

Representative, still

The role of the Senate in our democracy

Research report

Bill Browne

Ben Oquist



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One of the most extensive studies of Australians' knowledge of and attitudes to the Senate finds that the Senate is a unique, powerful legislative body, but Australians are confused about key details of its powers and operation. The Senate provides accountability, representation and diversity to a greater extent than the House of Representatives.

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March 2021

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Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601

Tel: (02) 61300530

Email: mail@australiainstitute.org.au

Website: www.australiainstitute.org.au

ISSN: 1836-9014

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Summary

While Australia has a bicameral system under which the Senate and House of Representatives were created equal, attention towards and knowledge of the Senate is poor.

In one of the only thorough looks at the public's knowledge of the Senate and its role, this report finds a very high share of Australians "don't know" or are actively wrong about details of how the Senate works.

More Australians answered incorrectly than correctly when asked which houses of parliament ministers can come from, whether senators or members of the House of Representatives (MPs) are paid more, how long a state senator's term lasts, which houses Question Time is held in, and whether the Senate has or does not have various powers.

This report identifies that the Senate is key to the success of Australian democracy in many ways, including by providing:

- accountability
- proportionality
- diversity
- a counterbalance to executive power
- an equal but differently constituted legislature to the lower house.

The Senate has always exercised accountability functions, such as ordering the provision of documents (which is so broad that it can require documents to be created where they do not already exist). Its powers of censure and disallowance, and the conduct of Senate estimates and Question Time, also shine a light on the Government and hold it to account. This accountability function is dependent on the Senate's legislative powers; if the Senate could not disrupt the Government's legislative agenda then the Government would have little incentive to engage with the Senate's accountability function.

The Senate is constitutionally required to be disproportionate in one significant respect: each original state elects the same number of senators, regardless of population. However, the Senate's electoral system of proportional representation means it better represents the large and growing share of Australians who do not vote for the major parties.

The Senate has also tended to be more representative of Australia's diversity than the House of Representatives, with milestones including the first election to Parliament of an Indigenous Australian, an Asian Australian, an openly gay man, an openly gay woman, and many others. While women were first elected simultaneously to the House of

Representatives and the Senate in 1943, women now make up half of the Senate but only 30% of the House of Representatives.

The Senate's ability and willingness to amend legislation, disallow regulations, demand documents, question public servants and otherwise frustrate the plans of the Government has made it a target over the years. Paul Keating, Andrew Robb, John Howard and Barnaby Joyce are among the former ministers and prime ministers who have proposed changes, each of which would make the Senate less powerful or less proportional. Attempts to change the Senate's rules or form have typically backfired or died on the vine, with its strong constitutional powers and legitimacy as a differently elected, proportional house of parliament allowing it instead to grow as a vital organ of accountability and representation.

Introduction

Australia is unusual among democracies in having a second house of parliament that is both directly democratically elected and as powerful, or almost as powerful, as the first house. The Senate was deliberately designed this way by the drafters of Australia's Constitution, although it took the introduction of proportional representation for the Senate to achieve its full potential as an organ of accountability.

Despite this special democratic feature, public knowledge and discussion of the Senate seems limited, with the house sometimes treated by commentators and members of the Government as a relic or a nuisance, and Senate elections receiving significantly less attention than those in the House of Representatives.

The Senate has long been the subject of interest for the Australia Institute. In 2005, the institute held a forum on the Senate to mark the 30th anniversary of the dismissal of the Whitlam Government.¹ At the forum, Senator Chris Evans stated that Senate procedures and mechanisms developed over the years 1983 to 2005 had enabled more transparent review of executive power:

[The resulting] debate and contest of ideas in the public arena has been good for Australian democracy – far better than the unfettered exercise of executive power ... [this] process has been beneficial and both the process and outcomes have been largely accepted by the Australian people.

And Senator George Brandis spoke of the balance of power in the context of the Howard Government having won a majority in the Senate:

The idea of the Senate as a balancing chamber has become an accepted part of our political culture. An opinion poll taken in February this year revealed that only 39 per cent of people were happy that the Government had won a majority in the Senate, although 45.1 per cent of electors in fact cast a first preference vote for the Coalition at the 2004 Senate election. Forty seven per cent thought it would be better if the Senate were not controlled by the Government of the day; almost a quarter of Coalition voters shared that view.

In 2019, Senate President Scott Ryan spoke to the Institute of Government in London on the topic of how the Senate “strengthens the ability of our democracy to facilitate and absorb evolving democratic expectations and pressures”. The Senate's proportionality, which Ryan emphasises closely matches the national vote despite states receiving the same number of

¹ The Australia Institute (2005) *Newsletter no. 45 December 2005*, p. 9, https://australiainstitute.org.au/wp-content/uploads/2020/12/NL45_8.pdf

senators regardless of population, gives it legitimacy, represents minority and emerging voices, and serves as a check on majoritarianism.²

Ryan describes complimentary roles for the two houses of parliament:

Even very close elections see stable governments formed in the lower house, without independents or smaller parties holding the very existence of a government to ransom.

Yet the legislative activity of Governments is limited by the Senate even when they are secure in office. A role for other voices is guaranteed in the work of government while the voice of the majority forms it.³

These speeches, delivered 14 years apart by senators from both major parties, identified the same kind of themes that will be explored in this paper.

With increased focus on the Senate's composition in recent years, changes in 2016 to how the Senate is elected, and with minor parties and independents playing a significant role in both houses of parliament, it is a good time to reflect on the role of Australia's upper house in our democracy, and how it can continue to serve a unique accountability and representative function as a counterbalance to executive power.

² Ryan (2019) *The Senate in an age of disruption*, <https://scottryan.com.au/media/media-speech/senate-age-disruption>

³ Ryan (2019) *The Senate in an age of disruption*

Senate knowledge and opinions

GENERAL SENATE KNOWLEDGE

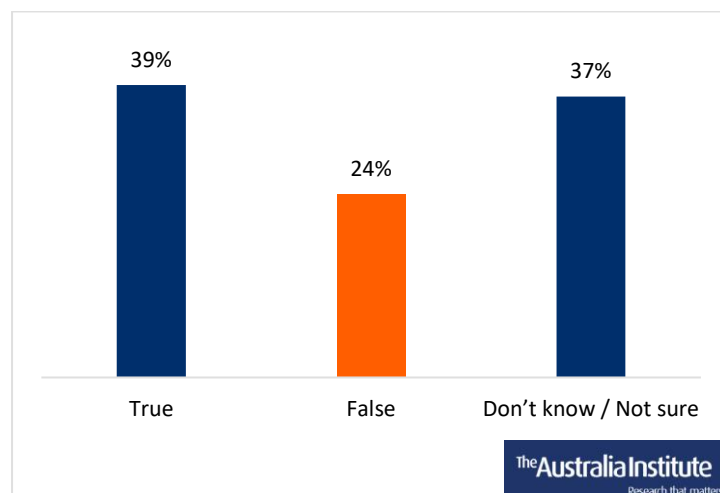
To test Australians' knowledge of the Senate, the Australia Institute surveyed a sample of 1,600 people in July 2020, with nationally representative samples by gender, age, state and territory, and household income.

Respondents were asked a series of factual questions about the Senate's powers, operations and constitution. Overall, respondents showed a poor level of understanding of the Senate, including high levels of "Don't know / Not sure" results as well as incorrect answers.

Respondents were asked whether government ministers must come from the House of Representatives. Two in five (39%) answered "true", with a further 37% saying that they did not know. Only one in four (24%) correctly answered "false".

Respondents may be thinking of the long-standing tradition that prime ministers and (federal) treasurers come from the House of Representatives.⁴ Every Australian Government has had some ministers from the Senate, and recently senators have made up one-quarter to one-third of all ministers.⁵

Figure 1: Government ministers must come from the House of Representatives



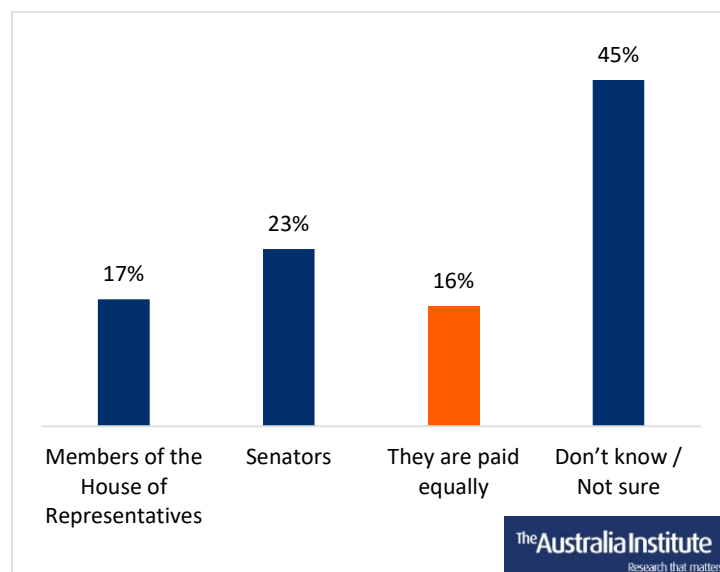
⁴ Brenton (2009) *What lies beneath: the work of senators and members in the Australian Parliament*, pp. 13–16,
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/APF/monographs/What_lies_beneath

⁵ Parliament of Australia (2020) *No. 14 - Ministers in the Senate*,
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief14

Respondents were asked whether members of the House of Representatives or senators are paid more, or if they are paid equally. Half (45%) said that they don't know, 23% said senators are paid more and 17% said members of the House of Representatives are paid more. Only 16% correctly identified that they are paid equally.

Members and senators are paid equally.⁶ In Australia, membership of the House of Representatives is generally considered more prestigious. The opposite is true in the United States, although members and senators of the US Congress are also paid equally.⁷

Figure 2: Who is paid more?



⁶ Madden, McKeown, & Vandenbroek (2020) *The base salary for senators and members: 2020 update*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/BaseSalary2019

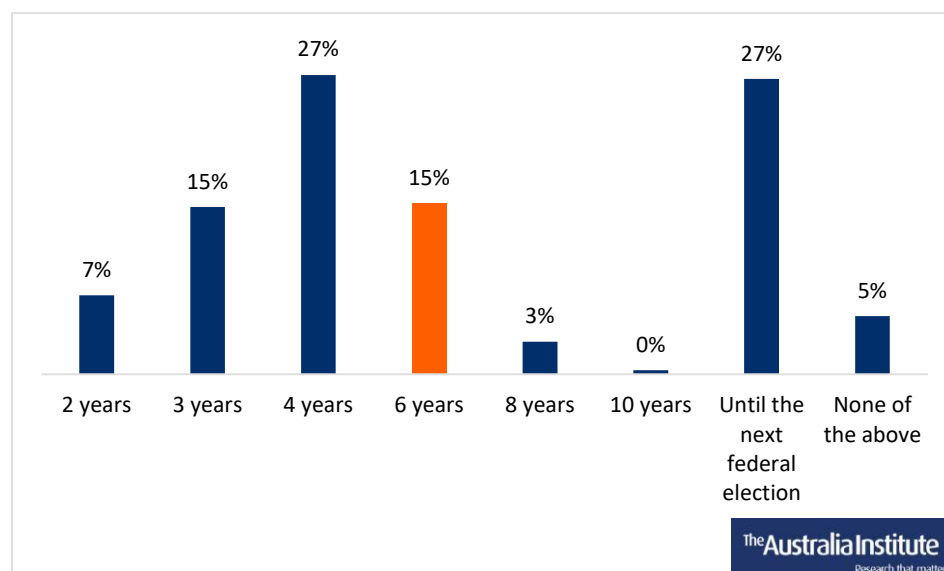
⁷ Brenton (2009) *What lies beneath: the work of senators and members in the Australian Parliament*, pp. 13–16

Respondents were asked how long state senators are elected for, and were given a range of year options, as well as “until the next federal election” and “none of the above”. There was no don’t know / not sure option for this question. Instead, respondents were instructed: “If you don’t know, give your best guess.”

Half of respondents (53%) chose a year length that was wrong. A further one in four (27%) said that senators were elected until the next federal election, and 5% said “none of the above”. Only 15% correctly answered that state senators are elected for six years.

Respondents may be confusing state legislative council terms (four, six or eight years) with Senate terms. However, there was no observable difference in the portion of Victorian and WA respondents selecting a four-year term compared to Australians as a whole and NSW and SA respondents were not significantly more likely to select an eight-year term than Australians as a whole. Those who selected “3 years” may be thinking of the terms of territory senators, although technically these run until the next federal election.

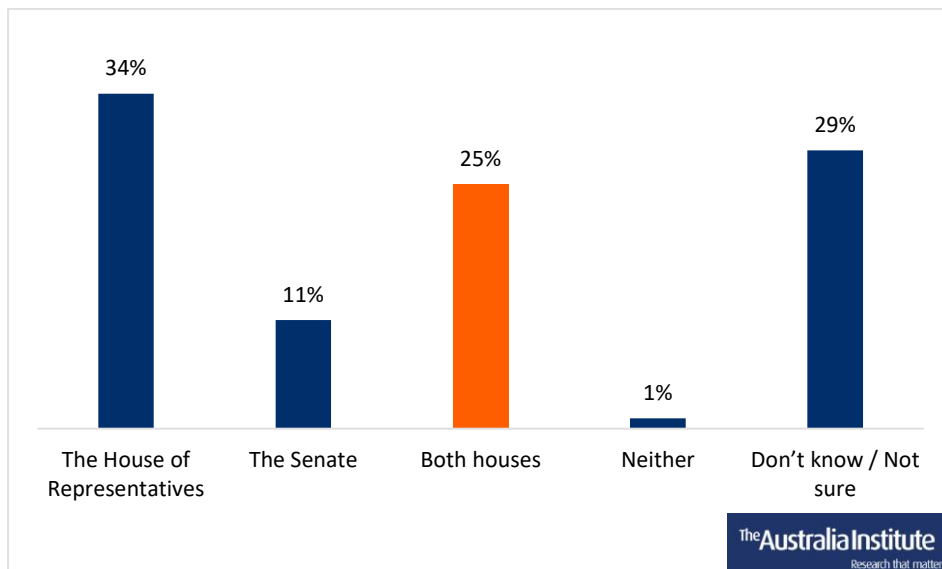
Figure 3: How long are senators from states elected for?



Respondents were asked where Question Time is held. Almost half (45%) selected either the House of Representatives or the Senate. Only one in four (25%) correctly answered that it is held in both houses of parliament. A further 29% said they did not know.

Question Time in the House of Representatives is certainly more prominent, and more likely to run live on Sky News (ABC 1 and ABC News Radio alternate between the houses).⁸

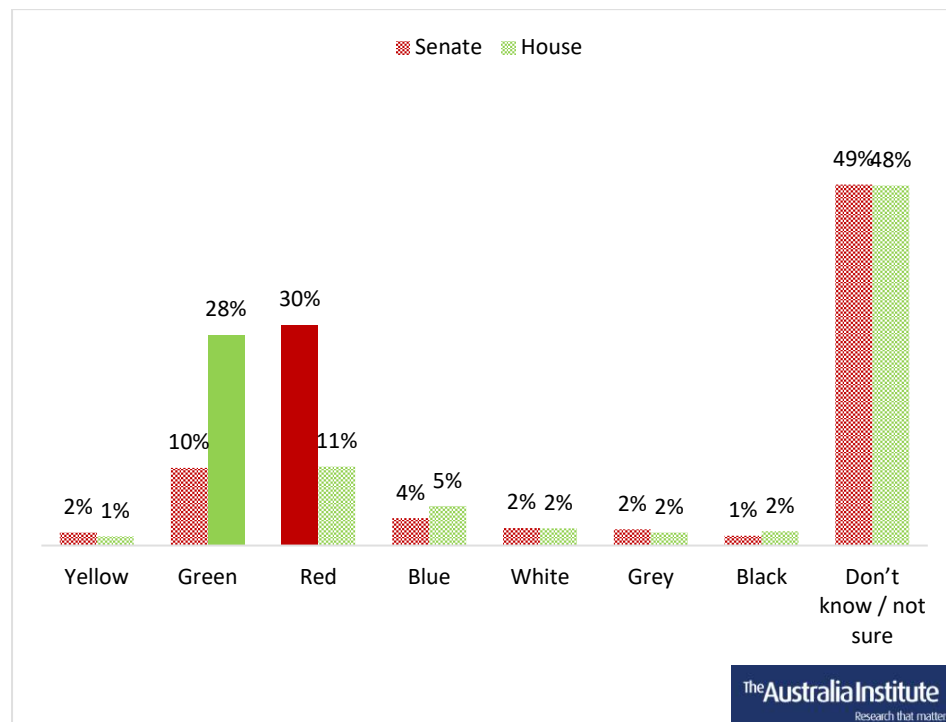
Figure 4: Where is Question Time held?



⁸ In a typical sitting week, the House of Representatives is broadcast live on Monday and Thursday and the Senate on Tuesday and Wednesday. ABC (2020) *ABC submission to the inquiry into the practices and procedures relating to question time*, p. 2, <https://www.aph.gov.au/DocumentStore.ashx?id=5d5bc867-9e46-49eb-af24-309df5690cb1&subId=690796>

Respondents were asked what colours the Senate and the House of Representatives are, from a list of seven colour options (as well as “don’t know / not sure”). Half said that they did not know. In both cases, one in three selected the correct answers – green in the case of the House of Representatives (28%) and red in the case of the Senate (30%). The correct answer for the other house was the second-most popular colour choice in both cases, excluding “don’t know/not sure”.

Figure 5: What colours are the Senate and the House of Representatives?

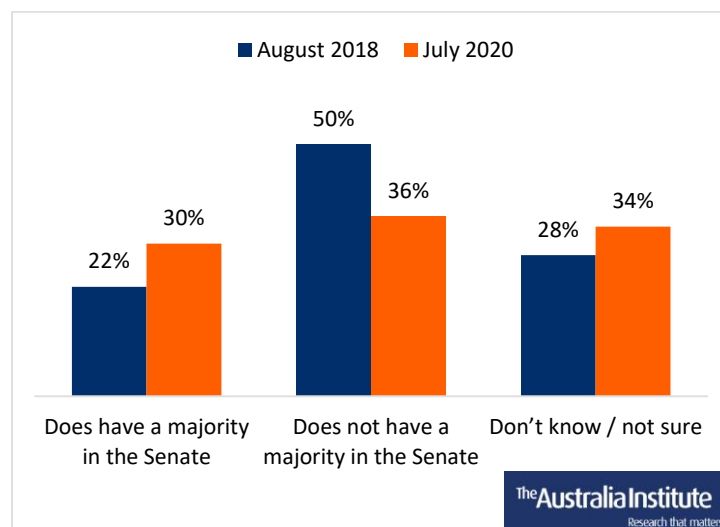


Note: The correct answer for each question is shown in darker colour.

Respondents were asked whether the Coalition Government has a majority in the Senate. Respondents were somewhat more likely to select the correct answer, that it does not have a majority in the Senate (36%), than the incorrect answer (30%) or that they did not know (34%).

When the Australia Institute last asked this question in 2018, respondents were significantly more likely to give the correct answer (50%). The increase in confusion about the Senate balance of power may reflect that the crossbench is smaller now than it was in 2018.

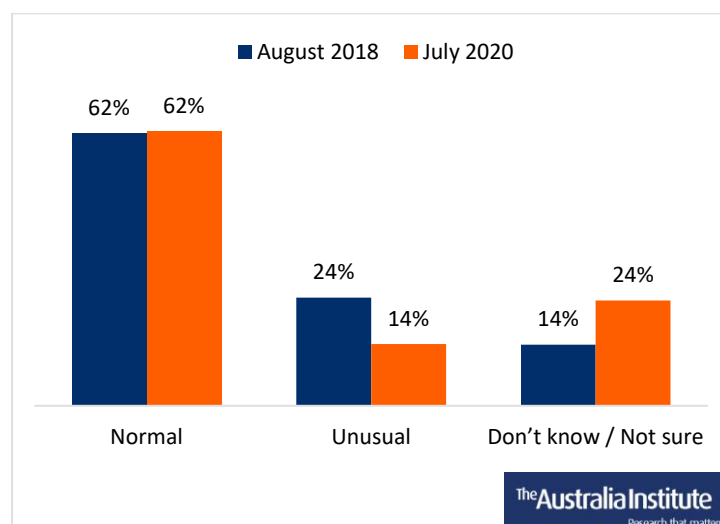
Figure 6: Does the Coalition Government currently have a majority in the Senate?



Respondents were then told that in the current Parliament, the Government needs the support of crossbench senators to pass legislation. They were asked if they think this situation is normal or unusual for Australia.

Three in five (62%) correctly answered that this situation is normal for Australia, no change from when this question was last asked two years ago.

Figure 7: Do you think this situation is normal or unusual for Australia?



While Australians generally show poor knowledge of the Senate's powers, situation and details, research has found that the knowledge of even parliamentary insiders is lacking. After Scott Brenton's survey of current and former parliamentarians, during his year as parliamentary fellow, he concluded:

... insiders—the parliamentarians themselves—also do not have a particularly accurate perception of what their colleagues in the other chamber actually do.⁹

That is not to say that federal parliamentarians would get questions wrong in the Australia Institute's survey, but just that even political experts could stand to learn more about the operation of the Senate.

⁹ Brenton (2011) *Minority government: is the House of Representatives finally catching up with the Senate?*, p. 120,
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/_/link.aspx?_id=1188F713C5B44C679E40642E38A93193&_z=z

SENATE POWERS

Australians were presented with eight powers that the Senate may or may not have, and were asked for each to identify whether it was a power that the Senate actually had (shown in Figure 8, over page).

There was a high level of “don’t know” responses, between 30% and 48% depending on the power. For only four of the eight powers was the correct answer the most popular response.

Respondents were asked about five powers that the Senate does have:

- To delay legislation that passes the lower house, which most respondents correctly identified that the Senate has (57%).
- To pass or reject government legislation that passes the lower house, which most respondents correctly identified that the Senate has (59%).
- To pass or reject private members’ bills that pass the lower house, which most respondents correctly identified that the Senate has (56%).
- To propose new legislation, which almost half of respondents correctly identified that the Senate has (46%).
- To set up its own inquiries even when the Government opposes, which two in five correctly identified that the Senate has (42%).

Respondents were asked about three powers that the Senate does not have:

- To confirm or reject government appointments such as judges and ambassadors, which one in three respondents incorrectly identified as a power of the Senate (33%). Only one in five (19%) correctly answered that the Senate does not have this power.
- To confirm or reject treaties that the Government has signed, which two in five respondents incorrectly identified as a power of the Senate (38%). Only one in five (20%) correctly answered that the Senate does not have this power.
- To introduce tax and spending legislation, which one in three respondents incorrectly identified as a power of the Senate (33%). One in three (28%) correctly answered that the Senate does not have this power.

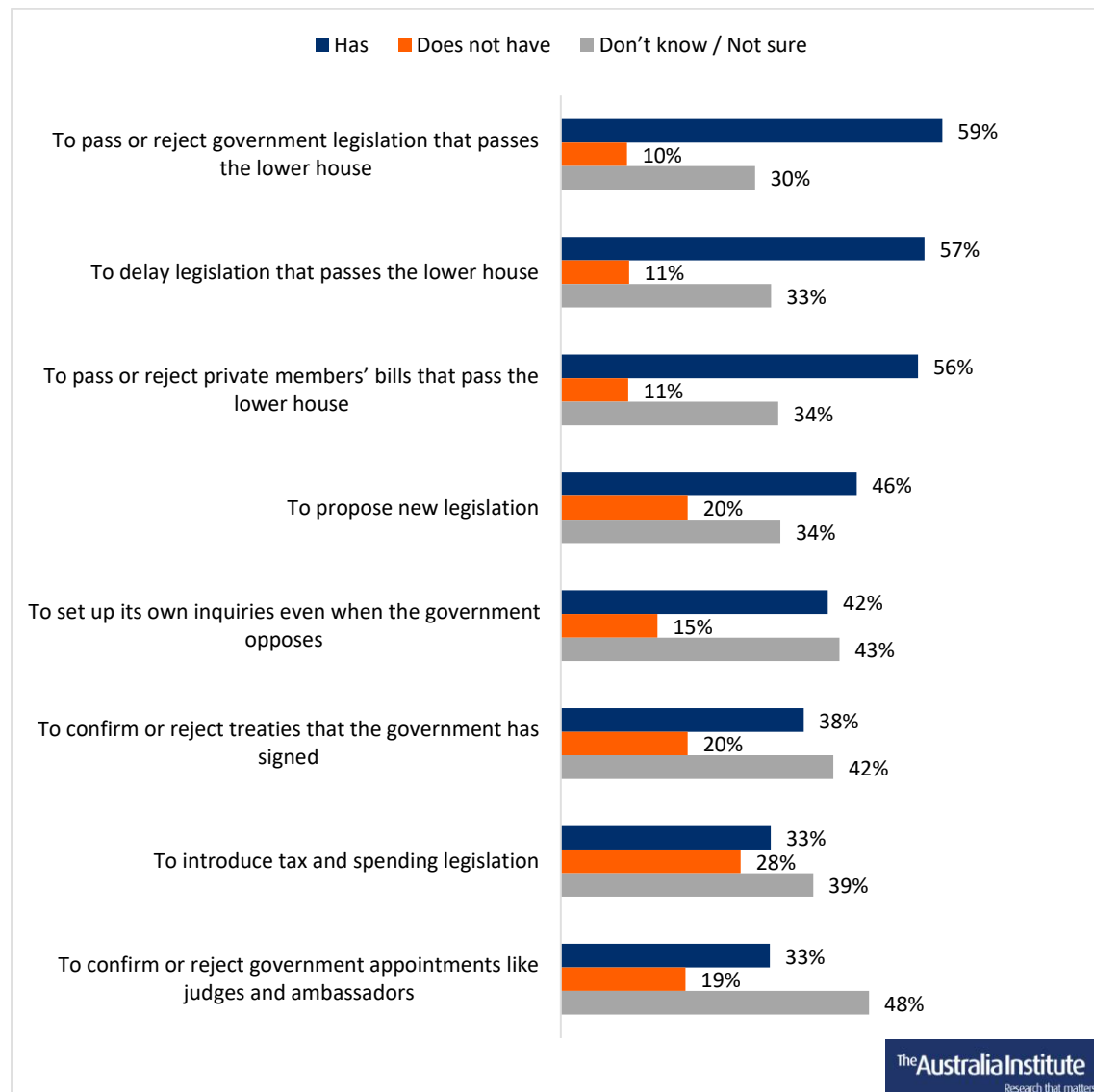
Between 1961 and the late 1970s, the House of Representatives and Senate in Australia were more involved in the treaty process, and from 1996 parliamentarians are involved via the Joint Standing Committee on Treaties.¹⁰ Under the current arrangements, a proposed treaty action must be tabled for 15 or 20 sitting days before the Government takes binding action on them (except for treaties that are particularly urgent or sensitive). This period

¹⁰ Hamer (2004) *Can responsible government survive in Australia?*, pp. 134–136, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/_/link.aspx?_id=E546DECDB0B04E0C9EF20803027FCB32&_z=z

gives the committee an opportunity to hold an inquiry and advise the Government – but there is no parliamentary vote and the Government does not have to follow the advice of the committee.¹¹

For all eight powers, respondents were more likely to say that the Senate had the power than that it did not have the power. This may reflect an appreciation of the strength and gravity of the Australian Senate, even if exact knowledge of its powers is lacking.

Figure 8: Whether the Senate has the power ...



¹¹ Hamer (2004) *Can responsible government survive in Australia?*, pp. 134–136; Joint Standing Committee on Treaties (n.d.) *Role of the Committee*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Role_of_the_Committee

SENATE OPINIONS

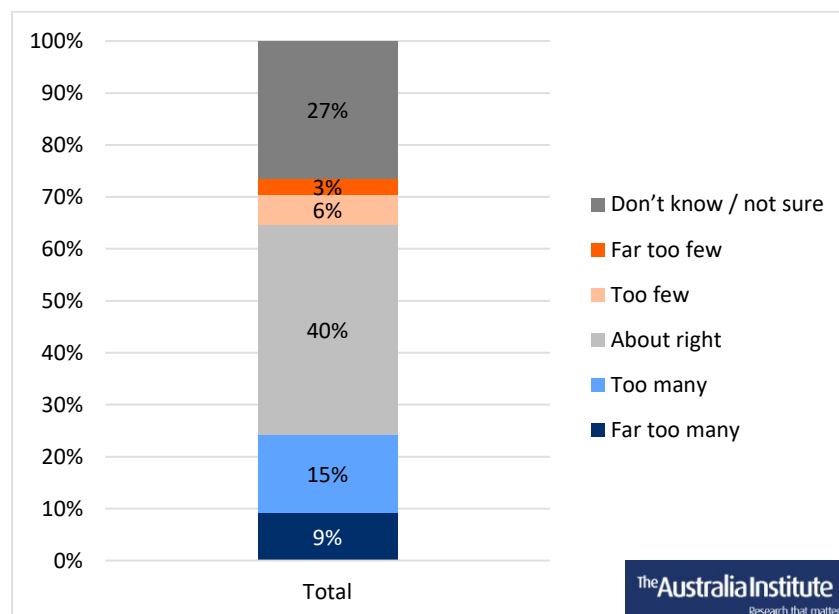
Respondents were told that there are about 220,000 enrolled voters for each federal senator, and were then asked if they thought that 220,000 enrolled voters were too many, too few or about right.

The single most popular response was that this number was about right (40%). More respondents said that this was too many (24%) than said it was too few (9%).

Interestingly, this is significantly different to the result when the Australia Institute asked an equivalent question about the House of Representatives in 2017. Then, 17% said that there are too many enrolled voters per MP (at 100,000 per MP) compared to 29% who said that there are too few per MP. Two in five (44%) said the number was about right.¹²

This dramatic change may reflect that one question asked about the House of Representatives and the other about the Senate, or that opinions have changed since 2017 (or both). The sheer larger number of enrolled voters per senator compared to per member of the House of Representatives may also have influenced responses. It is interesting, however, that Australians have been more likely to say that senators are stretched too thin than MPs – given that constitutional reform has historically tried to break the “nexus” in order to have more MPs rather than more senators.

Figure 9: Is 220,000 enrolled voters per senator too many or too few?

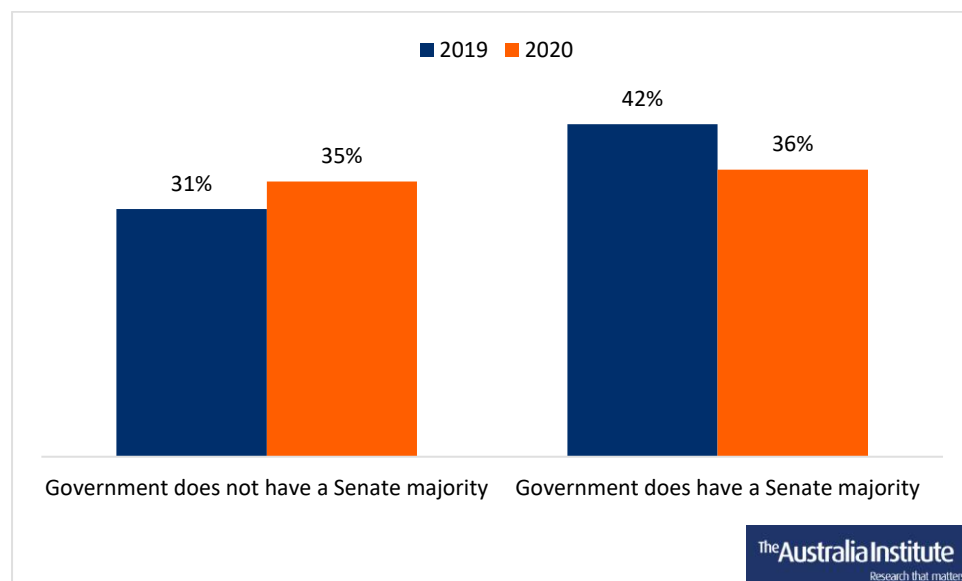


¹² This question can be asked in different ways, which elicits somewhat different responses. However, in this case the same question construction has been compared in both cases. For a face-to-face comparison of two different constructions, see Browne (2018) *It's time ... for more politicians*, p. 4, <https://australiainstitute.org.au/report/its-time-for-more-politicians/>

Australians were also asked whether, in their view, it is better for Australia for the Government of the day to have or to not have a Senate majority.

Australians were about evenly divided between those who said it is better for the Government to have a Senate majority (35%) and those who said it is better for the Government to not have a Senate majority (36%). This is a change since the question was first asked in 2019, when 31% said it was better if the Government does not have a Senate majority and 42% said it was better if the Government does have a Senate majority.

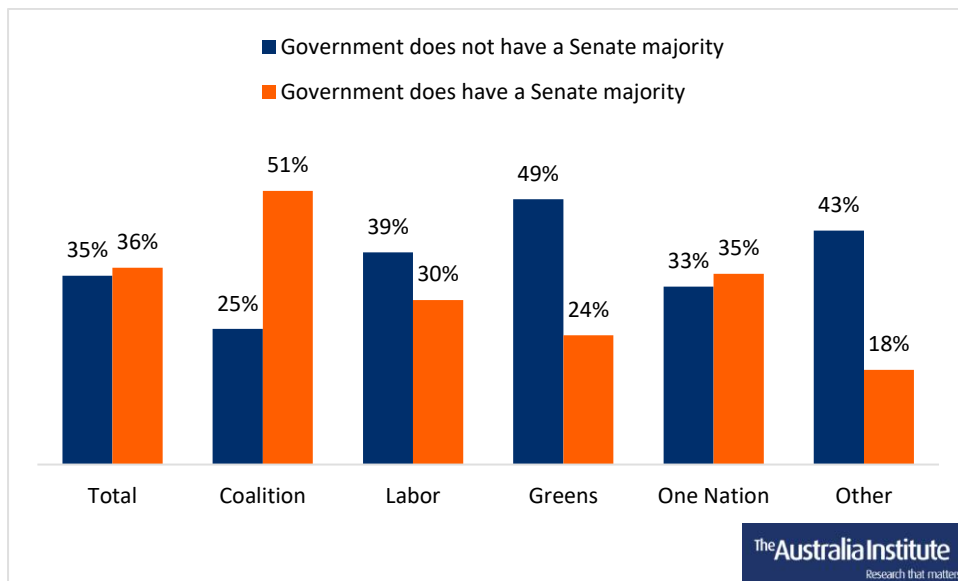
Figure 10: Better for Australia if the Government does or does not have a Senate majority



There were significant differences by voting intention. Looking at voting intention for the Senate specifically, half of Coalition voters (51%) said it is better if the Government of the day has a Senate majority, compared to one in four (25%) who said it is better if it does not have a majority. Among Labor, Greens and Other voters, more said it is better for the Government of the day to not have a Senate majority.

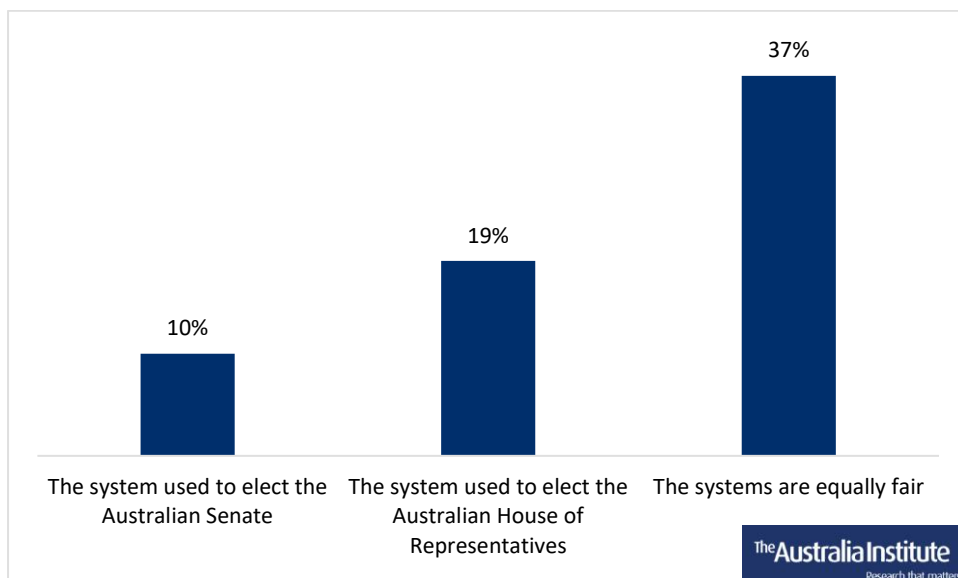
It is interesting that between one in five and one in three of those who vote for minor parties and independents in the Senate said that it is better for the Government to have a Senate majority. It raises the question of why these respondents vote for candidates other than from the major parties. Answers could include that they are hoping that the party they are voting for will become one of the major parties, that a crossbench balance of power is still preferable to them than an opposition-controlled Senate, or that they have not fully considered the ramifications of a government-controlled Senate.

Figure 11: Better for Australia if the Government does or does not have a Senate majority (by Senate voting intention)



Respondents were also asked which system they thought was fairer – the system used to elect the Senate or the system used to elect the House of Representatives. The most popular response was that the systems are equally fair (37%), followed by “don’t know / not sure” (35%). The House of Representatives was chosen by one in five (19%) and the Senate by one in 10 (10%).

Figure 12: Which election system is fairer?



Functions of the Australian Senate

The 19th century liberal political theorist Walter Bagehot identified four functions of the legislature beyond legislating:¹³

- expressive function – express the “heart of the nation”
- training function – educate people by forcing the nation to “hear two sides”
- informing function – keep the executive in touch with informed opinion
- scrutiny and review function – watch and check government ministers (including “responsible government” and deciding the government as an “electoral college”)

Writing of Australia in the 20th and 21st centuries, former MP and senator David Hamer identified at least two other functions of the legislature: a constituent assistance function and an “electoral campaign area” function. The latter function, he says, is now the dominant one¹⁴ – a sentiment shared by some parliamentarians.¹⁵

With the exceptions of constituent assistance and acting as an electoral college, these functions belong to both houses.¹⁶ However, due to party discipline and the House of Representatives’ electoral college function, the Senate is better placed to perform legislative and scrutiny functions.¹⁷ It is these two quite separate functions that are grouped together when the Senate is described as a “house of review”.

Looking at the four countries that most closely follow the Westminster system of responsible government (United Kingdom, Canada, Australia and New Zealand), Hamer identifies a range of other functions that upper houses serve:

- additional pool of ministerial talent
- legislative role with regard to bills and delegated legislation, to the extent that the lower house is unable or unwilling to perform it
- protect the special interests of states, territories, regions or provinces, and minority groups

¹³ As summarised in Hamer (2004) *Can responsible government survive in Australia?*, p. 6

¹⁴ Hamer (2004) *Can responsible government survive in Australia?*, pp. 222–224; the Senate has been used by oppositions to publicise their programs since at least 1930: Fusaro (1966) *The Australian Senate as a house of review: another look*, p. 389, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8497.1966.tb00896.x>

¹⁵ Specifically Neal Blewett, see Bach (2003) *Platypus and Parliament: the Australian Senate in theory and practice*, pp. 247–248, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/platparl

¹⁶ See Hamer (2004) *Can responsible government survive in Australia?*, pp. 295–296

¹⁷ For discussion, see Hamer (2004) *Can responsible government survive in Australia?*, pp. 224–225

- inquire publicly into government activities, particularly those the Government does not want to be scrutinised
- monitor government business enterprises and other statutory organisations
- force a government which is performing badly or irresponsibly to face an immediate election.¹⁸

The Senate also serves as a “fortress” where the Opposition can retain a relatively high number of parliamentarians even when the Government wins the House of Representatives in a landslide.¹⁹

ACCOUNTABILITY REVIEW

In addition to reviewing legislation, the Senate’s role as a house of review involves pursuing government documents, questioning ministers and public servants and passing disallowance motions to check the power of the executive.²⁰

In this regard, the Australian Senate in some ways mirrors the United States Senate as a check on executive power.

Though both houses of parliament have “formidable” powers beyond their legislative functions, these are “mostly theoretical” if party discipline means that parliamentarians are too deferential to their party’s leadership.²¹ As the House of Representatives has all but abandoned its additional role of holding the executive responsible by removing governments it has lost confidence in or installing new ones,²² the Senate’s role of holding the Government to account becomes more important and significant. The executive is not responsible to the Senate, but it is answerable to the Senate.²³

Under some conceptions, this accountability function belongs to a wholly new “integrity branch of government”, which exists alongside the traditional legislative, executive and judiciary.²⁴ Rather than having its own members and institutions, the integrity branch involves the cooperation of Parliament, courts, the Governor-General and some executive

¹⁸ Hamer (2004) *Can responsible government survive in Australia?*, pp. 259–260

¹⁹ Bach (2003) *Platypus and Parliament: the Australian Senate in theory and practice*, pp. 82–83

²⁰ See for example Mulgan (1996) *The Australian Senate as a “house of review,”*
<https://doi.org/10.1080/10361149651184>

²¹ Hamer (2004) *Can responsible government survive in Australia?*, p. 224

²² Evans (1999) *Accountability versus government control: the effect of proportional representation*,
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=F0479F528D5A4212A69FE23BCB3A8DB5&_z=z

²³ Hamer (2004) *Can responsible government survive in Australia?*, pp. 258, 349

²⁴ Spigelman (2004) *The integrity branch of government*, pp. 6–7, <https://papers.ssrn.com/abstract=1809582>

agencies. Even the media, non-government organisations and members of the public are involved, for example through freedom of information requests.

Senator James Paterson identifies six key political interventions by the Australian Senate, most of which would fall into the “integrity” role. These include disclosing the Government’s misuse of VIP flights, summoning officials for questioning and slowing down the passage of anti-terrorism legislation to allow for more scrutiny.²⁵ The decisions in 1974 and 1975 to block supply do not feature, which accords with Parliamentary Fellow Stanley Bach’s conclusion that this decision was made to force an election not because there was evidence of corruption or abuse of power.²⁶

Senate integrity powers include censure, which has led to the resignation of ministers,²⁷ disallowance motions for legislative instruments,²⁸ Senate estimates, Question Time, and orders for the production of documents.

Measures that would reduce the Senate’s legislative powers, such as new deadlock provisions proposed by then Prime Minister John Howard and discussed further in a later chapter, would also weaken the Senate’s accountability function. Longstanding clerk of the Senate, Harry Evans, noted that if the Senate did not have the power to disrupt the Government’s legislative agenda, then the Government would have little incentive to engage with the Senate’s accountability function.²⁹

Production of documents

Aspects of the Senate’s role as a house of accountability have been present from federation. Between 1901 and 1906, the Senate issued over a hundred orders for the production of documents. The practice fell into disuse between the 1910s and the 1970s, and the Senate’s annual volume of orders for the production of documents in its first six years was not matched until the 1990s.³⁰

The order for production of documents is broad:

²⁵ Paterson (2017) *In defence of the Senate*, pp. 60–61, <https://www.samuelgriffith.org/2017>

²⁶ Bach (2003) *Platypus and Parliament: the Australian Senate in theory and practice*, pp. 104–105

²⁷ Thompson (1999) *The Senate and representative democracy*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=DCF2CDCE8D454BBA9768A9B61474D94F&_z=z

²⁸ For historical examples, see Fusaro (1966) *The Australian Senate as a house of review: another look*, pp. 396–398

²⁹ Evans (1999) *Accountability versus government control: the effect of proportional representation*

³⁰ Department of the Senate (1999) *Business of the Senate 1901-1906*, p. vii, <https://nla.gov.au/nla.obj-2017026227>; Parliament of Australia (2019) *No. 12 - Orders for production of documents*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Brief_Guides_to_Senate_Procedure/No_12

There are no limits on the documents which may be ordered to be tabled. There are no exemptions or exceptions for cabinet submissions or national security documents or other classes of documents for which governments have traditionally claimed public interest immunity ... There is also no requirement that a document be one that is already in existence.³¹

While the language sounds archaic to modern ears and some of the issues that animated the first Senate seem quaint or worse, many of the Senate's orders for production of documents from 1901 to 1906 are reminiscent of modern uses of accountability mechanisms:

- statistics on the death rates of white people compared to Pacific Island workers (then referred to as "kanakas") in Queensland
- the Governor-General's expenses
- any papers relating to the statement from the General Officer (that is, Chief of Army) that Japan and China were "casting longing eyes upon the northern portions of Australia".³²

Freedom of information requests, Estimates questions and orders for production of documents today are often worded similarly and involve similar political issues to these 120-year-old orders – although the Governor-General's expenses in 1901 were unlikely to include a Thermomix.³³

Some orders for the production of documents have remained in force for years and changed the culture and practice of government departments. Of the 11 orders for documents of continuing effect, two are particularly noteworthy:

- Senator Brian Harradine's 1994 motion requires all federal Australian government departments and agencies to produce an indexed list of files every six months for tabling before Parliament.³⁴ Knowing what documents an agency or department has produced assists with freedom of information requests and makes the operation of government more transparent.

³¹ Parliament of Australia (2019) *No. 12 - Orders for production of documents*, p. 14

³² Department of the Senate (1999) *Business of the Senate 1901-1906*, pp. 18–19, 40–41, 62–63, 79–80, 103–104, 125–127

³³ See AAP (2015) "What is a Thermomix?" *MP Joe Ludwig blends oversight with food faux pas*, <http://www.theguardian.com/australia-news/2015/feb/24/what-is-a-thermomix-mp-joe-ludwig-blends-oversight-with-food-faux-pas>

³⁴ Attorney-General's Department (2020) *Senate Order for the production of indexed lists of departmental and agency files*, <https://www.ag.gov.au/about-us/publications/senate-order-production-indexed-lists-departmental-and-agency-files>

- Senator Andrew Murray's 2000 motion requires all departments and agencies to produce an indexed list of all contracts valued at \$100,000 or more that have been entered into during the previous 12 months.³⁵

Other continuing orders include for:

- advertising and public information projects costing \$100,000 or more
- lists of departmental and agency appointments and vacancies
- grants approved
- unanswered questions on notice
- meetings between current ministers, secretaries or deputy secretaries and former ministers
- free trade agreements before they are signed
- Australia's quarterly National Greenhouse Gas Inventory
- protection visa data
- annual emissions projections
- grant recommendations from the Australian Research Council.³⁶

The Senate's Standing Order 139(2), while not technically an order for the production of documents, has the effect of annually making public all provisions of Acts that have not yet been proclaimed. The standing order was a reaction to the discovery in 1988 that some parts of acts of parliament had not been proclaimed and therefore were not in effect, over 50 years after they were originally legislated. The arrangement is "very effective" at ensuring that all parts of acts are proclaimed.³⁷

³⁵ For some of the background to the motion and the Senate's considerations before passing the motion, see Parliament of Australia (2000) *Accountability to the Senate in relation to government contracts (Murray motion)*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed%20inquiries/1999-02/accnt_contract/report2/tor; Senate Standing Committees on Finance and Public Administration (2000) *Accountability to the Senate in relation to government contracts (Murray motion)*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/1999-02/dept_agency_contracts/report2/index

³⁶ See the full orders at Parliament of Australia (2020) *Orders for documents*, https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/~/link.aspx?_id=E09AEB5B759B4E55955A8F00B6D7C017&_z=z#Procedural-orders_13

³⁷ Alongside the new practice that most parts of acts requiring proclamation have a date set upon which they commence automatically if not already proclaimed. Hamer (2004) *Can responsible government survive in Australia?*, pp. 210–211; Parliament of Australia (n.d.) *Annotated standing orders of the Australian Senate*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/aso/so139

The Senate's power to order the production of documents is a significant one, and has been responsible for important information – like Australia's greenhouse gas emissions data – becoming public. However, Senate orders need to be respected to be effective.

The Government can refuse to comply with orders for the production of documents on the grounds of public interest immunity. The Senate and the Government at times disagree on how extensive the executive's public interest immunity is. The Senate's powers to remedy a refusal to provide documents include fines and imprisonment, as well as imposing political penalties like postponing legislation until the Government provides relevant information or using the Senate floor to draw public attention to the issue.³⁸

A recent conflict between the Senate and the Government has involved orders for the production of documents relating to the Australian Future Submarine Program.³⁹ After a Senate committee hearing in February 2021 where public servants could not explain why particular documents had been withheld, Senator Rex Patrick is reportedly considering referring the matter to the powerful Senate privileges committee.⁴⁰

There have also been incidents where the Government has missed Senate deadlines, although the documents were eventually produced.⁴¹

Ideally, governments will respect the Senate's right to order the production of documents and comply whenever the public interest allows. The Senate's powers to remedy a refusal are extensive, but the Senate is understandably reluctant to use them.

³⁸ Laing (2016) *Odgers' Australian Senate Practice*, pp. 643–676,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice

³⁹ Orders for this Parliament can be found in Australian Senate (2021) *Orders for the production of documents*, pp. 41–42, 50,

https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Notice_Paper/OPDs

⁴⁰ Gottlieb (2021) *Defence Minister Linda Reynolds in the crosshairs over submarine costings*,

<https://www.theaustralian.com.au/business/defence-minister-linda-reynolds-in-the-crosshairs-over-submarine-costings/news-story/ea0caa64438489d5ebf299bb0eb5e906>; Patrick (2018) *Future Frigate Problem*,

https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/0190ec-5b78-4065-b6a9-0dd14f1dd9d6/&sid=0000

⁴¹ Cox (2019) *Australia's emissions still rising, says report withheld in defiance of Senate order*,

<https://www.theguardian.com/environment/2019/jun/06/australias-emissions-still-rising-says-report-withheld-in-defiance-of-senate-order>

Question time

A distinctive feature of the Senate's Question Time is supplementary questions, which can be asked by the original questioner or any other senator.⁴² Some past Speakers of the House of Representatives have allowed supplementary questions, although it is not current practice.⁴³

With a review into the House of Representatives Question Time currently underway,⁴⁴ consideration should be given to whether supplementary questions could be again adopted in the House of Representatives as they have been shown to work in the Senate.

Senate Estimates

Brenton describes Senate estimates committees as "One of the most common areas of Senate envy amongst members [of the House of Representatives]". Members "would relish the opportunity to question public officials directly".⁴⁵

The Senate's own documents describe estimates as the most direct "manifestation" of accountability.⁴⁶ Senator John Faulkner described the estimates process as the "best accountability mechanism we have in any parliament in this country", adding:

It was in Estimates Committees that the truth of whether children were thrown overboard was revealed, and the state of Australian knowledge about Abu Grahیب was explored.⁴⁷

⁴² Parliament of Australia (2020) *No. 12 - Questions*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief12

⁴³ Elder & Fowler (2018) *House of Representatives practice (7th edition)*, p. 547,

https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7; Wright & Fowler (2012) *House of Representatives practice (6th edition)*, pp. 547–548, https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice6

⁴⁴ Parliament of Australia (2020) *2019 inquiry into the practices and procedures relating to question time*, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Procedure/Questiontime

⁴⁵ Brenton (2011) *Minority government: is the House of Representatives finally catching up with the Senate?*, p. 125

⁴⁶ Parliament of Australia (2020) *No. 5 - Consideration of estimates by the Senate's legislation committees*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief05

⁴⁷ Faulkner (2010) *The Senate: blessing or bane?*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~link.aspx?id=5EFA18242123496FBB90795882992522&z=z

LEGISLATIVE REVIEW

The Senate is where the real work is done through Senate committees and negotiations to get the best laws.

Senator Rex Patrick⁴⁸

With all the talk of the Senate's integrity function, it would be easy to forget that the Senate is first and foremost a legislature. Even here, there are aspects of the Senate – including its relative independence from the Government and the longer terms of senators – that mean it makes a major contribution to legislation.

Hamer goes further, calling the Senate “effectively the sole legislature” (at the Commonwealth level) since the House of Representatives is so deferential to the Government.⁴⁹ It is worth noting that since Hamer wrote, there have been two periods of minority government in Australia (2010–2013 and 2018–2019) that might have led him to re-evaluate.

Then Catholic Health Australia CEO Francis Sullivan described the Senate's role as a “broker” between the community and the Government. Civil society groups did the intellectual work on reform, then lobbied the Australian Democrats on the crossbench, who brokered change with the Government of the day.⁵⁰

Examples of quality legislative practice include:

- The practice of government ministers “guillotining” debate is much more likely in the House of Representatives than the Senate, given the Senate is rarely under majority control. Allowing for sufficient time for legislation to be considered and debated has been identified as a main function of an upper house.⁵¹
The Senate formalises this through Standing Order 111(5), which requires legislation introduced in the final third of a sitting period to be considered in the next sitting period unless the Government's special plea for urgency is agreed to.⁵²
- Governments using the Senate to amend their own legislation to plug holes and correct errors that were not picked up in the (sometimes rushed) lower house

⁴⁸ Lewis (2019) *Coalition faces Senate battle*, <https://www.theaustralian.com.au/nation/politics/coalition-faces-senate-battle-to-pass-big-reforms/news-story/207589cb129e4e9e98f758f96d210e26>

⁴⁹ Hamer (2004) *Can responsible government survive in Australia?*, p. 301

⁵⁰ Sekules & Sullivan (1999) *Lobbying the Senate: two perspectives*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~link.aspx?_id=AA04517790A14A5A974553BC6A239E4F&_z=z

⁵¹ www.parliament.uk (2000) *History of the House of Lords*, <https://publications.parliament.uk/pa/ld199798/holbrief/ldreform.htm>

⁵² Hamer (2004) *Can responsible government survive in Australia?*, p. 279; Parliament of Australia (n.d.) *Annotated standing orders of the Australian Senate*

legislative process. Unicameral legislatures do have alternative ways of addressing this, but the Senate is an obvious choice.⁵³

- The Senate Scrutiny of Bills Committee to which all bills are referred.

Committee work

[The] introduction of a wide-ranging committee system will make the red-carpeted Upper House potentially the most powerful parliamentary chamber in Australia.

Sydney Morning Herald, 1970⁵⁴

As anticipated by the *Sydney Morning Herald* in 1970, the committee system is key to the Senate's power and function.

Even the formation of the committee system is a demonstration of the Senate's independence and ability to compromise, with the Senate reconciling the Government and Opposition's competing proposals for five and seven committees respectively by passing both motions and creating 12 committees at once.⁵⁵ The committee system combines the Senate's accountability and legislative functions – one aspect of the accountability function (Senate estimates) is discussed above.

The number of inquiries and reports prepared by Senate committees has increased significantly from the 1970s. Figure 13 shows the number of reports tabled by Senate committees in 1974 and every five years afterwards to show the dramatic increase in output.

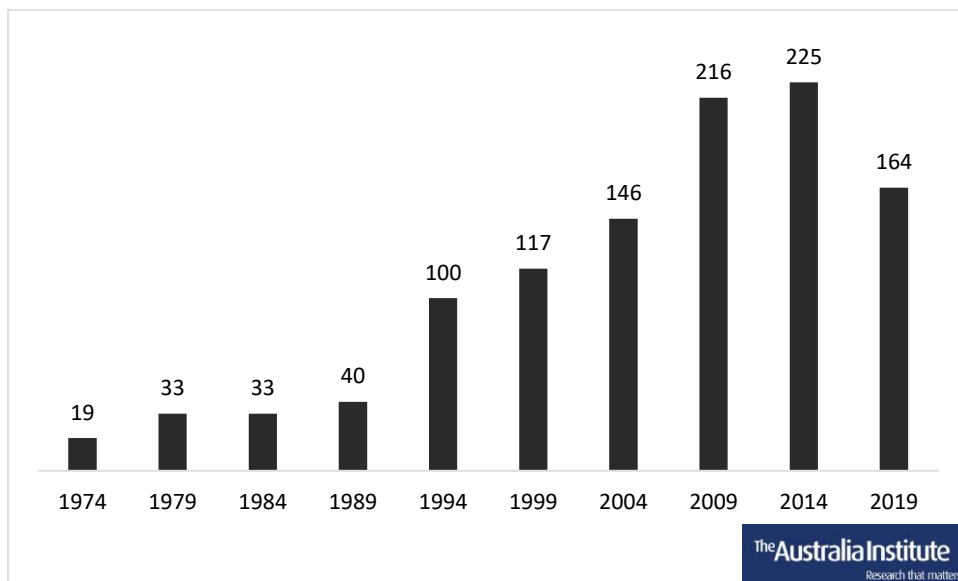
⁵³ Bach (2003) *Platypus and Parliament: the Australian Senate in theory and practice*, pp. 219–221

⁵⁴ Thompson (1999) *The Senate and representative democracy*

⁵⁵ Parliament of Australia (1990) *Senate legislative and general purpose standing committees: the first 20 years 1970 - 1990*,

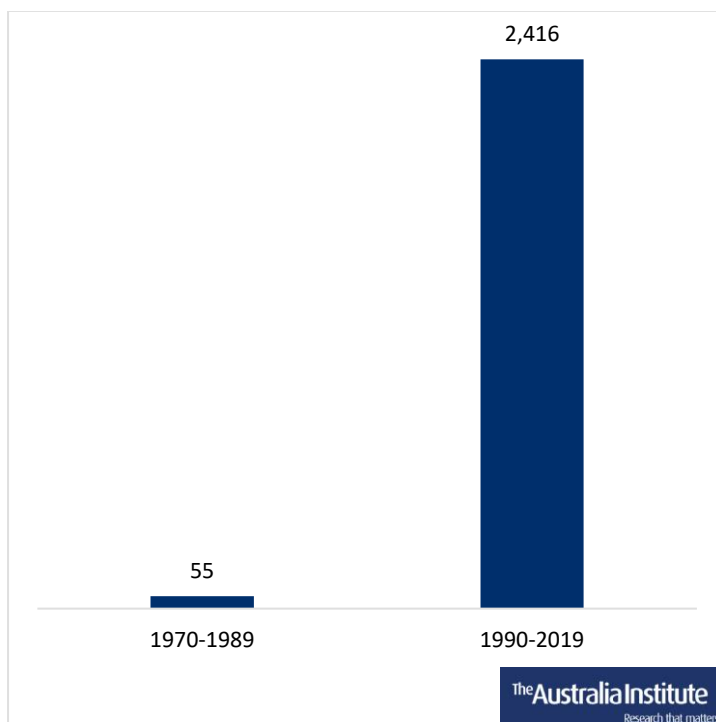
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Significant_Reports/first20years/contents

Figure 13: Reports tabled by Senate committees, five-year snapshots



Source: Parliament of Australia (2020) *Register of Senate committee reports*,
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/register

Figure 14: Bills referred to committees



Source: Parliament of Australia (2020) *Register of Senate committee reports*

Note that 1970–1989 is a 20-year period and 1990–2019 a 30-year period.

Advantages of the committee system include:⁵⁶

- playing an oversight role by identifying poorly-managed parts of government
- allowing for community participation and consultation through the inquiry process
- limiting the trend towards “managerialism” in the public service, by keeping the Government accountable for programs that have been contracted out
- long corporate memory, with public servants coming and going but membership of committees remaining relatively stable
- exercising the Parliament’s investigative capacities, and mobilising expert opinion
- allowing for parliamentary deliberation
- exploring the possibilities for bipartisanship
- making the case for change and building coalitions to achieve it.

⁵⁶ Marsh (1999) *Opening up the policy process*,
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~~/link.aspx?_id=BCE2CF33A79341EDB13BFE85F263F03E&_z=z; Sekules & Sullivan (1999) *Lobbying the Senate: two perspectives*;
Thompson (1999) *The Senate and representative democracy*

The strong Senate

The Senate's relevance as a legislative and checking body does not arise from the moral superiority of senators over members of the House of Representatives. ... Out of individual cross comes parliamentary gold simply because of the different party structure proportional representation gives the Senate.

Former senator and MP Fred Cheney⁵⁷

Delegates to Australia's constitutional conventions were quite deliberate in imbuing the Senate with powers almost equal to that of the House of Representatives. Alfred Deakin, a former Victorian minister and future prime minister, called the two houses the "irresistible force" and the "immovable object". John Quick, a former Victorian MLA, future federal MP and co-author of *The Annotated Constitution of the Australian Commonwealth*, said that with "the sap of popular election in its vein", the Senate would feel stronger than other upper houses.⁵⁸

The name "Senate" was chosen over "States' House" quite deliberately. The Senate's accountability and review functions are "baked in". Proportional representation was feted as the means of election, and indeed Tasmania's senators in 1901 were elected by the Hare-Clarke method, although it would take another 48 years before the Senate was again elected proportionally.⁵⁹

The Senate owes its powers to the Constitution, but it is able to exercise those powers to the extent that it does because of the legitimacy that popular election, and specifically proportional representation, bestows upon it. By some important measures, the Senate is more representative than the House of Representatives. This is not just a benefit imparted by the Senate, but also a source of its strength. Finally, it has the will to exercise those powers because it is not dominated by either the Government or the Opposition.

⁵⁷ Cheney (1999) *Should parliament be abolished?*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=115DEA765C56491F99AF794AC2FF9DBD&_z=z

⁵⁸ Bach (2003) *Platypus and Parliament: the Australian Senate in theory and practice*

⁵⁹ Uhr (1999) *Why we chose proportional representation*,

https://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/pops/~link.aspx?_id=DB8FD989ADD34452AF9F0792790FF7DF

PROPORTIONAL REPRESENTATION

It is the House of Representatives that is unrepresentative, not the Senate.

Campbell Sharman⁶⁰

... the Australian Senate [is] one of the most democratically elected chambers in the world – a body which at present more faithfully represents the popular will of the total Australian people at the last election than does the House of Representatives; that is a fact in terms of the proportional representation system

John Howard, 1987⁶¹

Proportional representation combines the democratic principle that parties should be represented in proportion to the votes they receive with the conservative or republican principle that the minority should have some way to keep the majority in check.⁶² Provided that – as has been typical in Australia in recent decades – no party wins a majority of seats in the Senate, then parties representing different minorities are able to keep the Government in check.⁶³

The Australian Senate has had proportional representation since the 1949 election, and the diverse representation provided by the Senate is one of the Senate's distinguishing features – as well as part of the Senate's claim to legitimacy. When the change from first-past-the-post to proportional representation was legislated in 1948, then Attorney General HV Evatt said: "the fairest system and the one most likely to enhance the status of the Senate is that of proportional representation".⁶⁴

⁶⁰ Sharman (1999) *The Senate and good government*,
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~link.aspx?_id=E553D989507B453B93640F6FE3DDD336&_z=z

⁶¹ Howard (1987) *Role and power of the Senate (Hansard)*,
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F1987-10-08%2F0109%22>

⁶² Although not in the same words, the idea comes from Evans (1999) *Accountability versus government control: the effect of proportional representation*

⁶³ Of course, in practice the "majority" party may not have won a majority of the vote, or even a majority of the two-party preferred vote in the lower house.

⁶⁴ Parliament of Australia (2019) *No. 1 - Electing Australia's senators*,
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief01

This prediction has been borne out, with the Senate growing in influence and stature in the following decades – in part because of the role of crossbenchers in making the Senate an effective and visible institution.⁶⁵

As a historical note, John Stuart Mill predicted exactly this phenomenon in his 1861 work *Considerations on Representative Government* – an upper house will not function as the “centre of resistance” to the lower house if it is unrepresentative, or representative only of a class. Mill also identified the risk that “representative” government would not represent minorities; not just the rich, but also Irish people, African people, Catholics, Protestants, skilled labourers and the poor.⁶⁶ Walter Bagehot made a similar point, arguing that the House of Lords is timid because it is unrepresentative: “Being only a section of the nation, it is afraid of the nation” (although Bagehot’s idea of representation was very limited by modern standards).⁶⁷

For an Australian example, the suffragette and activist Catherine Helen Spence recommended in the 1890s that the minority “can watch the majority and keep it straight”.⁶⁸

Since 1955, there have always been crossbench senators; this peaked at 20 senators on the crossbench following the 2016 double dissolution election.⁶⁹ However, this coincides with an increase in those voting for minor party and independent candidates. In fact, despite the disproportionate representation of smaller states and territories in the Senate, political scientist Campbell Sharman observed in 1999 that the Senate in practice represents “much more accurately and more fairly the pattern of party voting across Australia” than the House of Representatives does.⁷⁰ Political science academic Murray Goot made a similar observation at the same time.⁷¹

⁶⁵ For detailed analysis, see Sharman (1999) *The representation of small parties and independents*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=F74BDE214CB64985BCC43D1C76A15BF4&_z=z

⁶⁶ Mill (1861) *Considerations on representative government*, <https://www.gutenberg.org/files/5669/5669-h/5669-h.htm>; see also Uhr (1999) *Why we chose proportional representation*

⁶⁷ Bagehot (1873) *The English constitution*, p. 112, <https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/bagehot/constitution.pdf>

⁶⁸ Uhr (1999) *Why we chose proportional representation*

⁶⁹ Parliament of Australia (2019) *No. 1 - Electing Australia’s senators*

⁷⁰ Sharman (1999) *The Senate and good government*

⁷¹ Goot (1999) *Can the Senate claim a mandate?*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=3EE3F46B7B314E74A9888AD6F9D3E0A2&_z=z

The limits of crossbench power

As former senator Fred Cheney argues, it is wrong to conceive of the Senate crossbench as wielding outsized power:

No single senator has any power to affect the outcome of the legislative program unless he or she is taking a position that is in common with enough of the rest of the Senate to make a majority ...

The thing to remember is that any single Liberal, National or Labor senator could be pivotal in the case of a close vote. In the 1970s, when senators on the conservative side were less bound by party discipline, they often used their power across the floor to achieve the same apparent dominance in the decision making process as Colston and Harradine. There seems to me nothing undemocratic or indeed undesirable in that circumstance.⁷²

The Australian Democrats were only able to “keep the bastards honest” when either Labor or the Coalition voted with the Democrats.⁷³ If major party senators were prepared to cross the floor more often – as they were during 1901 and 1909 before the “fusion” of the Free Trade and Protectionist parties – the crossbench would lose much of its power.⁷⁴ And while Senates where the crossbench holds the balance of power are sometimes described as obstructionist, opposition-majority Senates have typically been much more obstructionist than Senates where neither major party has a majority.⁷⁵

⁷² Cheney (1999) *Should parliament be abolished?*

⁷³ Cheney (1999) *Should parliament be abolished?*

⁷⁴ Bach (2003) *Platypus and Parliament: the Australian Senate in theory and practice*, p. 54,59-61

⁷⁵ Bartlett (1999) *A squeeze on the balance of power: using Senate “reform” to dilute democracy*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=9E4CCAED140A4151BCE83C2D06976B8B&_z=z

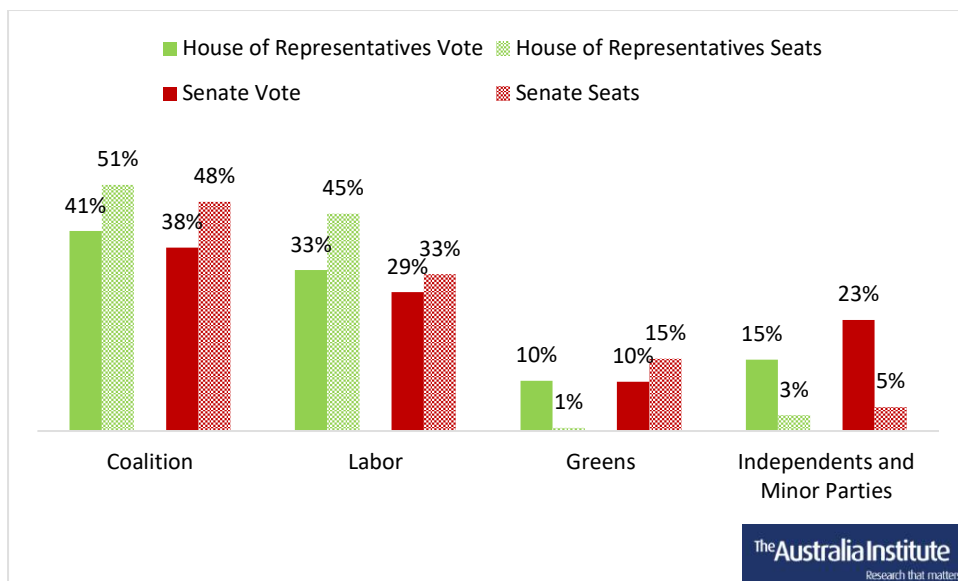
Measuring proportionality

The “winner-takes-all” approach used in House of Representatives elections means that larger parties tend to win a greater share of seats than their share of the vote. Figure 15 compares the vote share that parties received in the House of Representatives (2019 election) and the Senate (2016 and 2019 election) with the number of seats that they won.

In the most recent House of Representatives election, the Coalition and Labor together received 75% of the vote but 96% of the seats. The Greens received 10% of the vote but 1% of the seats, and independents and minor parties received 15% of the vote and 3% of the seats.

By contrast, the Coalition and Labor received 67% of the vote in the last two Senate elections, but hold 80% of the seats in the Senate. The Greens received 10% of the vote but hold 15% of the seats, and other minor parties and independents received 23% of the vote but hold 5% of the seats. These results are not as proportional as they could be – for example if the Senate were larger – but are still more representative of minor parties (including the Greens) and independents than the House of Representatives is.

Figure 15: House of Representatives and Senate disproportionality



Source: Author's calculations

Another way of looking at proportionality is to identify typical Senate vote compositions, and what portion of the population gave their first preference vote to parties participating in that vote.

For example, Coalition, One Nation and Centre Alliance senators, and independent Rex Patrick, together account for 40 votes, enough to pass legislation. These parties received 44% of the popular vote. Labor, Greens and Centre Alliance senators, and independents

Jacqui Lambie and Rex Patrick, together account for 38 votes, enough to block legislation. Together, these parties received 41% of the vote over the 2016 and 2019 elections.

If it seems unreasonable that senators receiving 41% of the vote can block legislation, keep in mind that Coalition MPs received 41% of the vote in the House of Representatives; from this they won a majority of the seats and formed government.

Table 1: Example Senate voting blocks

Vote composition	Votes (2016 and 2019)	Seats	Vote share	Seat share
Coalition + ON + CA	12,575,445	40	44%	53%
Coalition + ON + Lambie	12,190,930	39	43%	51%
Labor + Greens + Lambie + CA	11,599,012	38	41%	50%
Labor + Coalition	18,744,576	61	66%	80%

Note: For the interests of space, Rex Patrick has been counted under Centre Alliance and Cory Bernardi's vote share under Coalition. "ON" stands for Pauline Hanson's One Nation and "CA" for Centre Alliance.

This table is based on the approach used by the University of New South Wales Council for Civil Liberties in a 2003 submission.⁷⁶

Academic Michael Gallagher developed the Gallagher Index, or "least squares measure", as a measure of the disproportionality of an election.⁷⁷ The advantage of the Gallagher Index is that it can be used to compare election proportionality over time or between countries. However, it gives different results depending on how parties are grouped together, meaning that decisions must be made about whether to treat different Coalition parties as one party or several, and whether to group the Greens with minor parties and independents.

Applying the Gallagher Index to the 2019 House of Representatives and 2016 and 2019 Senate results shows that the Senate is at least as proportional as the House of Representatives. Results vary depending on how parties are counted (for example, whether the different Coalition parties are counted together or separately), but overall the Senate had a Gallagher Index of 13–14 (with 0 being a perfect score) and the House of Representatives had a Gallagher Index of 12–18.

See the appendix for more details of how the Gallagher Index is calculated.

⁷⁶ UNSW Council for Civil Liberties (2003) *Submission: resolving deadlocks*, p. 12, https://d3n8a8pro7vhmx.cloudfront.net/nswccl/pages/601/attachments/original/1418076286/2003_submission_resolving_deadlocks.pdf

⁷⁷ Gallagher (2019) *Electoral systems: Michael Gallagher electoral systems site*, https://www.tcd.ie/Political_Science/people/michael_gallagher/EISystems/index.php; (1991) *Proportionality, disproportionality and electoral systems*, <http://www.sciencedirect.com/science/article/pii/026137949190004C>

MINORITY “EMBODIMENT”

When [Penny] Wong won preselection for the Senate before the 2001 election ... the joke went around that she would never have been able to contest a lower house seat, being not only a woman, but Asian and gay to boot.

Sydney Morning Herald profile⁷⁸

Parliamentary Fellow Scott Brenton points out that the modern Senate is more representative of Australia than the House of Representatives in another aspect – representation of Australia’s diversity. Representation milestones achieved in the Senate include:

- the first two Indigenous Australians elected to Parliament: Neville Bonner and Aden Ridgeway
- the youngest woman elected to Parliament, Sarah Hanson-Young (although the youngest person was Wyatt Roy, in the House of Representatives)
- the first Asian Australian elected to Parliament: Tsebin Tchen
- the first Chinese speaker and child of a Chinese person elected to Parliament: Thomas Bakhap⁷⁹
- the first openly gay man elected to Parliament, and the first openly gay party leader: Bob Brown
- the first openly gay woman elected to Parliament, the first Asian Australian woman elected to Parliament, and the first openly gay member of Cabinet: Penny Wong
- the first member of Parliament with a partner who is transgender: Louise Pratt
- the first female party leader: Janine Haines
- the first woman to administer a federal department: Annabelle Rankin
- the first woman in Cabinet with portfolio responsibilities: Margaret Guilfoyle
- the first Muslim woman elected to Parliament, Mehreen Faruqi (although the first Muslim elected is Ed Husic, in the House of Representatives).⁸⁰

⁷⁸ Sydney Morning Herald (2007) *Freakish powers of a formidable operator*,

<https://www.smh.com.au/national/freakish-powers-of-a-formidable-operator-20071208-gdrw7.html>

⁷⁹ Thomas Bakhap was the adopted son of a Chinese Australian immigrant, Bak Hap. He was elected to the Senate in 1913.

⁸⁰ AEC (2019) *Electoral milestones for Indigenous Australians*,

<https://www.aec.gov.au/indigenous/milestones.htm>; Brenton (2011) *Minority government: is the House of Representatives finally catching up with the Senate?*, p. 121; Karvelas (2008) *Labor’s new gay senator Louise Pratt calls for same-sex marriage (archived)*,

<https://web.archive.org/web/20080916144057/http://www.theaustralian.news.com.au/story/0,25197,24259191-5013871,00.html>; Knaus (2018) *Mehreen Faruqi to become first female Muslim senator amid Fraser Anning outrage*, <http://www.theguardian.com/australia-news/2018/aug/15/mehreen-faruqi-to-become-first-female-muslim-senator-amid-fraser-anning-outrage>; Parliament of Australia (2020) *No. 3 - Women in the Senate*,

Women were simultaneously elected to the House of Representatives and the Senate in 1943, but today women make up exactly half of the Senate but just 30% of the House of Representatives.⁸¹

The notion that minorities have a right to representation even though majorities have a right to rule is a well-established one, and was a serious consideration during the debates around the constitution in the 1890s.⁸² Marion Sawer calls it “embodiment”, and recognises its importance while noting that “standing for” a minority does not necessarily mean “acting for” that group.⁸³

As well as being personally representative, not being tied to a particular electorate allows senators to represent broader interests such as union groups, religious denominations, environmental issues, economic ideologies, farmers and Indigenous Australians. And while the party system means that for the most part a major party senator’s vote does not vary no matter what state they come from, independent and micro-party senators are often more explicitly representative of their state’s interests – for example, Brian Harradine and Jacqui Lambie from Tasmania and Nick Xenophon and affiliates from South Australia.⁸⁴

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief03;
Sawer (1999) *Overview: institutional design and the role of the Senate*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~/link.aspx?_id=44D6F800131A4A278299EF7275C3DE54&_z=z; Thompson (1999) *The Senate and representative democracy*

⁸¹ Parliament of Australia (2020) *No. 3 - Women in the Senate*, p. 3

⁸² Uhr (1999) *Why we chose proportional representation*

⁸³ Sawer (1999) *Dilemmas of representation*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~/~/link.aspx?_id=C560ECA3881841D594C12DD4FB77CD96&_z=z

⁸⁴ The observation comes from Sharman, although his paper predates Lambie and Xenophon’s elections.
Sharman (1999) *The representation of small parties and independents*

Attempts to limit the Senate

No lower house has been able to be both the decisive chooser of a government and an effective critical scrutineer of the administration of that government.

Former MP and senator David Hamer⁸⁵

Proposals to nobble the Senate are almost as old as the Constitution.

Senator Scott Ryan, President of the Senate⁸⁶

John Faulkner has wryly observed that appetite for reducing the powers of the Senate is greatest when a major party is in government, and least when that major party is in opposition. The Coalition decried the power of the Senate only once they won the 1996 election; only the Coalition has used the Senate's "inconceivable" power to bring down the Government.⁸⁷

Senate electorates and geography

One of the most popular classes of Senate reform proposals, from senior politicians on both sides of politics, would remove or limit the proportionality of the Senate by dividing states into electorates. The Keating–Evans, Robb and Joyce proposals, described below, fall into this category.

Senator Scott Ryan, although speaking specifically about Barnaby Joyce's proposal (see below), argues generally against basing representation exclusively on geography:

But that specific experience, attribute or perspective [of geography] (which I do not at all dismiss) is also overlaid by others, such as personal interest, cultural and personal identity and employment, to name a few, just as in the past class or religion might have been more defining elements.

I don't dismiss the notion that many Australians, and particularly regional areas that are feeling the brunt of natural disaster, economic adjustment or simple access to government services may feel disconnected from their politicians and government.

⁸⁵ Hamer (2004) *Can responsible government survive in Australia?*, p. xviii

⁸⁶ Ryan (2019) *The Senate in an age of disruption*

⁸⁷ Faulkner (1999) *A Labor perspective on Senate reform*,

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=2B1DE8504D1943DDBCAA4A06C9D5FFE5&_z=z

But why should an unemployed person on the peri-urban fringe be stripped of the value of their Senate vote at the expense of a business owner in a regional centre?

I cannot see the claim to fairness in this.

Disadvantages, lack of access to services, frustration at not being heard or disconnectedness is not solely defined by geography.⁸⁸

The Senate's proportionality allows for rural and regional perspectives to be represented, but alongside other interests, groups and identities.

Single-senator electorates (Keating-Evans)

Paul Keating and Gareth Evans in 1994 canvassed splitting each state into 12 electorates and electing senators by preferential voting.⁸⁹

Alternating senator electorates (Robb)

In the 1990s, Liberal Party executive Andrew Robb proposed six electorates per state returning one senator each at each election.⁹⁰ The Western Australian Legislative Council (between 1962 and 1987) and the Victorian Legislative Council (between 1904 and 2006) are other upper houses that used two-member, rotating election electorates.

Electoral analyst Ben Raue in September 2019 analysed what this proposal might mean for Senate representation. He found that no independents, Greens or micro-party members would be elected at any of the last five federal elections. The Senate would have been tied at 38 Labor and 38 Coalition senators after the 2007 election, had a government-majority following the 2010, 2013 and 2016 elections, and an opposition majority following the 2019 election.⁹¹

For those worried about "deadlock" in the Senate, it is hard to imagine that one tied Senate and one Opposition-majority Senate would be less prone to deadlock than Senates where crossbenchers have the balance of power.

⁸⁸ Ryan (2019) *The Senate in an age of disruption*

⁸⁹ Faulkner (1999) *A Labor perspective on Senate reform*

⁹⁰ Coonan (1999) *The Senate: safeguard or handbrake on democracy?*,
<https://web.archive.org/web/20041227224303/http://www.onlineopinion.com.au/May/hand.htm>

⁹¹ Raue (2019) *Breaking up the Senate? Why it's such a bad idea*, <http://www.tallyroom.com.au/38982>

These Senates would also be much less representative than either the current Senate or the House of Representatives, with a Gallagher Index of 25.6 vs the current Senate Gallagher Index of 12.7.⁹²

Deadlock provisions for joint sittings (Howard)

In 2003, Prime Minister John Howard outlined two options for constitutional reform, either of which would allow legislative deadlocks in the Senate to be resolved without a double dissolution election.⁹³

Currently, the Constitution provides that if the Senate blocks the same piece of legislation twice (with at least three months between blockings), the Prime Minister can ask the Governor-General for a double dissolution. Following the election, the blocked legislation can be put to a joint sitting of the House of Representatives and the Senate, and passed on an absolute majority.⁹⁴

Howard's first option would allow for a joint sitting to consider blocked legislation, without an election. The legislation would still need to meet the criteria for a double dissolution (blocked twice, at least three months apart).

Howard's second option would allow for a joint sitting to consider blocked legislation following a regular election. The legislation would have to have been blocked in the new parliament, and at least twice in the old parliament.

At the time, Labor Opposition Leader Simon Crean ruled out option one but was open to option two.⁹⁵

Although Howard dubbed option two the "Lavarch option",⁹⁶ its namesake Michael Lavarch (former Labor Attorney-General) said it tilted the benefit too far in favour of executive

⁹² Based on Raue's estimated results: Raue (2019) *Breaking up the Senate? Why it's such a bad idea* Gallagher Index score calculated by the authors based on four voting groups (Coalition, Labor, Greens and Independent/Other).

⁹³ Department of the Prime Minister and Cabinet (2003) *Resolving deadlocks: a discussion paper on section 57 of the Australian Constitution*, https://webarchive.nla.gov.au/awa/20071127222520/http://pandora.nla.gov.au/pan/79623/20071127-1411/www.dpmc.gov.au/conschange/discussion_paper/index.html

⁹⁴ *Constitution of the Commonwealth of Australia* (Constitution of the Commonwealth of Australia), sec.57

⁹⁵ McGrath (2003) *PM - Howard proposes two options for Senate reform*, <http://www.abc.net.au/pm/content/2003/s962760.htm>

⁹⁶ McGrath (2003) *PM - Howard proposes two options for Senate reform*

power in the absence of fixed four-year terms for both the House of Representatives and the Senate.⁹⁷ Constitutional law academic George Williams suggested a similar variation.⁹⁸

More limited deadlock provisions had been proposed by past constitutional conventions and commissions.⁹⁹

In 2017, former Prime Minister Tony Abbott revived the proposal in a speech to the Samuel Griffith Society's 2017 conference. He appeared to be proposing the first model (joint sitting to resolve deadlock without an election).¹⁰⁰ During the same conference, Senator James Paterson described the proposal as "yet another bad idea of constitutional reform" because it would "fundamentally undermine the role of the Senate as a house of review, reducing it to a house of delay".¹⁰¹

Two-senator, region-weighted electorates (Joyce)

In 2019, prominent Nationals MP and former senator Barnaby Joyce proposed six electorates per state (three electorates voting per half-Senate election). The capital city for each state would be restricted to two senators out of 12. The relevant minister would decide the boundaries. Bob Katter is the bill's seconder.¹⁰² Joint Standing Committee on Electoral Matters (JSCEM) chair Senator James McGrath has also raised the possibility of splitting the states into six provinces, although without further detail.¹⁰³

As well as the problems of gerrymandering when the executive decides electorates,¹⁰⁴ the Joyce proposal would be even less representative and more prone to deadlock than the

⁹⁷ Lavarch (2003) *"Resolving deadlocks" or death knell to dissent?*,

<https://www.smh.com.au/opinion/resolving-deadlocks-or-death-knell-to-dissent-20031010-gdhkbz.html>

⁹⁸ Williams (2003) *Fixed terms hold key to breaking Senate's legislative deadlock*,

<https://www.smh.com.au/national/fixed-terms-hold-key-to-breaking-senates-legislative-deadlock-20030611-gdgwry.html>; he would make similar points in 2017 when Abbott resurrected the idea: Williams (2017) *Tony Abbott's manifesto on federal power is far from conservative*, <https://www.smh.com.au/opinion/tony-abbotts-solution-to-senate-deadlock-has-its-own-problems-20170630-gx1y8c.html>

⁹⁹ Department of the Prime Minister and Cabinet (2003) *Resolving deadlocks: a discussion paper on section 57 of the Australian Constitution*, pp. 34–37

¹⁰⁰ Abbott (2017) *Government not gridlock*, <https://www.samuelgriffith.org/2017>

¹⁰¹ Paterson (2017) *In defence of the Senate*, pp. 58–60

¹⁰² *Representation Amendment (6 Regions Per State, 2 Senators Per Region) Bill 2020* (Joyce),

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6502

¹⁰³ Lewis (2019) *Senate overhaul beyond cities*, <https://www.theaustralian.com.au/nation/politics/senate-overhaul-to-focus-beyond-cities-and-on-regions/news-story/36e06f1806812abef6f001ddb559f5ee>

¹⁰⁴ Senate Standing Committee for the Scrutiny of Bills (2020) *Scrutiny digest 4 of 2020*,

https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2020/PDF/d04.pdf?la=en&hash=17DDB58297EF058F1F4C60F9DD7335251A9897B4

Keating–Evans proposal, with every electorate likely to return one Labor and one Coalition senator.

Liberal President of the Senate Scott Ryan delivered a speech to the Institute for Government, London, in 2019 that criticised the proposal:

... the current Senate is actually very reflective of the national vote despite the differences in state populations.

But this proposal would destroy that.¹⁰⁵

The proposal would also dramatically increase the malapportionment of the Senate. Currently, the greatest malapportionment between states is NSW (8.1 million people) and Tasmania (537,000), that is, there are about 15 times more NSW residents per senator as Tasmanians per senator. Under Joyce's proposal, two senators would represent Sydney (5 million people) and 10 would represent non-Hobart Tasmania (330,000), that is, there would be 75 times more Sydney residents per senator as rural and regional Tasmanians per senator.

Ben Raue has calculated what election results would look like with six electorates per state (but no regional malapportionment).¹⁰⁶ In most elections, the Senate would have equal numbers of Labor and Coalition senators. Of the last six elections, Labor would perhaps have had a one-seat majority during two terms and the Coalition would perhaps have had a one-seat majority during one term.¹⁰⁷

¹⁰⁵ Gredley (2020) *Barnaby's senators plan reaches parliament*, <https://www.canberratimes.com.au/story/6645240/barnabys-senators-plan-reaches-parliament/>; Ryan (2019) *The Senate in an age of disruption*

¹⁰⁶ Raue was calculating for a double dissolution election in alternating senator electorates, but the results would be the same for other two-seat electorates under proportional representation. Raue (2019) *Breaking up the Senate? Why it's such a bad idea*

¹⁰⁷ This is complicated not just because preferences could behave differently, but also because Raue is modelling all electorates electing their senators at once. It is quite possible that the high result for a party would have occurred in that electorate's "off" election, and thus there would have been tied Senates in every federal election.

Expelling senators who leave their party (Williams)

In 2018, constitutional law expert George Williams argued in *The Australian* that with “disloyal” senators leaving the party they were elected under,

Enacting legislation resembles a random numbers game. Important bills pass or are rejected depending on who happens to be in the Senate at the time and where their party allegiance lies.

Williams argues that since voters typically vote for parties, rather than individual candidates, senators that leave the political party they were elected under should resign from Parliament, and the Parliament should change its standing orders “to remove the benefits and voting rights of senators who abandon their party without resigning from parliament” and/or change the law so that a senator loses their seat if they leave their party.¹⁰⁸ The idea has also been feted by JSCCEM chair Senator James McGrath.¹⁰⁹

Williams acknowledges in his editorial that the current system preserves “the right of a senator to shift their allegiance in accordance with their conscience”, but he places a higher premium on stopping the Senate from being “chaotic and unrepresentative”.

There are practical problems with standing orders or legislation that punish MPs for “jumping ship”, as discussed by James Allan in a followup editorial in *The Australian*,¹¹⁰ and in the academic response to similar “waka-hopping” legislation in New Zealand.¹¹¹

In practice, legislation that punishes parliamentarians for leaving their party would have to have some way of preventing the parliamentarian from simply staying in their party while voting in a contrary way.

The Parliament of Australia already has extremely strong party discipline, which limits the extent to which the House of Representatives and the Senate act independently of the Government and hold it to account, and the extent to which members and senators can reach bipartisan consensus in committees.

¹⁰⁸ Williams (2018) *Senate is the chaotic, unrepresentative swill that Keating described*, <https://www.theaustralian.com.au/opinion/senate-is-the-chaotic-unrepresentative-swill-that-keating-described/news-story/b8078477d5fe6af47147b5c1b444f54f>

¹⁰⁹ Bowe (2019) *How far will the Coalition go to shore up strength in the Senate?*, <https://www.crikey.com.au/2019/10/08/electoral-law-senate-changes/>

¹¹⁰ Allan (2018) *Plenty wrong with the Senate, but there are fixes*, <https://www.theaustralian.com.au/opinion/plenty-wrong-with-the-senate-but-there-are-fixes/news-story/9ca4b6c71e9f1c0cc3ea8ae41bb76e28>

¹¹¹ Geiringer & McLeay (2018) *Submission on the Electoral (Integrity) Amendment Bill (19 legal academics and political scientists)*, https://www.parliament.nz/resource/en-NZ/52SCJU_EVI_75706_14570/d10e31415725d45930bc10eeb1cbf415609a2a2b

A parliamentarian that leaves their party is not necessarily being untrue to the platform on which they were elected. It could be that the parliamentarian was elected because of, not in spite of, their differences with their party; alternatively, it could be the party and not the parliamentarian that has strayed from their election promises.

Rather than increasing electoral accountability, punishing jumping ship can worsen it. In the first term that New Zealand's "waka-hopping" legislation operated, some MPs remained members of one party – to avoid losing their seats – while campaigning for re-election under a different party.¹¹²

Jumping ship rules can also elevate internal party rules and by-laws above the laws of the land. Where expulsion from the party makes a parliamentarian's seat vacant, the by-laws of a party become the rules for determining eligibility in Parliament – not legislation or the Constitution. Where a minor party only has one or a few elected representatives, the parliamentarian may be a better representation of the party's membership or voter base than the party hierarchy is.

Measures that further tighten the grip of the party hierarchy over parliamentarians should be rejected. There is much to be gained from more free-thinking and independent parliamentarians. If defections are an issue, parties can screen their candidates better or voters can reject defectors at the ballot box.

¹¹² Geiringer & McLeay (2018) *Submission on the Electoral (Integrity) Amendment Bill (19 legal academics and political scientists)*

Conclusion

The 2020 federal Budget includes \$6 million for an interactive exhibition about Australia's voting system, to be installed in the Museum of Australian Democracy at Old Parliament House.¹¹³ The results of The Australia Institute's polling suggests that this is welcome, but insufficient. With existing parliament and civics education programs mostly focused on school-aged children through the Australian Curriculum and school visits supported by the Parliament and Civics Education Rebate Program, additional civics education should be targeted at adults as well.

¹¹³ Jenkins (2020) *Australian Electoral Commission to receive \$6m for exhibition and upgrades*, <https://www.themandarin.com.au/141579-australian-electoral-commission-to-receive-6m-for-exhibition-and-upgrades/>

Appendix: Polling methodology and full results

Method

The Australia Institute conducted a national survey of 1,600 people between 23 and 27 July 2020, online through Dynata with nationally representative samples by gender, age, state and territory, and household income.

The margin of error (95% confidence level) for the national results is 2.5%.

Results are shown only for larger states.

Voting crosstabs show voting intentions for the House of Representatives. Those who were undecided were asked which way they were leaning; these leanings are included in voting intention crosstabs. “Coalition” includes separate responses for Liberal and National. “Other” includes Centre Alliance, Jacqui Lambie Network and Independent/Other.

Full results

Currently, there are about 220,000 enrolled voters for each federal Senator (in the upper house).

Do you think 220,000 voters for each Senator is

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Far too many	9%	9%	10%	11%	7%	9%	6%
Too many	15%	15%	15%	17%	16%	14%	12%
About right	40%	46%	34%	40%	42%	39%	42%
Too few	6%	7%	4%	6%	6%	5%	10%
Far too few	3%	4%	2%	4%	4%	2%	2%
Don't know / not sure	27%	19%	34%	22%	25%	30%	28%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Far too many	9%	9%	8%	9%	10%	11%
Too many	15%	15%	17%	14%	9%	11%
About right	40%	44%	42%	38%	29%	27%
Too few	6%	7%	5%	7%	3%	6%
Far too few	3%	2%	3%	2%	10%	4%
Don't know / not sure	27%	23%	24%	29%	38%	41%

If the government of the day does not have a majority in the Senate, it must gain support from other Senators in order to pass legislation into law. In your view, is it better for Australia if the government of the day

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
does not have a Senate majority and must seek support from other Senators.	35%	39%	31%	33%	32%	37%	34%
does have a Senate majority and can pass legislation itself.	36%	41%	32%	41%	35%	37%	36%
Don't know / Not sure	29%	20%	37%	26%	33%	26%	30%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
does not have a Senate majority and must seek support from other Senators.	35%	26%	41%	46%	34%	40%
does have a Senate majority and can pass legislation itself.	36%	50%	30%	25%	28%	19%
Don't know / Not sure	29%	24%	29%	30%	38%	41%

(House of Representatives voting intention)

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
does not have a Senate majority and must seek support from other Senators.	35%	25%	39%	49%	33%	43%
does have a Senate majority and can pass legislation itself.	36%	51%	30%	24%	35%	18%
Don't know / Not sure	29%	24%	30%	27%	32%	39%

(Senate voting intention)

To the best of your knowledge, identify whether the Australian Senate has or does not have each of the powers below.

To confirm or reject government appointments like judges and ambassadors

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Has	33%	37%	29%	33%	33%	33%	37%
Does not have	19%	22%	17%	21%	21%	18%	16%
Don't know / Not sure	48%	41%	55%	47%	46%	49%	46%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Has	33%	36%	34%	27%	28%	19%
Does not have	19%	20%	19%	22%	13%	19%
Don't know / Not sure	48%	44%	47%	51%	59%	61%

To confirm or reject treaties that the government has signed

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Has	38%	40%	35%	39%	38%	39%	40%
Does not have	20%	23%	16%	21%	19%	20%	16%
Don't know / Not sure	42%	36%	48%	39%	43%	41%	44%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Has	38%	40%	39%	36%	31%	28%
Does not have	20%	21%	19%	19%	22%	19%
Don't know / Not sure	42%	39%	42%	45%	47%	53%

To delay legislation that passes the lower house

	Total	Male	Female	NSW	VIC	QLD	WA
Has	57%	62%	51%	58%	52%	63%	53%
Does not have	11%	12%	9%	11%	13%	9%	9%
Don't know / Not sure	33%	26%	40%	30%	36%	28%	37%

	Total	Coalition	Labor	Greens	One Nation	Other
Has	57%	62%	55%	55%	50%	47%
Does not have	11%	10%	12%	13%	4%	10%
Don't know / Not sure	33%	28%	33%	32%	46%	44%

To pass or reject government legislation that passes the lower house

	Total	Male	Female	NSW	VIC	QLD	WA
Has	59%	65%	54%	60%	57%	65%	57%
Does not have	10%	12%	8%	12%	11%	9%	9%
Don't know / Not sure	30%	23%	37%	28%	33%	26%	34%

	Total	Coalition	Labor	Greens	One Nation	Other
Has	59%	64%	59%	58%	44%	50%
Does not have	10%	10%	10%	11%	13%	8%
Don't know / Not sure	30%	25%	31%	30%	43%	42%

To pass or reject private members' bills that pass the lower house

	Total	Male	Female	NSW	VIC	QLD	WA
Has	56%	62%	49%	58%	52%	59%	51%
Does not have	11%	11%	10%	12%	11%	10%	11%
Don't know / Not sure	34%	26%	41%	30%	36%	31%	39%

	Total	Coalition	Labor	Greens	One Nation	Other
Has	56%	61%	55%	52%	43%	45%
Does not have	11%	12%	10%	11%	10%	7%
Don't know / Not sure	34%	27%	35%	36%	47%	47%

To propose new legislation

	Total	Male	Female	NSW	VIC	QLD	WA
Has	46%	46%	46%	44%	46%	51%	42%
Does not have	20%	25%	15%	24%	17%	17%	23%
Don't know / Not sure	34%	29%	39%	32%	37%	31%	35%

	Total	Coalition	Labor	Greens	One Nation	Other
Has	46%	49%	46%	50%	38%	35%
Does not have	20%	21%	21%	21%	10%	13%
Don't know / Not sure	34%	30%	33%	29%	51%	52%

To introduce tax and spending legislation

	Total	Male	Female	NSW	VIC	QLD	WA
Has	33%	31%	34%	33%	32%	37%	26%
Does not have	28%	36%	20%	29%	27%	28%	30%
Don't know / Not sure	39%	33%	46%	38%	41%	35%	44%

	Total	Coalition	Labor	Greens	One Nation	Other
Has	33%	35%	33%	33%	19%	25%
Does not have	28%	32%	26%	28%	21%	23%
Don't know / Not sure	39%	33%	40%	39%	60%	52%

To set up its own inquiries even when the government opposes

	Total	Male	Female	NSW	VIC	QLD	WA
Has	42%	49%	34%	43%	41%	43%	37%
Does not have	15%	18%	12%	17%	15%	16%	14%
Don't know / Not sure	43%	33%	53%	40%	44%	41%	49%

	Total	Coalition	Labor	Greens	One Nation	Other
Has	42%	44%	43%	39%	35%	32%
Does not have	15%	16%	16%	17%	7%	13%
Don't know / Not sure	43%	40%	42%	44%	57%	55%

True or false?

Government ministers must come from the House of Representatives.

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
True	39%	37%	40%	41%	44%	34%	37%
False	24%	35%	14%	25%	22%	25%	21%
Don't know / Not sure	37%	28%	46%	34%	34%	41%	42%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
True	39%	39%	43%	35%	28%	30%
False	24%	28%	23%	23%	15%	21%
Don't know / Not sure	37%	33%	35%	42%	57%	49%

Who is paid more?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Members of the House of Representatives	17%	19%	14%	19%	17%	14%	13%
Senators	23%	24%	22%	20%	23%	25%	23%
They are paid equally	16%	18%	13%	18%	16%	13%	15%
Don't know / Not sure	45%	38%	51%	43%	44%	47%	49%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Members of the House of Representatives	17%	18%	16%	19%	12%	11%
Senators	23%	21%	26%	24%	28%	17%
They are paid equally	16%	16%	16%	19%	10%	11%
Don't know / Not sure	45%	45%	42%	38%	50%	61%

How long are Senators from states elected for?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
2 years	7%	6%	8%	7%	9%	5%	6%
3 years	15%	15%	15%	16%	16%	15%	17%
4 years	27%	29%	25%	27%	27%	28%	26%
6 years	15%	22%	9%	16%	12%	16%	18%
8 years	3%	4%	2%	3%	4%	2%	2%
10 years	0%	1%	0%	1%	0%	0%	0%
Until the next federal election	27%	20%	33%	26%	26%	28%	25%
None of the above	5%	3%	7%	5%	5%	5%	6%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
2 years	7%	7%	7%	13%	4%	5%
3 years	15%	16%	16%	11%	10%	15%
4 years	27%	27%	30%	28%	31%	16%
6 years	15%	18%	15%	15%	4%	12%
8 years	3%	3%	3%	3%	1%	3%
10 years	0%	1%	0%	0%	0%	1%
Until the next federal election	27%	26%	24%	23%	43%	35%
None of the above	5%	4%	4%	7%	6%	13%

In your opinion, which is fairer?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
The system used to elect the Australian Senate	10%	13%	7%	11%	12%	7%	9%
The system used to elect the Australian House of Representatives	19%	24%	13%	18%	23%	21%	15%
The systems are equally fair	37%	37%	36%	36%	34%	37%	39%
Don't know / Not sure	35%	26%	44%	35%	31%	35%	36%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
The system used to elect the Australian Senate	10%	10%	11%	11%	4%	8%
The system used to elect the Australian House of Representatives	19%	23%	18%	17%	9%	8%
The systems are equally fair	37%	38%	38%	34%	37%	27%
Don't know / Not sure	35%	29%	32%	38%	50%	57%

Where is Question Time held?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
The House of Representatives	34%	41%	28%	36%	34%	32%	30%
The Senate	11%	12%	11%	12%	11%	12%	8%
Both houses	25%	27%	23%	27%	25%	24%	25%
Neither	1%	1%	1%	1%	1%	1%	1%
Don't know / Not sure	29%	20%	37%	23%	29%	30%	36%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
The House of Representatives	34%	38%	32%	30%	26%	34%
The Senate	11%	10%	13%	15%	10%	7%
Both houses	25%	26%	27%	17%	32%	18%
Neither	1%	1%	1%	2%	1%	1%
Don't know / Not sure	29%	25%	28%	36%	29%	40%

What colour is the Senate, the upper house of Parliament, and what colour is the House of Representatives, the lower house of Parliament (e.g. their furniture and carpet)?

Senate

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Yellow	2%	2%	2%	2%	3%	2%	0%
Green	10%	9%	12%	13%	10%	8%	6%
Red	30%	35%	24%	33%	29%	25%	24%
Blue	4%	4%	4%	4%	4%	4%	4%
White	2%	2%	2%	2%	3%	1%	3%
Grey	2%	3%	1%	3%	3%	2%	1%
Black	1%	2%	1%	2%	1%	1%	1%
Don't know / not sure	49%	43%	54%	41%	46%	57%	61%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Yellow	2%	2%	2%	1%	0%	0%
Green	10%	10%	10%	15%	4%	11%
Red	30%	31%	32%	33%	19%	18%
Blue	4%	3%	4%	3%	1%	4%
White	2%	2%	3%	1%	0%	2%
Grey	2%	2%	2%	4%	1%	1%
Black	1%	1%	1%	1%	0%	1%
Don't know / not sure	49%	48%	44%	41%	74%	64%

House of Representatives

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Yellow	1%	1%	1%	2%	0%	2%	1%
Green	28%	34%	22%	34%	25%	24%	20%
Red	11%	9%	12%	11%	12%	9%	8%
Blue	5%	5%	5%	5%	7%	5%	4%
White	2%	3%	2%	2%	2%	2%	4%
Grey	2%	2%	2%	2%	3%	1%	0%
Black	2%	2%	2%	2%	3%	1%	2%
Don't know / not sure	48%	43%	54%	42%	47%	56%	61%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Yellow	1%	1%	2%	1%	0%	1%
Green	28%	32%	29%	30%	15%	18%
Red	11%	10%	12%	12%	4%	11%
Blue	5%	6%	6%	7%	3%	2%
White	2%	2%	3%	3%	1%	1%
Grey	2%	2%	2%	2%	0%	1%
Black	2%	1%	3%	4%	0%	1%
Don't know / not sure	48%	47%	44%	42%	76%	64%

To the best of your knowledge, does the Coalition Government currently have a majority in the Senate, and can pass legislation by itself?

Or does it not have a majority in the Senate, and need support from other Senators to pass legislation? The Coalition Government currently

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Does have a majority in the Senate	30%	34%	27%	31%	33%	28%	30%
Does not have a majority in the Senate	36%	42%	30%	38%	33%	37%	34%
Don't know / not sure	34%	25%	43%	31%	34%	35%	36%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Does have a majority in the Senate	30%	33%	31%	34%	21%	19%
Does not have a majority in the Senate	36%	40%	35%	32%	34%	29%
Don't know / not sure	34%	27%	34%	35%	46%	52%

In the current Parliament, the government is not able to pass legislation on its own, but needs to seek the support of crossbench Senators.

When enough crossbench Senators vote along with the opposition against legislation, that legislation does not pass.

Do you think this situation is normal or unusual for Australia?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
Normal	62%	68%	56%	61%	61%	64%	65%
Unusual	14%	15%	13%	15%	17%	11%	13%
Don't know / Not sure	24%	17%	31%	24%	22%	24%	22%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
Normal	62%	65%	64%	59%	51%	53%
Unusual	14%	15%	13%	16%	22%	11%
Don't know / Not sure	24%	20%	24%	25%	26%	36%

Appendix: Gallagher Index

The Gallagher Index (or index of least squares) is a method of determining how proportional the seats won by candidates in an election are compared to votes for those candidates. The lower the score, the more proportional the result.

To calculate the House of Representatives and Senate Gallagher Indexes, the author took the 2019 House of Representatives vote shares and the sum of the 2016 and 2019 Senate vote shares and compared them to MP and senator numbers in the 46th Parliament.

One weakness of the Gallagher Index is that results vary depending on how party votes are summed. For example, comparing the votes and seats of the two major parties to the sum of all other candidates results in a relatively low Senate index (13) but a high House of Representatives index (18). Alternatively, separating the vote and seat results for the Coalition's four constituent parties results in a relatively low House of Representatives index (12) but a higher Senate index (14).

Michael Gallagher himself uses the latter method in his aggregation of Gallagher Index scores for over 140 countries.¹¹⁴ This potentially misunderstands the nature of the Coalition's constituent parties since they are the result of both geographical and ideological divides. However, even with the Coalition treated as a single block, a researcher's decisions about which minor parties and independents to aggregate will still have a significant effect on the resulting Gallagher Index.

In addition, the Gallagher Index is a snapshot of a single election. A somewhat proportional system may inspire more parties and candidates to run for election and only deliver some of them the seats that they "deserve"; a disproportional system that dissuades candidates from running or voters from voting for them can receive a better Gallagher Index (c.f. the United States).

¹¹⁴ See "Values of indices" PDF file, Gallagher (2019) *Electoral systems: Michael Gallagher electoral systems site*

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