powers to shift responsibility for industrial relations away from the states and territories and to the Commonwealth. The bill passed the Senate by 35 votes to 33 (with even some coalition members not voting for it) ([Parliament of Australia, 2005](#)). The Act was deeply unpopular with the trade unions, and many commentators believed that the controversy around it contributed to the government’s subsequent electoral defeat.

The incoming Rudd Labor Government promised to use the same powers to reverse these changes through its *Fair Work* laws. *Fair Work* sought to introduce ‘modern awards’ around national standards for federal employees and in doing so drive change with other employees and at other levels. Particularly, it sought to ‘harmonise’ awards by shifting jurisdictional awards to national level, introducing a ‘no disadvantage’ transition test and reining in unfair dismissal arrangements ([Stewart and Forsyth, 2009](#)). However, the government had only a minority of seats in the Senate and needed the support of the Australian Greens and one of two crossbenchers for the passage of these bills. Two controversial issues emerged that left Senators Xenophon and Fielding with the decisive vote.

The first issue related to inclusions and transitions within the 10 new modern awards. The government, along with peak bodies, lobbied the senators strongly around the national support for these changes. However, Senator Xenophon claimed that through consultation with members of these peak bodies and citizens from his state of South Australia he had identified unfair conditions – centring around too large a shift in too short a time from state to modern awards in some states. He also argued that this was a national rather than state-specific challenge. Xenophon raised these issues with the government in early 2009.

Ministers signalled that they would proceed as intended. Senator Xenophon then drew on his party colleagues in the South Australia's upper house (the Legislative Council) to threaten to block the enabling legislation. This was important because each jurisdiction had to vote to refer their provisions to the Commonwealth. The move resulted in strong consultations, with the outcome being that retail, café and catering were removed from the hospitality sector and put into their own award category (with specific transitions). The horticulture award was also varied around flexible hours, casual rates and transition provisions. The referral legislation subsequently passed both houses of the South Australian Parliament. This example shows senators' powers in a government minority setting being used to address the needs of citizens that would otherwise have been excluded by legislation, and to impress distinctive state needs on ministers.

However, a second issue highlights the limits on these powers. Earlier, there had been strong disagreement about the number of employees to be used to designate a small business, one that would be exempt from the full laws on unfair dismissal. The Liberal-National's previous *Work Choices Act* provisions set this at 100 employees, while Labor sought to reduce this to 15 employees. Senator Xenophon believed that this number was too low and moved an amendment for the threshold to be set at 20 full-time equivalent employees that passed the Senate in early March 2009. In response, ministers made the counter-vailing case that this new limit was unworkable. After negotiations with Senator Fielding, the government passed additional legislation to set a transition limit at 15 full-time equivalent employees for 18 months, before returning to the intended 20 people after that. Both examples demonstrate the powers of non-government members in the Senate to create important detailed wins for their states and more granular representation of state-specific interests, while also demonstrating the constraints applying if a government deems an individual specific demand too extreme.

## The establishment of the Banking Royal Commission

The powers of Senate committees can also result in greater scrutiny and policy change, as the case of the Banking Royal Commission (2019) shows. For several years before 2017, there had been public criticism of the treatment of customers by the four major banks (ANZ, Commonwealth Bank, National Australia Bank and Westpac). This attracted more attention when, in May 2014, the Australian Broadcasting Commission's *Four Corners* program broadcast an investigation of the sales-driven culture within the Commonwealth Bank's financial planning division. The Senate Economics Committee had been conducting an inquiry into the performance of the Australian Securities and Investments Commission (ASIC) since June 2013. They used ASIC's responses, which they described as complacent, to highlight misconduct within the Commonwealth Bank's financial planning division. One of the recommendations of the Committee's report was the establishment of an independent inquiry, such as a Royal Commission, to review the actions of the Commonwealth Bank. The Liberal-National government's response in October 2014 rejected this recommendation.

In subsequent months, more evidence emerged of improper conduct at other major banks. In April 2016, the then Treasurer Scott Morrison described the proposed commission as 'a reckless distraction that puts at risk confidence in the banking system' (Coorey and Frost, 2017). However, from the government ranks, Senator John Williams dissociated himself from the Treasurer's remarks. A member of the Economics Committee, he was a longstanding critic of the banks (and of ASIC) and believed consumers and small business were not adequately protected. He supported the call for a Royal Commission.

While the Coalition Government was returned at the 2016 Federal Election, pressure for an inquiry into the banks continued to mount. In March 2017, a private member's bill was introduced by the Australian Greens, and supported by a number of crossbench senators, to establish an inquiry. The Labor Opposition said it would vote in favour and Senator Williams announced he would 'cross the floor' to support it, meaning that it would pass the Senate. Opposition to a Royal Commission was also wavering among government backbencher MPs, which meant that it could have passed in the House of Representatives as well. Faced with the prospect of an inquiry whose terms of reference would be set by the crossbench and opposition, the four major banks reversed their position opposing a Royal Commission and instead wrote to the PM saying they would now support one appointed by the government. The government then announced a Royal Commission, which reported in February 2019 ([Banking Royal Commission, 2019](#)), recommending a whole raft of changes to secure greater responsibility, regulation, scrutiny and accountability on the part of banking directors and the banking industry. Opinions differed on how many of the 76 Commission-proposed changes were implemented by the early 2020s ([Butler, 2021](#); [Ziffer, 2022](#)). Significant changes had nonetheless been precipitated.

## **Holding ministers to account for wrongful dismissal**

In October 2020, Christine Holgate, the Chief Executive of Australia Post, appeared before a Senate Estimates Committee. The extraordinary events that followed provide a way of understanding the importance of the committee system in the Senate, its powers to uncover issues of public concern and hold the Executive to account. She had been accused of inappropriately awarding four Australia Post executives with Cartier watches as a reward for brokering a multi-million-dollar deal for major banks to continue to allow banking through post offices. She told the Senate that she could have awarded the four executives bonuses of \$150,000 each, but chose not to. Up until this point, there had been no suggestion that her actions were in any way controversial.

Later that day in Parliament, the then Communications Minister, Paul Fletcher, asked Holgate to 'stand aside' claiming he was 'shocked and concerned' at what had been revealed in the Senate Estimates Committee that morning. Prime Minister Morrison subsequently said to Parliament, that if the chief executive did not wish to stand aside, she has been instructed to and 'if she doesn't wish to do that, Mr Speaker, she can go!' ([Atkins, 2021](#)). Holgate subsequently stood down. She denied voluntarily standing down. She claimed she was bullied and that the decision was made by the Australia Post Board Chairman, because (she believed) the PM had instructed it.

Five months later in April 2021, Holgate appeared in front of the Senate Environment and Communications References Committee. They were told the findings of a review by the law firm Maddocks into her dismissal found no deliberate dishonesty or fraud on Holgate's part and that it was within her rights as chief executive to make such gifts. Holgate suggested to the Committee that she stood down not because of the gifts, but because she disagreed with many of the findings of the secret report by Boston Consulting Group to privatise parts of Australia Post. The Committee shared the Maddocks inquiry's concerns about disturbing direct government interference in an independent statutory authority. This occurred at the time, unbeknown to the Committee, when the PM had also had himself secretly sworn in as the Finance Minister. Ultimately, partly due to the interventions by Senate committees, Holgate received a \$1 million dollar compensation payoff for wrongful dismissal in 2021.

# Tensions and possible reforms affecting the Senate

Of course, the Australian Senate has not realised some form of democratic utopia. It has also been a legislature with inherent internal tensions. The first, and perhaps most enduring, tension within the Senate occurs between senators representing the citizens within their state or territory and the party position. This revolves around the democratic requirement on elected officials to try to represent all members of the community, including minority groups or those silenced in debates between majority groups. Although parties take state differences into account, it cannot be reasonably expected that the national position of the big parties especially will align with the interests of individual states or territories (and regions within them) on every issue.

A second tension revolves around the role of the Senate in controlling the actions of the executive. Parliamentarians are expected to regularly scrutinise the design, implementation, efficiency and effectiveness of government policy. For much of its history, this requirement was met by the Senate operating primarily as a house of review. However, as prominent third parties have grown and increasingly held the balance between government and the main opposition with deciding votes, some of the upper house parliamentarians have viewed themselves as equal legislators. Expressed in the ‘oppose or amend’ dilemma, should these legislators decide to appeal to an anti-government electoral base (oppose), they lose the opportunity to mitigate the harder elements of potentially successful legislation for those same groups (amend). At its most potent, this dilemma can split minor parties or damage their electoral survival (as noted previously with the Australian Democrats).

While presidential-style PMs were far from unprecedented in Australian political history, the consistent presence of presidential-style PMs since 2007 has created other issues for accountability. These developments have constrained the prominence, independence and influence previously available to portfolio ministers, while increasing pressure on ministers in both houses to toe the line set by the PM. These potential barriers to ministerial scrutiny in the legislature highlight the importance of Senate powers of ministerial censure and ordering of documents.

A prominent change in recent times has been the rise of the populist senators ([Marks, 2017](#)). A further shift away from the ‘reviewer’ and ‘legislator’ roles, these senators have argued that their popular appeal provides them with an independent ‘mandate’ to that of the executive. On this basis, they have sought to introduce legislation and engage less constructively with ministers or government policy. Increasingly, this has resulted in negotiations played out through the media, with questions raised about the extent that this has been driven by politics and enhancing a senator’s public profile, rather than seeking genuine policy improvements. Such developments have potentially presented a challenge to the past conventions and operations in the Senate and mean that its democratic foundations cannot be taken for granted.

## Reforms to reset Senate elections

An ongoing issue surrounding the Australian Senate has been the representation secured by micro parties and independent senators since 1984. Changes made to the STV voting system for the Senate in 1984 allowed for voters to select a single party preference ‘above the line’ on their ballot papers, rather than having to number every preferred candidate individually – although this remains an option for voters who use the ‘below the line’ part of the ballot paper

(see [Chapter 5](#)). This change facilitated the election of more minor and micro party candidates. It was also increasingly subject to a process labelled ‘preference harvesting’ where the leaders of micro parties agree to swap their voters’ second or later preferences with other parties, notifying the Australian Electoral Commission on how such transfers should take place. This can occur when the major parties support smaller parties in return for their voters’ later preferences, or when micro parties swap preferences between each other. In some cases, new micro parties with names designed to appeal to certain elements in the community were established just to feed later preferences to existing parties.

A prominent example occurred prior to the 2013 Federal Election. Several deals were negotiated by the ‘preference whisperer’ consultant, Glenn Druery, who worked as an adviser to some of the micro parties. The result of this collaboration was the election in Victoria of Senator Ricky Muir of the new Australian Motoring Enthusiasts Party. Muir’s party won only 0.5 per cent of the first-preference votes in the state, but he received later preferences from 22 other parties (nine of which started the count with more primary votes than Muir). The accumulated votes saw Muir win the last Senate seat in Victoria.

Following the 2013 election, the Joint Standing Committee on Electoral Matters (JSCEM) investigated these matters. Its chair, Tony Smith, concluded that the Senate voting system had delivered some ‘outcomes that distorted the will of the voter’ ([Parliament of Australia, 2018](#)). The Committee unanimously recommended the introduction of optional preferential voting for the ‘above the line’ party votes (i.e., numbering parties with their 1,2, 3 if votes wished) and only requiring voters to fill in a limited number of preferences for individual candidates ‘below the line’. In effect, this recommendation would reduce the ability of parties’ leaders (rather than their voters) to control how their later preferences were allocated.

In February 2016, PM Malcolm Turnbull announced that his government would attempt to implement the JSCEM recommendations. The measures received the support of the major and third parties and were applied from the 2016 Federal Election. However, that election was a ‘double dissolution’ with every Senate place vacant. This reduced the formal quotas for winning a seat (from over 14 to under 8 per cent). The Coalition’s senate members fell to a 20 year low, while the reduction in quota also helped the Greens and smaller parties to win more seats (see [Figure 12.2](#)). In effect, this dissolution dissolved the intended potential positive impact for larger parties.

At the 2019 Federal Election, where half the Senate was up for election, the changes to the voting system seemed to have more of their intended effect (see [Figure 12.2](#)). There was a marked decline in the number of parties contesting the election, while only two micro parties and no independent senators were elected. Broadly, this was seen as an electoral improvement as it still enables independent or micro party members to be elected to the Senate, but in a way that was shaped more directly by voter intention. It also demonstrated the role of the Senate and its committees in renewing its democratic basis. In the 2022 Senate elections One Nation, United Australia and the Jacqui Lambie Network, plus one independent, won seats.

## Public understanding of the Senate and its elections

A 2021 survey report of Australia citizens’ views of the Senate by the Australia Institute found that the public had a fairly accurate view of the chamber’s powers, with most people ascribing it more functions than it actually has exercised (see [Figure 12.7](#); and [Browne and Oquist, 2021](#)). In addition, voters seemed to be broadly knowledgeable about how the Senate elections worked and were content with using a different system of voting (see [Uhr, 2005](#)).

**Figure 12.7: Responses to survey questions about the Senate in the 2019 Australia Institute report**

Question asked	Per cent (%) of respondents			
Which system of election is fairer?	19 <i>House</i>	10 <i>Senate</i>	37 <i>Equally fair</i>	34 <i>DK/No view</i>
2019: Better for Australia if the Government does or does not have a Senate majority	42 <i>Does</i>	31 <i>Does not</i>	27 <i>DK/No view</i>	
2021: Better for Australia if the Government does or does not have a Senate majority	36 <i>Does</i>	35 <i>Does not</i>	29 <i>DK/No view</i>	

Source: **Browne and Oquist, 2021**, *Representative, Still – The role of the Senate in our Democracy, Research report, Canberra: The Australia Institute, March, p.26*. Note: DK indicates 'don't know'

In addition, Browne and Oquist argue that in terms of the national match between votes cast for the Senate and members elected, the chamber has been less disproportional than the House of Representatives – which may bolster the public's positive view of it. Finally, by 2021, respondents were rather evenly divided on whether it was a good thing to have a Senate majority for the government or not, with government supporters more critical and those backing opposition parties more content. However, **Browne and Oquist's (2021)** key conclusion is that the Senate remains 'democratic still'.

In terms of representing the diversity of Australia's population, the Senate has also performed better than the House. It achieved a gender-balance with 51 per cent of members being women in 2019. The first two Indigenous parliamentarians were both senators and there continues to be more First Nations senators than MPs. Senators with Asian ancestry, women, Muslim and openly gay senators were also elected before their counterparts in the lower house. The first female party leaders were also in the Senate. There are grounds for the conclusion that the Senate is an avenue to present and represent more diverse perspectives within the parliament.

## Conclusion

To be useful, the Senate needs to be neither a 'rubber stamp' nor an 'unrepresentative' obstruction. Walking this middle path requires it not to be dominated by the executive, the most vigorous members of the opposition, or an over-confident crossbencher (or backbencher). A key challenge that underlies each of these scenarios is the ongoing strictness of party discipline. Labor, with its tradition of caucus solidarity, has never been comfortable to release this bind. The Liberal-National Coalition parties pay lip service to the idea of state-specific voting, but in practice crossing the floor has become very rare. Meanwhile, the challenge of partisanship is exacerbated by periods of presidential-style politics and the influence of 'balance of power' populists. An obvious enhancement to the Senate's influence would be for backbenchers from both sides to feel free to vote in the interests of their states and territories, rather than adhering to party discipline. Greater diversity in intra-party voting would reduce the likelihood of the final vote being in the hands of a few pivotal crossbenchers and might even enhance the quality of regional, socially diverse and more deliberative representation. That said, the long-established and deliberately designed representation, structures, processes and conventions of the Senate continue to be its greatest

protection against such threats. In summary, it is our contention that the origins and operations of the Australian Senate have historically been among the most democratic in Commonwealth nations. Our judgement of the current state of the Senate is that, although faced with both opportunities and threats, it has remained a resilient institution supporting Australia’s democracy.

## Note

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