

16 December, 2003

A SUBMISSION TO:

Constitutional Change
Legal and Cultural Branch
Department of Prime Minister
and Cabinet
3 - 5 National Circuit
BARTON ACT 2600

EXECUTIVE SUMMARY

This submission

(i) opposes the proposal for reform of Section 57 of the Australian Constitution as detailed in the discussion paper.

(ii) argues that Section 57, in its current form, has served Australia well and imposes an appropriate discipline on both the Government of the day and the Senators whether they be government, opposition, minor party or independent.

(iii) recommends restoration of the role of a Senator to more closely reflect the original purpose.

Comment

(i) opposition to proposal - the Council for the National Interest - Western Australian Committee (CNI) generally rejects the argument put forward in the "Executive Summary" to support the case for "Option 1 - Joint Sitting without an Election and Option 2 - Joint Sitting following ordinary Election."

In particular CNI rejects the key conclusion of the 1959 bipartisan committee that "Section 57 needs to be amended in such a way as to maintain the principle of responsible government and to ensure the precedence of national interests over other interests."

This key conclusion is advanced as an argument for Changing Section 57. CNI rejects the notion that the Australian Constitution was ever intended to "ensure the precedence of national interests over other interests." In fact proper recognition of some "other interests" could well be in the national interest. Further the prime purpose of the Senate, as perceived by the founding fathers, was to ensure proper protection was given to other interests" e.g. the interests of a State.

(ii) Section 57 has served Australia well - the fact that Section 57 requires a double dissolution imposes on all Senators the discipline of ensuring that they act in a proper way to reflect a clear and unambiguous mandate from the people or to respond to the will of the people. It also imposes on the Government of the day the discipline to ensure that the legislation rejected by the Senate is reasonable, does reflect a clear electoral mandate and also does reflect the will of the people. This dual discipline on the Senators and the Government must remain in place to support the democratic process of responsible government.

(iii) Restoration of the role of a Senator - the difficulties complained of in the discussion paper would be substantially ameliorated by firstly allowing Senators a free vote rather than requiring them to “toe the party line” and secondly, discontinuing the practise of appointing Senators to Ministerial positions.

RECOMMENDATIONS:

CNI recommends:

- (i) that Section 57 be not altered.
- (ii) that all Senators be allowed to vote on legislation according to the individual Senator’s judgment on the effect of the legislation on the State or Territory which the Senator represents
- (iii) that no Senator be appointed to the Ministry. Ministerial responsibility should be the task of members of the House of Representatives, solely

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