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## Executive Summary

As the debate on House of Lords reform develops in Britain, the option of a largely or wholly elected second chamber is liable to be attractive to many. Indeed this option has already received public support from the Mackay Commission appointed by William Hague and by a group of 157 MPs of all parties.<sup>1</sup>

Direct election is the most popular basis for membership of second chambers in other countries. This briefing focuses on two of those other countries - Italy and Australia - and their very different, directly elected, second chambers. Both the Australian and Italian Senates are elected by proportional representation, but within very different systems. The Australian Senate contrasts with a lower house elected by the Alternative Vote, which tends to give one party a majority, so the political balance in the Senate is very different. Its members serve six year terms while lower house members are elected for three years. The Italian Senate is elected by a similar system to, and on the same day as, the lower house.

The key points of interest about these second chambers include:

- Both the Italian and Australian Senates are very powerful with respect to the lower house. This is common amongst directly elected second chambers. Because they are directly elected they have high perceived legitimacy and may challenge the lower house. Although a directly elected chamber could in principle be given fewer powers, this situation might not be stable as it could bid for more power over time and might win public support.
- The Australian Senate has become a key part of the parliamentary machinery, scrutinising bills and investigating government's work more closely than the lower house. However, it does not challenge the supremacy of the lower house because it is seen as 'unrepresentative', due to the fact that all Australian states have an equal number of Senate seats, irrespective of their population.
- The Australian chamber is far more successful than the Italian one. The difficulty in Italy is that the chambers are too similar and have not developed distinct roles and characters. If a second chamber is directly elected it seems essential that this is on a different basis to the first chamber.
- This means that a proposal for a directly elected second chamber cannot be considered in isolation from the future of the voting system for the House of Commons, which is due to be put to a referendum. It seems preferable that the system for the lower - and more important chamber - should be decided first.
- The option of a second chamber elected by PR alongside a majoritarian House of Commons could offer a compromise position between those who are for and against PR for the Commons. However, it would be entirely different from the current House of Lords and herald a new form of national politics in the UK.

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<sup>1</sup> These MPs signed an Early Day Motion proposed by Conservative MP Andrew Tyrie in March 1999. The EDM attracted support from 80 Labour, 39 Conservative, 35 Liberal Democrat and two Plaid Cymru MPs.

## Introduction

The government has embarked on a two-stage reform of the House of Lords, with a declared long-term intention of creating a 'more democratic and accountable' upper house.<sup>2</sup> A recommendation for the form this house should take is due from the Royal Commission on Reform of the House of Lords, which is due to report at the end of 1999.

An obvious means of ensuring that a body is democratic and accountable is to elect it on a broad franchise. Thus to introduce these features into a reformed House of Lords could involve the creation of a new upper house which is either fully or partly elected by the people. Another alternative is to ensure that election plays a part in the process of selecting members, but that there is no direct link between the people and the members of the upper house – for example through elected councillors or MPs being responsible for choosing them. For this reason there is a distinction commonly drawn between 'direct' election by the people and more 'indirect' forms of election for upper houses.<sup>3</sup>

The majority of upper houses around the world include some element of election, most commonly direct election. A survey of the world's second chambers in 1996 found that 16 out of 58 chambers were entirely directly elected. A further seven included at least some proportion of directly elected members. This compared to 21 second chambers which were wholly or partly indirectly elected.<sup>4</sup> Countries that directly elect their second chamber include Argentina, Brazil, Chile, Croatia, the Czech Republic, Japan, Malaysia, Mexico, Nigeria, Poland, Romania, Switzerland and the US.

This briefing concentrates on two directly elected chambers in particular – those of Italy and Australia. These offer two contrasting models, in terms of both their origins and their current operation. One is a second chamber operating within a post-war European system and the other operates within a Commonwealth system which was heavily influenced by Westminster. They may also be contrasted both in terms of their electoral systems and their functions and powers. Thus they demonstrate two distinct directions which the British system could potentially follow, and the pitfalls and benefits of each. Their dissimilar natures also allow us to draw some lessons that are common to directly elected second chambers in general.

## Two chambers, two electoral systems

Although both directly elected, the Italian and Australian upper chambers differ in many ways. These differences become apparent as soon as the composition of the chamber, and the broader system in which it operates, are considered.

### Lower house

### Upper house

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<sup>2</sup> Labour Party general election manifesto, 1997.

<sup>3</sup> Indirectly elected upper houses will be the subject of a future Constitution Unit briefing.

<sup>4</sup> Coakley, J. and Laver, M. (1997). 'Options for the Future of Seanad Éireann', in *The All-Party Oireachtas Committee on the Constitution, Second Progress Report: Seanad Éireann*. Dublin: Government of Ireland.

### **Italy**

Name of chamber	House of Deputies	Senate
Members	630	325 (not fixed)
Electoral system	Proportional	Proportional
Term of office	Up to five years	Up to five years

### **Australia**

Name of chamber	House of Representatives	Senate
Members	148	76
Electoral system	Majoritarian	Proportional
Term of office	Up to three years	Six years

As the table shows, the upper and lower chambers in Italy have many similarities to one another, whilst the chambers in Australia have a distinct electoral system and electoral cycle. In both countries the upper chamber is almost exactly half the size of the lower chamber.

Italy has a tradition of proportional representation dating back to the adoption of the post-war constitution in 1948. Following the fall of Mussolini in 1943, the new constitution was designed to ensure a pluralist democracy with a powerful system of checks and balances. Hence it included a second chamber which, like the first, would be directly elected by the people using a proportional system. Although the electoral systems for both houses have recently changed<sup>5</sup>, they remain proportional and almost identical to each other. Both are based on single member constituencies with a proportional 'top up' or additional member element. The difference is that for the lower house the additional members are from party lists in 27 areas, and for the upper house seats go to 'best losers' in 20 regions. Because the lower house is larger its results tend to be marginally more proportional than those for the upper house, but the party balance in the two chambers is very similar. This is particularly the case as elections for the two chambers take place on the same day (see below).

The Australian constitution of 1901 marked the federation of six self-governing states, each of which had its own two-chamber parliament closely modelled on the Westminster system. The structure of the federal parliament reflects these influences. The lower chamber, the House of Representatives, is elected using the majoritarian system of the alternative vote. This system, based on single member constituencies where the first candidate to gain 50% of preference votes wins the seat, tends to result in a majority for the governing party.<sup>6</sup> The upper chamber, the Senate, was intended to represent the interests of the states. Each state has 12 seats in the upper chamber irrespective of its population, and two less populous 'territories' have two seats each. The term of office in the Senate is twice the length of that for the lower house, with half the members in each state being elected every three years, for six-year terms.

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<sup>5</sup> Following a referendum in 1993, the electoral systems for both chambers were changed from list-based proportional representation systems to the current additional member systems using single member constituencies. A further referendum on moving to a first past the post system for the lower house failed in April 1999.

<sup>6</sup> In periods when the right holds power this is strictly held by a 'coalition' rather than a party, due to the long established electoral pact between the Liberal and National parties, who govern together.

Since 1948 elections to the Australian Senate have used the proportional system of the single transferable vote. Each state elects six members - half its total - every three years, for six year terms. For these elections the state comprises one large constituency. This major difference between the electoral system for the upper and lower houses means that the Senate is far less likely than the lower house to have a government majority - in fact this has now not occurred since 1981. Rather, the balance of power in the upper house is held by small parties and independents, which tend not to be represented in the lower house.<sup>7</sup> The combination of half-Senate elections and the proportional system also mean that the Senate is far less susceptible to swings of political opinion which may affect the lower house.

In both Italy and Australia it was originally intended that the elections to the two houses of parliament should be at different times. The Italian constitution of 1948 gave the upper house a six-year term compared to a five-year term for the lower house. However, the Senate was dissolved a year early to coincide with the elections to the lower chamber in 1953, and again in 1958. In the end a constitutional amendment in 1963 shortened its term to five years. Consequently elections for the two chambers have always been held on the same day. In Australia Senators' terms are fixed at six years, whereas the election date for the lower house is in the hands of the government, with a maximum period between elections of three years. However, governments habitually time elections to coincide in order to avoid the Senate elections acting as a mid-term test.<sup>8</sup> Thus in both countries voting patterns for the chambers are kept as close to each other as possible, and Senate elections form part of the general election campaign.

The Italian Senate, renewed on the same day using a similar electoral system, does retain some distinctive characteristics as compared to the lower house. As in many upper houses the minimum age requirement for members is higher than that for the lower house - 40 as compared to 25. This results in a higher average age amongst its members. The voting age for the upper chamber is also higher, being 25 as compared to 18 for the lower house. Hence the electorates for the two are slightly different. Finally, and perhaps most importantly, the Senate contains a small number of unelected members. The number of elected members is fixed at 315 (exactly half the size of the lower house), but in addition there are currently ten ex-officio and appointed members. The ex-officio members are ex-presidents of the republic, who are entitled by right to sit in the Senate for life.<sup>9</sup> In addition each president is entitled to appoint up to five life members of the Senate (although the current president has chosen not to exercise this right). This adds a distinguished element to the upper house and slightly increases the probability of the government not having a majority. Current life members include two ex-presidents, and the youngest amongst the ten is 78-year-old Giovanni Agnelli, President of the Fiat car company.

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<sup>7</sup> Until 1948 the Senate was elected using a similar system to the lower house and tended to have an even larger government majority. The change was voted through by a Labor government in an apparent (and successful) bid to protect Labor's Senate seats in the face of an impending election defeat.

<sup>8</sup> The constitution allows elections for the Senate to take place up to one year before a Senate renewal, alongside a general election. However the old Senate will continue to sit until its due dissolution date. For example Senate elections were held alongside the general election of October 1998, with the new Senators not due to take their seats until 1 July 1999.

<sup>9</sup> The same provision exists in other countries such as Chile, Kazakhstan, Uruguay and Venezuela.

## The powers and functions of the chamber

The Italian and Australian upper houses carry out all the classical functions of a parliamentary chamber. These involve the scrutiny and voting into law of legislation, monitoring and holding the government to account, and carrying out various forms of investigation and debate. They also perform a representative function – a factor particularly important in Australia where the Senate is constitutionally the voice of the states in the federal parliament. However their abilities to carry out these functions are crucially affected by the powers with which the chamber is vested.

The major part of the chamber's work, in both cases, is consideration of legislation. This work is carried out both in the plenary sessions of parliament and in parliamentary committees. In both countries the second chamber has considerable powers in this area. Unlike in Britain there is no concept of a 'suspensive veto' in either Italy or Australia. The second chamber has the power to reject any piece of legislation indefinitely, and there is no mechanism internal to parliament by which to resolve disputes that arise between the chambers. In Italy legislation which is amended or rejected by the Senate may shuttle indefinitely between the houses, unless one house backs down or the legislation is dropped. In some cases this situation may continue for many years before government abandons the legislation or in some way the differences are resolved.<sup>10</sup> In Australia there is a resolution procedure which may be turned to in last resort. If legislation is rejected three times by the Senate (or amended by the Senate in a way the lower house does not accept), under certain conditions<sup>11</sup> the Prime Minister may initiate a 'double dissolution' of both houses of parliament. The disputed legislation may then be voted on again after the election and if the dispute continues the final say is given to a joint sitting of both houses – where lower house members outnumber Senators by two to one. However, in broad terms double dissolutions will tend to disadvantage the governing party, as electing all 12 seats in a state leads to a more proportional result in which minor parties will do better than in a half Senate election. Despite this disincentive governments have resorted to double dissolutions six times this century, the most recent being in 1987.

In practice much of the legislative scrutiny work in both countries takes place in committees. In both countries' upper houses, permanent committees broadly mirroring government departments are responsible for this work. In Italy the committees have an almost identical structure and role to committees in the lower house. In particular they share the unusual power of being able to agree laws without reference to the full chamber - the only issues which must be passed by the full house are those relating to the constitution, voting rights, international agreements and the budget. Thus a bill in Italy may pass between the relevant committees in the two chambers until it is agreed, without ever facing a plenary vote.<sup>12</sup> This

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<sup>10</sup> An extreme example of the Italian system was a bill to reform the rape laws, which shuffled between the chambers for 17 years before finally being agreed in 1995.

<sup>11</sup> The legislation must be rejected twice by the Senate, after which three months must elapse before it is agreed again in the lower house and rejected again by the Senate. The Prime Minister must ask the Governor General for a dissolution, which the Governor General must agree to. A double dissolution election may not be called within six months of the due date of election of the lower house.

<sup>12</sup> The decision on whether to agree a bill in committee or in the full chamber is made by the president of each chamber independently, so it is also quite possible that a bill will be referred to the full plenary of one house, but agreed by a committee in the other.

provision has contributed to the fact that Italy has the highest legislative output of any parliament in Europe. In the 1980s around one half of all bills were agreed in committee.

In Australia the number and scope of parliamentary committees has grown considerably in recent years, and this has been almost entirely due to the influence of the Senate. In fact the upper chamber is firmly at the centre of committee activity, both in terms of legislative scrutiny and more general enquiries. The committee system grew out of the demands of the minor parties in the Senate in the 1970s, and as these parties have continued to grow in strength the system has done likewise.

In both countries, as in Britain, government ministers may be drawn from either chamber. In both this tends to be in proportion to the number of members of the houses, resulting in around one third of ministers drawn from parliament coming from the upper chamber. In Australia a convention exists that the Prime Minister and Treasury Minister should be drawn from the lower house, but there is no such convention in Italy.<sup>13</sup> In both countries there are parliamentary questions to ministers in the upper house – an event that is daily in Australia and weekly in Italy. In Australia, as in Britain, ministers are restricted to answering questions in the chamber of which they are members. However, in Italy any ministers may be questioned in the Senate. Both chambers demonstrate a common feature of second chambers in relation to parliamentary questions: although question time is a theatrical affair, in general the quality of debate in the Senate tends to be higher than that in the lower house, due to the more relaxed and less media-dominated atmosphere.

However there is an extraordinary element in the relationship between the executive and the upper chamber in Italy. It is one of the few countries in the world where the government is equally accountable to both chambers – to the extent that a government may fall due to a vote of no confidence in the upper house. When a new government is formed it must face a vote of confidence in both chambers within 10 days.<sup>14</sup> This is rarely a serious hurdle, but government remains subject to a confidence vote in either chamber at any time. The last government to fall due to a vote of no confidence in the Senate was the Andreotti government of 1972.

The Australian experience demonstrates that there is a fine line between a power to reject legislation and a power to reject the government. Although in Australia the government is accountable only to the lower house, the worst crisis in Australian constitutional history arose when a government fell due to the actions of the Senate. In 1975 the Senate failed to pass finance bills necessary to allow government expenditure. Following a four week stand-off between the chambers, the Australian Governor General took unprecedented action in dismissing the government and dissolving both houses of parliament. This led to criticism of both the Senate and the Governor General, and calls for the Senate's powers over financial

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<sup>13</sup> The last time a Prime Minister sat in the Italian Senate was during the final premiership of Giuliano Andreotti in 1991-2. However, in Italy there is no requirement for ministers - including Prime Ministers - to be members of parliament, so governments may also include members who do not sit in either house. Two Prime Ministers in the last decade have been appointed from outside parliament.

<sup>14</sup> In fact the degree of symmetry between the two chambers of parliament is such that a convention exists saying that the first chamber to hold an initial confidence vote in the government will alternate with each new government.

legislation to be curtailed. However, these issues have never been resolved, and there has simply been a reversion to the pre-1975 convention that the Senate should never 'block supply'.

## **The politics of the chamber**

In both Italy and Australia the second chamber, due to its proportional electoral system, broadly reflects the political affiliations of the general public. In Italy this does no more than mirror the lower house, which is elected on an almost identical basis. However, in Australia there is a tension in the system, since the lower house is elected using a different electoral system that does not allocate seats in proportion to votes.

In the Australian system it is very difficult for either government or opposition to win a majority in the upper house. In general the balance of power in the chamber is held by a combination of independent members, Greens, and representatives of the third party, the Australian Democrats.<sup>15</sup> It is now an established part of political life that the Senate acts as a brake on government, and indeed the Australian Democrats' - who have never been represented in the lower chamber - were founded on the slogan to "keep the bastards honest". It is widely believed that the electorate votes tactically in order to preserve this balance and ensure that the Senate is as different as possible from the lower house. Despite the elections occurring on the same day, votes for minor parties and independents are consistently higher for the upper chamber.

The political balance in the chamber has been instrumental in its growing strength within the parliamentary system. The Senate is influential in the outcome of legislation and the small parties and independent members - who are the focus of much public attention - frequently win concessions from government. In coalition with the main opposition party, minor parties and independents in the Senate have recently successfully blocked the privatisation of the national telecom company, the introduction of national identity cards the subject of the dispute leading to the double dissolution in 1987) and are currently engaged in a heated debate over the proposed introduction of a Goods and Services Tax.

It was also the influence of the small parties in the chamber that helped create the now well established system of permanent committees that scrutinise bills and take evidence from interested parties. Prior to the growth of committees, the detailed consideration of all bills was taken in a 'committee of the whole' in both chambers. This continues to apply to passage of almost all bills through the government-controlled lower house, where legislation committees have been slow to develop. There is also a system of 'reference' committees in the Senate which carry out investigations and have no government majority. The decision to refer an investigation to committee is taken by the chamber, where the non-government parties may easily win support. These factors lead to many controversial enquiries being referred to these committees, and many committee reports which seek to expose government weaknesses. Even work by government-controlled legislative committees may result in high profile and controversial investigations - including an annual round of 'estimates hearings'

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<sup>15</sup> One side effect of the political balance in the Australian Senate is that, in contrast to many other upper houses, the degree of party control of the chamber is even tighter than that in the lower house. That is because the close balance between the parties makes adherence to the whip more critical in the upper house.



into the budget, which are not mirrored by any form of budget hearings in the lower house. Thus party competition in the Senate has created an important element of accountability in the Australian parliament.

In Italy many of the same procedures and structures exist. However, the lack of difference between the politics of the chambers means the essential tension existent in Australia is absent. Whilst committees in both chambers take hearings on bills, and both chambers are able to investigate and question government, their organisation and perspective is essentially identical. In Italy government may not have a majority in the Senate - most governments are in any case coalitions comprising many parties. But the similarities of the electoral systems means that this will simply mirror the position of government in the lower house.

### **Direct election: legitimacy and powers**

It is hard to argue with the legitimacy of a directly elected chamber. Unlike the House of Lords, the upper houses in both Italy and Australia have little hesitation from challenging the decision of the elected lower house, and the same appears to apply to many other directly elected second chambers worldwide. A study in 1997 found that of 58 second chambers around the world, 17 had roughly equal powers to the lower house. Of these 13 were wholly or largely directly elected.<sup>16</sup> It is thus no accident that in both countries the upper house has the power to amend and block legislation coming from the lower house, and has the power - either de jure or de facto - to bring down the government.

The proportional nature of the Australian upper chamber, in contrast to the lower house, would appear to present a danger of the upper house being seen as 'more legitimate' and seeming to take control. It is interesting that this does not happen. In fact it is widely appreciated - and frequently stated by all the political parties - that the lower chamber is the 'house of government'. It is on the basis of majority in the lower chamber that the party of government is decided, and this fact is largely respected. The 1975 crisis - which continues to loom large over relations between the chambers - is seen as an aberration never to be repeated. This does not mean that government goes unchallenged in the upper house, as demonstrated above. But challenges tend to be limited to detailed scrutiny and accountability work, and to large political issues where government is perceived to be acting without public support. The small parties are keen not to be seen as obstructionist, but will nevertheless make political mileage out of challenging unpopular government policies, such as the current attempt by the conservative government to introduce a Goods and Services Tax.

The reasons for this acceptance are probably twofold. The first is a historic attachment to the majoritarian form of government, whereby the party that wins the largest number of seats - irrespective of votes - has the right to govern. This system, inherited from Britain, applies in all but one of the Australian states and has been in operation nationally since federation in 1901 (applying to the Senate as well as the lower house until 1948). Proportional representation operates for most state upper houses, but has never been used to form

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<sup>16</sup> Coakley, J. and Laver, M. (1997). 'Options for the Future of Seanad Éireann', in *The All-Party Oireachtas Committee on the Constitution, Second Progress Report: Seanad Éireann*. Dublin: Government of Ireland.

government in Australia outside of Tasmania.<sup>17</sup> The second factor that prevents the domination of the lower house by the Senate is the system of equal representation for states. Under this system all states have 12 members of the Senate, despite large disparities in population. For example in the lower house, which is based on population share, Tasmania has five members whilst New South Wales has 50. This feature enables government members to claim that the Senate does not reflect the population and that, in the famous words of Prime Minister Paul Keating, Senators are “unrepresentative swill”. In fact the share of seats in the Senate is always very close to the share of votes nationally, although of course the system at least contains the potential for this not to be the case - for example if a successful party were to develop based in one or two small states alone.

### **A second chamber too like the first?**

So a directly elected second chamber is likely to demand considerable powers, and to use them to the full. But does this simply create a duplicate, and thus a rival, to the lower house? Is it possible for a second chamber to be directly elected and yet add something distinctive to functions performed by the first? As has already been demonstrated, Italy and Australia offer contrasting answers to this important question.

In Italy the second chamber is elected using an almost identical system to the first. It is elected on the same day, and thus tends to have the same party balance. It has the same powers over legislation, and the same power to sack the government. It has an almost identical set of committees, and almost identical procedures. The Prime Minister and ministers may be drawn from either chamber or none. All bills may be introduced in either chamber, with the strict parity between the chambers demanding that the budget is introduced in one house one year, and the other the next. Indeed it is not unusual for other bills to be introduced in both chambers simultaneously, to reduce delay. Altogether, aside from the higher average age of Senators, the smaller size of the chamber and the small number of unelected members, the Senate is almost indistinguishable from the lower chamber. It is a model example of what is technically referred to as ‘perfect’ bicameralism.

In fact a degree of competition exists between the chambers, which is fed by the exact sharing of duties between them. This is demonstrated for example by the way that most investigations in Italy are now sent to joint committees, rather than committees of either chamber, as consideration of an issue by one chamber alone may lead to jealousy and suspicion breeding between members of the two houses.<sup>18</sup> One chamber might react to establishment of a committee in the other by establishing a similar, competing, committee. Or it might refuse to consider the other committee’s report. Such tensions are alleviated by the creation of joint committees. However, the growing role of these committees has led to some concerns being expressed that the lines between the chambers are becoming blurred and Italy is sliding towards a form of unicameralism with two chambers. It is ironic that this is the same accusation often levelled at parliaments where the second chamber is particularly weak and unable to challenge the first.

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<sup>17</sup> The state of Tasmania has a two chamber parliament, with the lower chamber being elected using a proportional system and the upper chamber using a majoritarian system.

<sup>18</sup> In Australia there are also a number of joint committees, but with more limited functions.

The result of the similarities between the chambers is a high degree of scepticism in Italy as to the worth of the second chamber as currently constituted. There have been numerous calls for reform. However, these fit within a context of general dissatisfaction with the current constitution. Other matters – such as reform of the electoral system, the judiciary, and possible adoption of a directly elected president – are considered as being of higher priority. In January 1997 a joint committee was established to review the constitution, and proposed a complete new draft, which was discussed and amended in parliament in 1998. There were numerous proposals for reform of the upper house. These included removing the power of the Senate to sack the government and reducing the range of legislation over which the Senate would have a veto – leaving only, for example, constitutional amendments and penal law as bicameral issues. Instead the Senate would be given a new regional element, with 200 directly elected members being supplemented by 200 indirectly elected representatives from the regions, provinces and municipalities for consideration of issues particularly affecting these levels of government. These proposals drew on Italy's original plan to turn the upper house into a chamber of the regions, which are still formally reflected in the constitution. However, because the development of regional government was very slow, with assemblies not established in all regions until 1970, the interim Senate became a permanent feature. Despite the ambitious plans of 1997-98, at present it seems unlikely that the Senate will be reformed - at least until more pressing constitutional issues have been resolved - to finally give it a true regional flavour.

In Australia the Senate clearly has a more distinctive character. Differing from the lower house in terms of both electoral system and terms of office, it has a consistently different party balance to the lower house. It also has a more clearly defined role, with government ultimately responsible to the lower house alone, and senior government ministers concentrated there. It has gone on to establish a separate identity as a chamber carrying out many of the essential roles of parliament. This has been fuelled by the crucial mix of strong formal powers and a relatively independent voice, dominated by neither government or opposition.

The frequent meddling of the Senate in government business is by no means uncontroversial, but the major parties have a schizophrenic attitude to its reform. In general both parties are hostile to the Senate when in government, and calls for reform are commonplace from the governing party. However, on entering opposition both parties rapidly adapt to working with the minor parties to extract concessions from government, and vigorously defend the Senate against attack. So long as this pattern continues reform remains unlikely.

## **Lessons for the UK**

As debate develops in Britain on the final form that the new upper chamber should take, a directly elected chamber is liable to become an aspiration for many campaigners. The Mackay Commission appointed by William Hague has already recommended a largely elected second chamber as one of its two options<sup>19</sup>, and this may yet be adopted as Conservative Party policy. The aspiration of a directly elected chamber has also been signed up to by 131 MPs of all parties in the shape of an Early Day Motion sponsored by the

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<sup>19</sup> *The Report of the Constitutional Commission on Options for a new Second Chamber*, April 1999.

Conservatives' Andrew Tyrie.<sup>20</sup> Offering the attractions of democratic legitimacy and public involvement in its selection, such a chamber would be a radical departure from the current House of Lords.

Directly elected chambers exist in many countries. Based on this experience, and the experience of Italy and Australia in particular – as outlined in this briefing, we can draw numerous lessons about the way such a chamber might operate in the UK.

- A directly elected chamber would be powerful. The legitimacy it enjoyed would ensure that it had little hesitation in using whatever powers it was given. This would provide a strong contrast to the current House of Lords, which has the power to delay ordinary legislation for 13 months, financial legislation for a month, and to veto delegated legislation, but has used these powers only extremely rarely.
- The chambers examined in this briefing have extensive powers – far more extensive than the formal powers the House of Lords has now. Consideration might be given to creating a directly elected chamber with the powers of the current House of Lords, or even to reducing these powers on the basis that they would be more likely to be invoked. However, it is questionable whether such a situation would be stable. A directly elected upper house, and particularly one elected on a proportional system, would be unlikely to be satisfied to remain subordinate to the House of Commons for long. If the upper house had the power to initiate legislation there is a strong possibility that it could bid to increase its powers, and this could win public support.<sup>21</sup>
- In any case the power of a chamber goes far beyond what is formally written down. This is influenced by the regard in which the chamber is held, its political balance and its perceived legitimacy. The proportionally-elected Australian Senate also demonstrates how a chamber can gain more power for itself over time through modifying standing orders and through such measures as creating committees of enquiry.
- The representativeness of the new second chamber is key to its legitimacy. One of the factors which prevents the proportionally-elected Australian upper house from completely taking over the mantle of the lower house is the 'unrepresentative' nature of the distribution of seats. An upper house that was elected on a proportional system with seats allocated by population would be unlikely to be so restrained.
- Direct elections to an upper chamber would be liable to act as a mid-term verdict on the government if timed differently to general elections. This increases the likelihood of party political conflict between the houses. However, simultaneous elections blur the lines between the two houses and are liable to produce membership which is too similar if similar electoral systems are used.

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<sup>20</sup> EDM 464 had received 157 signatures by 7 May 1999. These comprised 80 Labour MPs (seven with amendments), 39 Conservatives (one amendment), 35 Liberal Democrat and two Plaid Cymru MPs.

<sup>21</sup> A rare example of a directly elected second chamber with weak powers is that of the Czech Republic. Created in 1993 it only has the power to delay legislation for 30 days. However, this is already creating tensions and there are bids by Senators to obtain more equal powers.

- The example of Italy demonstrates the problems of having an upper house that is too like the lower house. If both houses are to be directly elected it seems essential that they use different electoral systems.<sup>22</sup> However, this leads to the questions about legitimacy mentioned above, and to arguments about which house is more genuinely 'representative' of the views of the public.<sup>23</sup>
- Within the British context this important factor means that establishment of a directly elected upper house could not be considered in isolation. Whilst the electoral system is in question for the lower house – following the report of the Jenkins Commission on the Voting System<sup>24</sup> and prior to a referendum on the issue – it would be unwise to fix an electoral system for the upper house. The two must be considered in conjunction, and it seems desirable to fix the system for the lower, and more important, house first.
- Even with a different electoral system and different terms of office, a directly elected chamber is liable to adopt some of the characteristics of the House of Commons. In particular, it would be difficult to design a system of direct elections that did not result in a chamber dominated by the parties. It would be difficult to ensure continuing involvement of independent members under such a system.
- If the parties entirely dominate the chamber there are three broad possibilities. First, the government may have an overall majority in the chamber – this raises the danger of the chamber simply acting as a 'rubber stamp'. Second, the opposition party might have a majority – in which case the government might be constantly blocked by a hostile and powerful chamber. Third, there might be close parity between the parties, perhaps with the balance of power lying with minor parties. In this case – as is seen in Australia – government may function by negotiation and broad consent, but party discipline in the upper chamber is liable to become very strict.
- The desire to retain independent members in the chamber is one reason given for the consideration of an appointed element, maybe mixed with a predominantly elected membership.<sup>25</sup> However, the results of this are unpredictable. If the independent, appointed, members are decisive in the outcome of votes they may come under intense media scrutiny and attack by the parties. This is the case with the (elected) independent members in the Australian Senate who currently hold the balance of power. There have also been isolated controversies in Italy when the small number of appointed members have held the casting votes.

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<sup>22</sup> This is commonly accepted by experts who have studied bicameral systems – see for example Lijphart, A. (1984). *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries*. New Haven: Yale University Press.

<sup>23</sup> It is interesting that where systems differ for two directly elected houses it is more common for the lower house to be proportional – and presumably therefore seen as reflective of opinion – whilst the upper house is majoritarian. This is the case, for example, in the Czech Republic, Japan, Poland and Switzerland.

<sup>24</sup> *Report of the Independent Commission on the Voting System*, CM-4090-I, October 1998.

<sup>25</sup> See for example, *Modernising Parliament – Reforming the House of Lords*, Government White Paper (CM-4183), January 1999.

It seems clear from these two examples that there are successful and unsuccessful ways of devising a directly elected second chamber. The Italian upper house, which is almost indistinguishable from the lower house, adds little to the system except delay. In contrast, the Australian upper chamber brings in a different dynamic – and different parties – to the political system. It has carved out a distinctive personality as a chamber with powerful committees and mechanisms for holding government to account. In a Britain which remains undecided on its attitude to proportional representation, a proportionally-elected upper house on the Australian model could create a compromise position between the two options, retaining strong government but introducing an element of negotiation with minor and opposition parties. However, the Australian second chamber has a very different character to the House of Lords, and is subject to constant controversy in Australia. If a directly elected second chamber were introduced in the UK we would need to accept that this brings with it a new kind of politics quite unlike that which we are used to.

## **The Constitution Unit and the House of Lords**

This research was carried out as part of a comparative project on second chambers overseas, based at the Constitution Unit and funded by the Leverhulme Trust. The aim of the project is to inform the debate about reform of the House of Lords in the UK. This is the third briefing in the series coming from this project. The final output from the project will be a book, due to be published in November 1999.

The Constitution Unit has already produced a report and six briefings on reform of the House of Lords:

- Reform of the House of Lords (report) - £15
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- Rebalancing the Lords: The numbers - £5
- An Appointed Upper House: Lessons from Canada - £5
- A Vocationally Based Upper House?: Lessons from Ireland - £5
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To order any of these documents, request a publication list, or be put on the Constitution Unit mailing list for publications and events, please contact the Unit using the details given on the cover of this document.

# **A Directly Elected Upper House: Lessons from Italy and Australia**

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