BOOK REVIEWS

Australian Senate Practice by J. R. ODGERS, Clerk of the Senate. (Australian Government Printing Service, 1976, 5th Edition. Also published as Parliamentary Paper 1976, No. 1), pp. i-xxi, 1-707. Cloth, recommended retail price $22.10 (ISBN: 0 642 02045 0); Paperback, recommended retail price $14.10 (ISBN: 0 642 02293 3).

Since the appearance of the first edition in 1953, Odgers' *Australian Senate Practice* has been invaluable, not only to those who work in Parliament House, but also to the growing number of public servants, lawyers, academics and journalists who have to understand what is happening there. It is surprising, though not Mr Odgers' fault, that his enterprise has not been duplicated for the House of Representatives, and perhaps the appearance of the fifth edition on the eve of its jubilee of *Senate Practice* might encourage the Speaker and Officers of the House to think again about keeping up with their neighbours.

As the work purports to be, and indisputably is, encyclopaedic, a reviewer's efforts can be directed to identifying changes and trends in the latest edition. Mr Odgers helpfully identifies what he regards as the more important developments in the role, composition and practice of the Senate in his Preface, and certainly the years since the fourth edition appeared in 1972 have been as eventful as any in the Senate's history. Despite the speedy production of so large a book, it has been overtaken in at least one area: the success of the referendum proposal for casual Senate vacancies confirms the wisdom of Mr Odgers' comment on the 1975 appointments of Senators Bunton and Field:

> The effect is to distort the vote of the people and so put at risk the Senate's powers, which stem from its fully elective and representative character. It is imperative that the States take heed of the resolution of the Senate commending to the Parliaments of all States the practice [note that the author does not say "convention"] which had prevailed since the introduction of proportional representation in 1949 whereby the States, when a casual vacancy has occurred, have chosen a Senator from the same political party as the Senator who died or resigned. The Commonwealth Government for its part should not strain the practice by any action likely to antagonise the States in the matter of casual vacancies. (page xix)

Although the amendment leaves problems when the departed Senator had been an Independent or represented a minor party since deactivated, the situation is certainly better than it was.

The 1974 rejection of the referendum for simultaneous elections was noted approvingly with the comment that the quality of independence given the Senators with fixed six-year terms (save after a double dissolution)

> would disappear if Senators, through no fault of their own, could have their terms shortened by any mid-term dissolution of the House of Representatives, such as occurred in 1929 seven months

> after the first meeting of that House. Lacking independence, the Senate would live in the shadow of the House of Representatives and fast lose its character as an independent House of review. (page 91)

The comment is sound so far as it goes, provided one wants a co-equal upper house, but does not deal with the political aspect of the matter. Separate elections are more likely to produce a Senate the party composition of which does not mirror that of the House, and by being different it will be more independent. The early dissolution of the House at the end of 1977 has brought elections back into step, though the Prime Minister's statement on the matter[1] left obscure the extent to which the Governor-General granted the dissolution to ensure simultaneous elections (in addition to, or instead of, ensuring economic confidence) and thus preferred the view of a 62 per cent majority of the electorate to the constitutional requirement of a majority of states which had been refused by the electors of three states.

Undoubtedly the most important development since the fourth edition was the affirmation of the power of the Senate to reject or defer a money bill, and the consequent demonstration by the double dissolutions "that a Government which has been denied Supply by the Parliament cannot govern and should advise a general election or resign" (page xix). Mr Odgers argues strongly that "[a]ny contention that there is a convention that the Senate should not defer or reject money Bills is insupportable" (page 61) and claims that the Senate's veto power over *all* legislation was vital to the formation of the federation and that the need for the power is as real today, "indeed, with greater Federal involvement in matters affecting the States and the people, the need is greater" (page 61).

However, he is more coy in following through the implications of this power. Under the heading "Motions of No-Confidence, and of Censure" tucked away in the chapter on Miscellaneous matters, he observes:

> Whereas the passing of a no-confidence or censure motion in the House of Representatives could spell the doom of a government, a similar resolution in the Senate would not necessarily mean the fall of the government. (page 617)

and then refers the reader to pages 367-368 which set out the co-equal powers of the Senate, except in the origination of money grants and tax measures, and declare that the greatest of the Senate's powers is the ability to withhold Supply and force a dissolution of the House or of the Parliament. In the previous edition, the passage just quoted had read:

> Whereas the passing of a no-confidence or censure motion in the House of Representatives could spell the doom of a government, a similar resolution in the Senate would not mean the fall of the government, centred as it is in the House of Representatives.

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[1] H.Rep.Deb. 27 October 1977, 2476-2477.

and been preceded by the sentences:

> Substantive motions of no-confidence in the Government, and motions of censure, are not usually moved in the Senate because, even if carried, they would have no real significance. Governments are made and unmade in the House of Representatives, not the Senate. . .[2]

That is now demonstrably no longer the case.

Mr Odgers is even more guarded on the implication of the Senate's power for a successful motion of censure on a Minister. The censure of the then Attorney-General in 1973 is noted with the comment that the resolution "did not involve the resignation of the Minister" and the interesting information that at the time the President had prepared for subsequent use of a statement which said in part that he was not aware of anything in the Standing Orders which required him to take any action as a result of the resolution of censure and that he should not adjudicate upon "any question involving the Executive Government" so far as that was concerned (page 619). Nor is there anything in the Standing Orders of the House which requires a Minister censured by that House to resign, but the expectation is that either he would or else the Government would treat the matter as one of confidence and resign collectively or seek a dissolution.

On the basis of past experience that what Mr Odgers writes today, the Senate frequently thinks tomorrow, one other addition in this edition warrants mention:

> Compared with the 2 to 1 ratio as between numbers in the two Houses . . . the Senate is not well represented in the Ministry. On the principle of the 2 to 1 ratio, the Senate in a Ministry of 24 has a claim for 8 Ministers. It is of interest to note that the South Australian Constitution provides that the number of Ministers shall not exceed 10, with not more than 7 from the Lower House. (page 612)

Certainly a co-equal upper house might be expected to have its status, not to say stature, recognised appropriately.

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[2] Odgers, *Australian Senate Practice* (4th ed. 1972) 549.

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