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## PRIME MINISTER

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AUSTRALIAN CONSTITUTIONAL CONVENTION ITEM NO. H8

THE POWER OF THE SENATE IN RELATION TO MONEY BILLS

The motion moved by the Leader of the Opposition in the Commonwealth Parliament seeks to remove the Senate's power to reject, defer or in any other manner block the passage of laws appropriating revenue or money, or imposing taxation.

I assume from the fact that this motion is moved, that in fact past arguments as to whether the Senate had the power it exercised in November 1975 have now been effectively abandoned. It ought now to be clearly acknowledged that the Senate has the power and that its use of the power was fully constitutional.

Both sides of the Federal Parliament have recognised in the past that the Senate has the power to disallow money bills. This was actively contended by the then Opposition in 1970 and again by the Opposition in 1974.

In 1975 the power was not only claimed but was demonstrated and the Senate's action was overwhelmingly endorsed by the people. Section 1 of the Constitution clearly vests the legislative power of the Commonwealth in a Federal Parliament consisting of The Queen, the Senate, and the House of Representatives. Section 53 places certain limitations on the Senate's powers to introduce and/or amend money bills, but categorically states that otherwise the Senate shall have equal power with the House of Representatives in respect of all proposed laws. Section 58 requires that a proposed law be passed by both Houses before it is presented to the Governor General.

There is overwhelming agreement by Australian Constitutional authorities that the Senate has the legal right to defer or reject money bills. This has been explicitly stated by Quick and Garran, Odgers and others.

It has been claimed by some that the Senate's power to reject a money bill "has atrophied and become a dead letter", that there exists some convention that the power not be used. This would seem to be a nonsense. Every money bill since Federation has gone to the Senate for consideration by it. The Senate has voted on each such bill. The power to consider and vote cannot become atrophied.

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How then can one say that the Senate must vote on a bill but cannot say no, or, for that matter, defer a decision?

If a Senator seeks to vote against a bill, is his vote to be rejected? If not, how can the Senate be prevented from rejecting a bill if that is how the majority of Senators vote? Clearly, the Senate can also vote to defer any matter.

It is interesting to note the recent judgement in Victoria versus the Commonwealth in the Petroleum and Minerals Authority Act. In this case of the three judges who commented on the Senate's powers, each clearly indicated that they were of the view that the Senate could reject any bills including money bills.

As the Founding Fathers foresaw, it is of course only proper that the Senate should have power to refuse passage to any legislation, including money bills. The reasons will be appreciated by the State delegates to this Convention but I am sure they will bear with me if I reiterate them.

The money power in the Senate is vital for two main reasons:

1. It is a power which enables the removal of a disastrous government: and
2. It provides important protection for the four less populous States against the possibility that the taxpayers' money, raised uniformly per capita throughout Australia, might be heavily concentrated within the two larger States which have the numbers to dominate the Lower House.

The Australian Constitution is a Federal constitution devised by representatives of the States. They insisted that the Senate as the States' House, have some control over Federal expenditure.

The States reflect an important element of Australian political and social reality. Australia is to a considerable extent composed of great regions which are largely reflected in our State structure. The motion which would curtail the Senate powers blatantly ignores this Federal reality and is not in the interests of effective government. The Senate is an essential element of our system of government and in the political cohesion of Australia.

One of the Senate's functions is to safeguard the interests of the States. Another is to act as a house of review with the responsibility of expressing second opinions in relation to legislative and other proposals initiated in the House of Representatives.

The existence of a house of review brings an element of moderation into government. The Senate plays a major role in the preservation of our Federal democracy.

The Senate powers are checks and balances against any concentration of unbridled power in the executive government, or against any misuse of power or mismanagement of a government. The Senate is elected from the same body of electors as is the House of Representatives. It is a second democratic chamber with a particular role in our Federal system of government.

With their commitments to the basic concepts of Parliamentary government, it would have been inconceivable to the Founding Fathers that a government might ignore the cardinal Parliamentary convention that a government unable to pass supply through the Parliament must go to an election. The blunt fact is - a fact on which Parliamentary supremacy over the executive has always been founded - that a government without money cannot rule.

Sir Charles Court has suggested that the Constitution should be strengthened by providing an automatic procedure by which a failure to obtain supply can be resolved. The present provisions, while they have proved adequate in the event, provide great temptations to a government willing to ignore convention and law.

Sir Charles sees the need for a procedure giving formal expression in the Constitution of the long standing convention that a government refused supply must face the people. We must also consider that fact that it was only fortuitous in November last that the necessary conditions existed at the time for a double dissolution pursuant to Section 57.

Sir Charles has submitted that if the Senate refuses supply to the government and the Prime Minister is thus forced to seek an election to resolve the issue, then the Senate should itself also face the judgement of the people, that it should not simply be able to force the House of Representatives alone to face the people.

The provision Sir Charles seeks, would of course, help to ensure that the Senate will continue to recognise that its power to refuse supply is a power not to be lightly exercised. There is great weight in Sir Charles Court's view that if the annual appropriation or supply bills fail to pass within thirty days, there should be a double dissolution of the Parliament and an election held and that the Constitution should provide for this sequence of events.

The Parliament of our country includes the Senate. It is not without significance that those who seek to restrict the powers of the Senate are committed in party philosophy to the abolition of the Senate totally and of the states. The Government which I lead is not. On the contrary, we accept the Federal character of the Australian Constitution. We accept that the Government of Australia is the Crown, the Senate and the House of

## Representatives.

We believe that Federalism is, and ought to be, a living reality in our Governmental structure and that a Senate vested with the powers it has under the Constitution, is a vital element in a cohesive Federal system. The Senate's powers are deliberately grave. They should be gravely exercised.

The provisions governing their exercise are capable of improvement. It is in the direction of improvement that we believe reform should be made.

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