

# Reforming the Dewan Negara: Its Evolution and Options for Reform

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## Abstract

Despite its prominent position as the upper House of the Malaysian Parliament, the inherent structural and operational weaknesses of the *Dewan Negara* culminates in a chamber that fails to inspire public attention and confidence. This is a significant contrast with the attention that the lower House, the *Dewan Rakyat* usually draws and is a departure from the original vision that it should be an influential forum of debate and discussion. Nonetheless, the general apathy with which the public may perceive the chamber should not distract from the benefits that serious reform of the chamber may provide. As attention paid to parliamentary reform in Malaysia increasingly focuses overwhelmingly on the *Dewan Rakyat*, it is equally important that the *Dewan Negara* be considered as an integral element to any parliamentary reform efforts. In dealing with this issue, this paper explores the historical evolution of the *Dewan Negara* and the current issues it faces. It then performs a comparative study of the Australian and Canadian Senates to glean usable lessons, culminating in a discussion of possible reform options for the *Dewan Negara*.

**Keywords:** Reform, Dewan Negara, Constitutional Law, Parliamentary Democracy, Upper Houses

## Introduction

The Malaysian Parliament is a quasi-mirror of the Parliament of the United Kingdom. It consists of two chambers, namely the *Dewan Rakyat* and the *Dewan Negara*, both parallels of the House of Commons and the House of Lords respectively. Much like its British counterpart, the *Dewan Rakyat* is composed of elected Members, and is constitutionally designed to be the preeminent House in contrast to the unelected *Dewan*

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*Negara*, resulting in the latter's lesser public prominence versus the elected *Dewan Rakyat*.<sup>1</sup>

The lack of attention given towards the *Dewan Negara* distracts from the original vision that it should be an "influential forum of debate and discussion"<sup>2</sup> to contribute "valuable revision"<sup>3</sup> to legislation. Instead, a common sentiment today is that the *Dewan Negara* serves as a rubber stamp to legislation passed by the *Dewan Rakyat*.

While the topic of Parliamentary reform has gained steady traction amongst civil society, greater attention is placed on the *Dewan Rakyat* than the *Dewan Negara*. This is arguably to the detriment of not only to the *Dewan Negara* itself, but also to Malaysia's Parliamentary democracy as a whole. This paper will attempt to shine a spotlight on the *Dewan Negara* by, firstly, examining and tracking the constitutional evolution of the chamber both before and after Merdeka, and thereafter by critically assessing its present-day performance. A comparative study involving the Australian and Canadian Senates is then undertaken, followed by considerations of possible reform options that may be adopted for the *Dewan Negara*.

## **Powers of the *Dewan Negara***

The existence of the *Dewan Negara* is governed by Article 44 of the Federal Constitution,<sup>4</sup> which establishes the Parliament as being composed of the *Dewan Rakyat* and the *Dewan Negara*:

The legislative authority of the Federation shall be vested in a parliament, which shall consist of the Yang di-Pertuan Agong and two Majlis (Houses of Parliament) to be known as the *Dewan Negara* (Senate) and the *Dewan Rakyat* (House of Representatives).

Mirroring the *Dewan Rakyat*, the *Dewan Negara* can introduce legislation, alongside reviewing, revising and holding debates over legislation<sup>5</sup> passed by the *Dewan Rakyat*.

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1 A. Harding, 'The Dewan Negara and Constitutional Reform: Upper Houses in Comparative Perspective' (2021) 1 *Journal of the Malaysian Parliament* 55, 56.

2 Reid Commission, *Report of the Federation of Malaya Constitutional Commission 1957* (Her Majesty's Stationery Office, 1957) para 64 (iv).

3 *ibid.*

4 Federal Constitution of Malaysia, art 44.

5 *ibid.* art 66(1).

However, the similarities end here. To begin with, the chamber is restricted from introducing or amending “Money Bills”<sup>6</sup> which remain the sole domain of the Dewan Rakyat. In the event where the *Dewan Negara* does not pass a Money Bill without amendments within a month, Article 68(1)<sup>7</sup> provides for the Bill in question to be presented directly to the Yang di-Pertuan Agong for assent, bypassing the *Dewan Negara*.

The *Dewan Negara* also faces similar restrictions for other Bills. Under Article 68(2)<sup>8</sup>, the *Dewan Negara* may reject a Bill or pass it with amendments not agreed to by the Dewan Rakyat. This will result in the Bill in question being debated again by the Dewan Rakyat at least one year after its initial passage in the Dewan Rakyat.<sup>9</sup> Should the Dewan Rakyat pass the Bill without accepting any amendments by the *Dewan Negara* (or with those defined in Article 68(3)<sup>10</sup>), and upon being sent to the *Dewan Negara* it is rejected or passed with amendments not agreed to by the Dewan Rakyat, the Bill (either in its original form or with mutually agreed amendments) will be presented directly to the Yang di-Pertuan Agong for assent.

Effectively, this allows the Dewan Rakyat to completely bypass any serious objections the *Dewan Negara* might have against incoming legislation, negating the possibility of a deadlock occurring between the two Houses over legislative disagreements. The Dewan Rakyat may choose to not negotiate with the *Dewan Negara* should the Bill lack urgency, as it can simply repeat the legislative process again and constitutionally bypass the reservations of the *Dewan Negara*.<sup>11</sup>

## Composition of the *Dewan Negara*

The *Dewan Negara*'s composition is set out in Article 45 of the Federal Constitution.<sup>12</sup> It is composed of 70 unelected Senators, all appointed or elected to three year terms with a further two-term limit. The Senators

6 *ibid.* art 67(1); The phrase “Money Bills” here is defined by Article 67(1) and refers to Bills that primarily concern taxation and financial matters of the Federation.

7 Federal Constitution of Malaysia, art 68(1).

8 *ibid.* art 68(2).

9 *ibid.* art 68(2)(b).

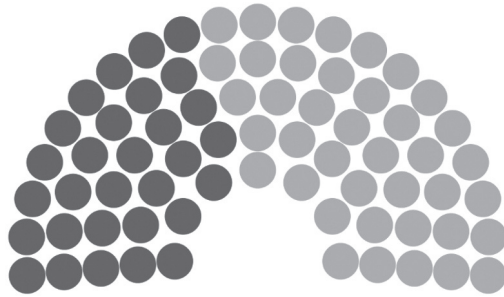
10 This refers to alterations to the Bill certified by the Speaker of the *Dewan Rakyat* to be necessary owing to the time which has elapsed since the Bill was passed in the earlier session, or to represent amendments made in that session by the Senate.

11 Harding (n 1) 61.

12 Federal Constitution of Malaysia, art 45.

are broken down into 30 Senators:<sup>13</sup> two representing each of the 13 States of the Federation and Kuala Lumpur respectively, and one each from the other two Federal Territories - Labuan and Putrajaya. The other 40 Senators are appointed by the Yang di-Pertuan Agong.<sup>14</sup>

**Figure 1.** Graphic representing the current majority of appointed Senators in the chamber. Dark grey represents State Senators while the light grey represents the federally appointed Senators.



Twenty six (26) State Senators are appointed by their respective state assemblies. As the Federal Territories do not have legislative assemblies of their own, their Senators are appointed by the Yang di-Pertuan Agong, as is also the case with the 40 federally appointed Senators.

While the Senators are officially appointed by the Yang di-Pertuan Agong, in practice it is the Prime Minister who is responsible for the nomination of individuals as prospective Senators. Within the context of Malaysia's constitutional monarchy, the Prime Minister is effectively the final decision maker in the appointments process for Senators.

The President and the Deputy President are the presiding officers of the *Dewan Negara*. Article 56 (1) requires the President and the deputy to be chosen from among the 70 Senators. This differs from the *Dewan Rakyat*, where a person need not be an MP to be elected as Speaker.

## Evolution of the *Dewan Negara*

### *The Federation of Malaya*

The present Malaysian Parliament has its roots in the constitutional proposals drawn up by the Reid Commission for the Federation of

13 Hereinafter referred to collectively as "State Senators" unless otherwise stated, as FT Senators still represent a territory despite being federally appointed.

14 Hereinafter referred to as "federally appointed Senators".

Malaya<sup>15</sup> in February 1957. The Commission proposed a bicameral legislature, a structure later adopted for the Malayan (and subsequently Malaysian) Parliament. In addressing the role of the *Dewan Negara*, the Commission conceived it as being an “influential forum of debate and discussion”,<sup>16</sup> and contributing “valuable revision”<sup>17</sup> to legislation. The *Dewan Negara*’s secondary role compared to the Dewan Rakyat was also specifically emphasised, complete with the assertion that the *Dewan Negara*’s exercise of its power to delay legislation would be in “exceptional” cases.

The Commission envisioned the *Dewan Negara* as an indirectly elected body, with the majority of the members being elected by the legislative councils of the 11 Malayan States (the State Senators). The remaining members would be nominated for a term by the Yang di-Pertuan Agong<sup>18</sup> (the federally appointed Senators). A majority of the Commission recommended that the *Dewan Negara* be composed of two Senators from each of the 11 Malayan states, and of 11 nominated members. This gave the proposed Malayan *Dewan Negara* a composition of 22 State Senators and 11 federally appointed Senators, making a grand total of 33 Senators.

The requirement for federally appointed Senators were a matter that the Rulers and the Alliance parties specifically advocated for in their memoranda evidence to the Commission. Disappointingly, the report did not elaborate on the details of any of the specific arguments made in favour of these appointed Senators, though it may be speculated that their advocacy could very well have been centred on the need for distinguished individuals and representatives of ethnic minorities to be represented in the legislative process, especially given that this was proposed and later adopted as the criteria for appointed Senators.

Nevertheless, two members of the Commission—Sir William McKell and Justice Abdul Hamid dissented,<sup>19</sup> deeming an unelected *Dewan Negara* to be unjustifiable. Viewing an unelected *Dewan Negara* as not conforming to the system of parliamentary democracy, they described it as being incompatible with the desire of Malaysians to enjoy “self-government in the real sense and democracy in its purest form”. Yet perhaps most poignant was their invoking of the spirit of Merdeka:

15 The Federation of Malaya Constitutional Commission.

16 Reid Commission (n 2) para 64 (iv).

17 *ibid.*

18 Called the “Yang Di-Pertuan Besar” in the report.

19 Reid Commission (n 2), Note by Sir William McKell and Mr Justice Abdul Hamid on Paragraphs 61 and 62.

Merdeka, to the celebration of which the people of Malaya are looking forward, means to them freedom, freedom to govern themselves through representatives of their own choice under a system in which their parliamentary institutions shall be exclusively representative of the people's will.<sup>20</sup>

In particular, they noted the irony of allowing Malaysians to directly elect the members of the predominant lower House, while not trusting them to elect the members of the much "weaker" *Dewan Negara*.<sup>21</sup> Addressing the inclusion of federally appointed senators, they described this class of Senators as being out of step with a parliamentary democracy,<sup>22</sup> due to the fact that while they are able to debate, vote on, and delay legislation already passed by the lower House - their being appointed rather than elected precludes them from public accountability.<sup>23</sup> Specifically, the inability to vote a Senator out of office is mentioned,<sup>24</sup> which is evidently applicable in cases where the *Dewan Negara* votes down legislation popularly supported by the people, or legislation that forms part of the governing party's manifesto. Similar arguments were also made by the duo against the proposed indirect election of State Senators by the state assemblies, arguing that the Federal Parliament should not be concerned with local matters.<sup>25</sup>

Their views ultimately remained a dissenting opinion, but the Commission allowed the possibility of the composition of the *Dewan Negara* being amended along similar arguments in the future. They subsequently recommended that the Malayan Parliament should have the powers to affect any such changes if they so desire, and this was indeed accepted and later incorporated into the Constitution.

The eventual Malayan *Dewan Negara* was very close to the Commission's recommended composition. In the absence of access to the original text of the Malayan Constitution, the annotated version of the current Constitution gives the Malayan *Dewan Negara* as having 16 federally appointed members rather than the recommended 11.<sup>26</sup> This would have given the *Dewan Negara* a composition of 22 State Senators and

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20 *ibid.*

21 *ibid.*

22 *ibid.*

23 *ibid.*

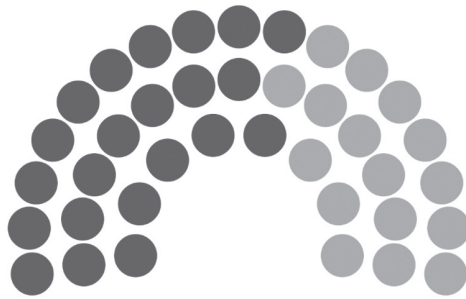
24 *ibid.*

25 *ibid.*

26 The Commissioner of Law Revision, *Federal Constitution of Malaysia* (15th reprint) notes on Article 45.

16 federally appointed members—a total of 38 Senators. Despite this apparent increase in numbers of appointed senators, the balance in the House still tilted towards the State Senators by virtue of their numbers alone. The *Dewan Negara* would retain this composition until the formation of Malaysia in 1963.

**Figure 2.** Graphic illustrating the first Malayan Dewan Negara and its majority of State Senators. Dark grey represents State Senators while the Light grey represents the federally appointed Senators.



### ***The Federation of Malaysia***

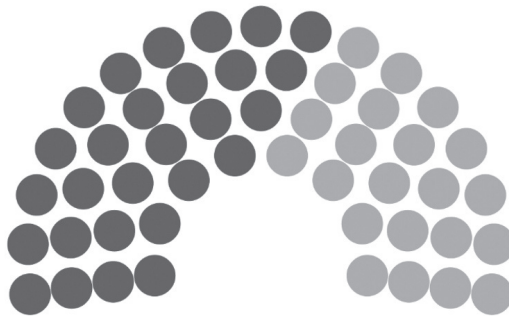
The formation of Malaysia in 1963 saw a further evolution of the existing Malayan constitutional framework to accommodate the new additions of Singapore, Sabah (North Borneo) and Sarawak. What ultimately became the present Malaysian constitution was the result of deliberative work performed by two bodies created in 1962: the Cobbold Commission and the Inter-Governmental Committee (IGC). The former was setup first and foremost as a commission of enquiry to determine Sarawakian and Sabahan attitudes to the formation of Malaysia. In addition to its findings, the Commission's report also contained recommendations on the constitutional arrangements to be implemented for the expanded federation. The findings and recommendations of the Cobbold report<sup>27</sup> were further considered by the IGC, formed of representatives of the British, Malayan, North Borneo and Sarawak governments. Unlike the Cobbold Commission, the IGC's area of deliberations were wholly concerned with constitutional matters, and its recommendations formed the basis of many new provisions designed to safeguard Sabah and Sarawak's position in the federation.

<sup>27</sup> Commission of Enquiry, North Borneo and Sarawak, *The Report of the Commission of Enquiry: North Borneo and Sarawak 1962* (Colonial Office, 1962).



Both the Commission and the IGC maintained the existence of the *Dewan Negara* and expanded the existing composition to include Senators from the new States. The Commission in particular recommended a continuation of the existing quota of two State Senators per state,<sup>28</sup> which was accepted by the IGC.<sup>29</sup> This was premised on the Commission's findings that it would be "difficult" to increase the allocation to more than two Senators per state,<sup>30</sup> and implied that further state representation should be achieved through the federally appointed members.<sup>31</sup> The IGC did not make any reference to these remarks in their final report, but both bodies differed on the amount of federally appointed senators to be added to the existing composition. While the Commission recommended the addition of eight appointed Senators,<sup>32</sup> the IGC eventually settled on six appointed Senators with no further explanation.<sup>33</sup> This, along with two State Senators for Singapore, was incorporated into the Constitution on the 16th of September 1963 (i.e Malaysia Day). The initial Malaysian *Dewan Negara* therefore featured 28 State Senators and 22 federally appointed Senators - making a total of 50 Senators in the *Dewan Negara*, an increase of 12 from the Malayan *Dewan Negara*.

**Figure 3.** Graphic illustrating the expanded Dewan Negara at the formation of Malaysia. Dark grey represents State Senators while the Light grey represents the federally appointed Senators.



28 *ibid.* para 190(g).

29 Intergovernmental Committee on the proposed Federation of Malaysia, *Report of the Inter-Governmental Committee 1963* 2 International Legal Materials 423, para 19(1).

30 Commission of Enquiry, North Borneo and Sarawak (n 27) para 190(g).

31 *ibid.*

32 *ibid.*

33 Intergovernmental Committee on the proposed Federation of Malaysia (n 29) para 19(1).



### **Post-1963 evolution**

The dominance of State Senators in the Malaysian *Dewan Negara* did not last long. A constitutional amendment in 1964 increased the number of federally appointed Senators to 32<sup>34</sup> versus 28 State Senators. Singapore's expulsion from the Federation in 1965 subsequently saw the *Dewan Negara* lose two State Senators with no change to the number of federally appointed Senators. Further amendments in 1978<sup>35</sup> added two Senators for the newly created Federal Territory of Kuala Lumpur alongside 10 federally appointed Senators, bringing the 1978 composition to 28 State Senators and 40 federally appointed Senators. The number of federally appointed Senators subsequently remained unchanged at 40 until years 1984<sup>36</sup> and 2001<sup>37</sup> with the further addition of one State Senator each for the new Federal Territories of Labuan and Putrajaya respectively.

Presently, the *Dewan Negara's* composition has remained at 30 State Senators and 40 appointed Senators – a grand total of 70 Senators. This is a notable departure from the original composition of the Malayan and the first Malaysian *Dewan Negara*, as well as the composition reflected in the Reid Commission's proposals.

**Table 1.** Evolution of the *Dewan Negara's* composition

Year	State & FT Senators	Federally Appointed Senators
MALAYA	22	16
16 September 1963	28	22
30 July 1964	28	32
9 August 1965	26	32
31 December 1978	28	40
16 April 1984	29	40
1 February 2001	30	40
<b>Present</b>	<b>30</b>	<b>40</b>

34 Constitution (Amendment) Act 1964, s 6.

35 Constitution (Amendment) Act 1978, s 2(1)(b).

36 Constitution (Amendment) (No. 2) Act 1984, s 13.

37 Constitution (Amendment) Act 2001, s 15.

## Critically Examining the *Dewan Negara* States Representation

It may be tempting to conclude, off the basis of the numerical composition of the *Dewan Negara*, that the balance of power now favours the federally appointed Senators. The line of reasoning that follows is that the federal Senators would be able to outvote the State Senators in the event of a conflict between the federal government and the states over the former's legislative agenda.

However, the *Dewan Negara* rarely sees the manifestation of state-federal conflict, as these are usually solved by way of direct discussions between both the federal and state governments instead. Rather, it might actually be easier to divide the *Dewan Negara* along party lines rather than on the basis of federal and State Senators.

In that connection, the dilution of states' representation at the Federal level owes much of its onset to the dominance of the Barisan Nasional (BN) coalition in both state and federal governments for over 60 years. In the case of the *Dewan Negara*, a state legislative assembly if dominated by the ruling federal coalition could ensure the election of a compliant Senator. State Senators may then be less inclined to act independently as representatives of their respective states in the chamber even if State Senators were to form the majority in the *Dewan Negara*.<sup>38</sup>

### Quality of the *Dewan Negara*'s work

The Reid Commission envisioned the *Dewan Negara* as an apolitical body capable of performing technocratic review of legislation to ensure the quality of legislation. Despite the high hopes, the *Dewan Negara* does not enjoy an esteemed reputation today, with the chamber being largely perceived as a rubber stamp functioning only to pass Bills without much debate and amendments.

Any independent streak that may exist in the *Dewan Negara* would also have been overshadowed by the Federal Government's trend towards the centralisation of power, impacting upon Parliament's independence. For instance, the duration of Parliament sittings were previously decided upon by the de-facto Minister in charge of Parliament,<sup>39</sup> a ministerial position that existed during the tenure of the previous BN federal

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38 Harding (n 1) 61.

39 T.Z.A. Muhriz, *A New Dawn for the Dewan Negara? A Study of Malaysia's Second Chamber and Some Proposals* (Kuala Lumpur, IDEAS Malaysia, 2012) para 6, 14.

government. This portfolio ceased to exist during the tenure of the Pakatan Harapan (PH) government, but was later resurrected and merged with the Law portfolio<sup>40</sup> when the Perikatan Nasional (PN) coalition came into power, thus formally bringing Parliament under the control of the Executive once more.

On the same note, the *Dewan Negara* sits for a far shorter time period than the Dewan Rakyat, scheduled to sit only for 24 days<sup>41</sup> in 2022 versus 60<sup>42</sup> for the Dewan Rakyat. This severely limits the amount of time allocated for legislative work, as there is simply not enough time for the *Dewan Negara* to introduce its own legislation while also debating government legislation.

### ***Quality of Senators and the Democratic Deficit***

If the *Dewan Negara* were to be an influential forum, it must be composed of members whose professional qualifications and experience render them able to contribute valuable insight to debates and legislative work. This would allow the *Dewan Negara* to delve into the technicalities of certain legislative areas in a professional and objective manner. This is not an alien concept, as many legislatures worldwide also implement certain processes to ensure the quality of a policy being translated into legislation. These usually take place in the form of select committees that scrutinise an assigned area of government policy, and committees that form part of a “committee stage” in the legislative process, and undertake detailed discussion and consideration of a particular Bill.

An ideal situation would be where the *Dewan Negara* ensures its Senators are highly qualified, professional persons, competent enough in their respective fields to delve into the technical issues of policy while simultaneously remaining above partisanship.

This is not reflected in the composition of the *Dewan Negara*. In the case of State Senators, the candidates for State Senatorship are proposed and then voted on by members of the respective state legislative assemblies (DUN) without public input. In assemblies with a dominant party or

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40 The current Minister for Parliament and Law under the UMNO led government is Dato Sri Dr Haji Wan Junaidi bin Tuanku Jaafar from the GPS coalition. The position is a portfolio under the Prime Minister’s Department.

41 Takwim Dewan Negara <<https://www.parlimen.gov.my/takwim-dewan-negara.html?uweb=dn&>> accessed 3 April 2022.

42 Takwim Dewan Rakyat <<https://www.parlimen.gov.my/takwim-dewan-rakyat.html?uweb=dr&>> accessed 3 April 2022.

coalition it is a simple matter to propose a name previously agreed upon by party consensus, thus rendering the election of State Senators a mere formality. This indirect election is evidently undemocratic, with the lack of public engagement disallowing public appraisal of the candidates, resulting in a general lack of knowledge of the identities of State Senators. This translates into a wider general apathy, and has the wider implication of diminishing the opportunities to hold State Senators to public account.

On the other hand, federally appointed Senators and Federal Territory Senators are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. The constitutional requirement set out at Article 45(2)<sup>43</sup> requires Senators to be individuals who:

... have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines.

The generality of the phrases of “distinguished public service” and “achieving distinction” is un conducive for a total comprehensive appraisal of one’s merits for the position. Without an oversight or accountability mechanism, these parameters leave the Prime Minister with a wide latitude of discretion for their nominations.

Conversely, this method also allows deliberate ignorance over an appointee’s public reputation regardless of their wealth of experience and length of service. This issue also applies to State Senators: An example is the 2013 election of Tan Sri Mohd. Ali Rustam as a Senator representing the state of Melaka, who despite his long experience in politics as Chief Minister, was also allegedly found guilty by his own party of being involved in money politics<sup>44</sup> and was noted for making racially charged remarks<sup>45</sup> following his defeat in the 2013 General Election - characteristics that would have been at odds with an esteemed *Dewan Negara*.

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43 Federal Constitution of Malaysia, art 45(2).

44 ‘Mohd Ali Rustam barred from DP race, KJ given warning’ *The Edge Markets* (17 March 2009) <<https://www.theedgemarkets.com/article/updated-mohd-ali-rustam-barred-dp-race-kj-given-warning>> accessed 14 June 2020.

45 ‘Ali Rustam: Chinese didn’t appreciate me’ *Astro Awani* (6 May 2013) <<http://english.astroawani.com/election-news/ali-rustam-chinese-didnt-appreciate-me-13481>> accessed 14 June 2020.

## ***Political Entrenchment in the Dewan Negara***

The shift in focus away from the quality of Senators to rewarding political loyalty and patronage has led to a detrimental effect to the overall quality of the *Dewan Negara* by entrenching the power and the influence of the government of the day. Historically, the *Dewan Negara* was often dominated by BN affiliated Senators, which effectively guaranteed the smooth passage of a BN Government's legislation through the *Dewan Negara*.

The *Dewan Negara's* composition being unchanged following PH's election victory at GE14 also meant that the *Dewan Negara* remained BN dominated despite PH's majority in the Dewan Rakyat (at the time). This meant that the *Dewan Negara* could vote down legislation passed by the PH dominated Dewan Rakyat, exemplified when it voted down the Bill to repeal the Anti-Fake News Act. The Act was a much-criticised BN era legislation and its repeal formed part of the PH manifesto. In the absence of a Malaysian version of the Salisbury convention,<sup>46</sup> the *Dewan Negara* thus saw fit to vote against the Bill.

## ***The importance of reforming the Dewan Negara***

A functioning *Dewan Negara* is important to the functioning of our parliamentary democracy. As Bills passed by the Dewan Rakyat are immediately sent to the *Dewan Negara*, the chamber is a second opportunity to debate government legislation in a more holistic manner. Ideally, the *Dewan Negara* is to act as a filter for legislation and is also intended to be another opportunity to hold the government to account, in keeping with Parliament's role as a check and balance on the Executive. Given that it is also possible to appoint professional individuals as Senators, the *Dewan Negara* further represents an opportunity to ensure greater detail on policy are not overlooked or lost in the political machinations of the elected Dewan Rakyat. This will in turn allow for the relevant amendments to be made, which will no doubt ensure that our legislation is all rounded, fair, and of higher quality.

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46 The Salisbury Convention is a UK constitutional convention under which the House of Lords will not oppose the second or third reading of government legislation promised in its election manifesto.

## Comparative Study

Reform of the chamber must be aimed at addressing the wider flaws inherent to the chamber rather than being confined to treating surface-level symptoms. As previously identified, these revolve around the quality of the chamber's legislative work, the quality of its Senators, as well as in the chamber's democratic accessibility. To gain a better understanding of the expected role and operations of an upper House, this paper will undertake a comparative study of the Australian and Canadian Senates.

The Australian and Canadian Senates were chosen for this study due to the Westminster heritage shared with the *Dewan Negara*. Both nations are also federations with their Senates fulfilling a states' representation function similar to the *Dewan Negara*; The Australian and Canadian Senates also represent two opposing types of Upper Houses, with the former being a fully elected Senate and the latter being fully appointed. This will allow a better understanding of the characteristics of Upper Houses of both types, and better aid in considering reforms for the *Dewan Negara*.

### State and Provincial Representation

Both the Australian and Canadian Senates function as an arena for state (or provincial) representation to a far greater extent than the *Dewan Negara*, with all Senators representing a particular State or Province. This is reflective of the historical origins of the two nations, both being federations of separate British colonies with established political and legal systems. The economic disparities between each other meant that the equal footing of the territories were given heavy emphasis, particularly by the smaller colonies. In the case of Canada, the presence of a large French population in Québec, and the later additions of established British colonies to the west that were similarly keen to have their rights and status protected, were additional factors that crystallised the need for a provincial-representative Senate.

### Australia

In Australia, all 76 Senators represent the six States<sup>47</sup> and two<sup>48</sup> (of three<sup>49</sup>) mainland Territories that makeup Mainland Australia. The equal

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47 New South Wales, Victoria, Queensland, South Australia, Tasmania, and Western Australia.

48 Canberra (the National Capital Territory), and the Northern Territory.

49 Jervis Bay Territory residents are represented by Canberra NCT Senators.

representation of States in the Senate is a principle enshrined in the Australian Constitution.<sup>50</sup> Under the provision, each Original State<sup>51</sup> is to have no less than six Senators each. The intent behind this formula then was to protect the less populous states against domination by the two richest and most populous states - New South Wales and Victoria. This translates into the six States electing 12 Senators each, and the mainland territories electing two each. Senators representing the States are elected for six year terms with half being elected every three years, whereas those representing the Territories are elected for three year terms.

**Table 2.** The States and Territories of Australia and Senator allocations

State / Territory	No. of Senators
New South Wales	12
Victoria	12
Queensland	12
South Australia	12
Western Australia	12
Tasmania	12
Northern Territory	2
National Capital Territory (Canberra)	2
<b><u>TOTAL</u></b>	<b><u>76</u></b>

## Canada

Like their Australian counterparts, all 105 Canadian Senators<sup>52</sup> represent the 13 Provinces<sup>53</sup> and Territories<sup>54</sup> of Canada. At the inception of the Senate, it was determined that a population based representation was unsuitable<sup>55</sup> for Canada, and instead a favourable weightage was

50 Constitution of the Commonwealth of Australia, s 7.

51 "Original State" refers to the six Australian States that, as separate colonies, federated to form the Commonwealth of Australia.

52 Constitution Act (Canada) 1867, s 22.

53 Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, and Newfoundland & Labrador.

54 Northwest Territories, Yukon, and Nunavut.

55 The Senate of Canada, *The Canadian Senate in Focus 1867-2001* (2001), ch 1 pt 1 para 3 <<https://sencanada.ca/en/Content/Sen/committee/391/pub/focus-e>>.



given to less populous Provinces,<sup>56</sup> granting them better representation (population per Senator) than more populous Provinces.

**Table 3.** The Provinces & Territories of Canada, their Regions and Senator allocations

<b>Province/Territory</b>	<b>Senate Region</b>	<b>No. of Senators</b>
Ontario	Ontario	24
Québec	Québec	24
British Columbia	Western Canada	6
Alberta	Western Canada	6
Manitoba	Western Canada	6
Saskatchewan	Western Canada	6
Nova Scotia	Maritimes	10
New Brunswick	Maritimes	10
Prince Edward Island	Maritimes	4
Newfoundland and Labrador	Newfoundland and Labrador	6
Northwest Territories	(Territory)	1
Yukon	(Territory)	1
Nunavut	(Territory)	1
<b><u>TOTAL</u></b>		<b><u>105</u></b>

## ***Senate Committees and Legislative Work***

### *Australia*

The Australian Senate's committee system is particularly notable. Most of the Senate's legislative work is performed by its committees rather than the Senate sittings, illustrated by the fact that in the year 2018, the Committees met for a total of 2081 hours versus the Senate's 577

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<sup>56</sup> *ibid.* para 4.

hours,<sup>57</sup> the equivalent of 86.7 and 24 full days respectively. This is in stark contrast to the *Dewan Negara's* allocated 24 days of sitting in year 2022 with little to no Committees: With a typical sitting day lasting only 8 hours, this means the *Dewan Negara* will sit for at most a total of 192 hours in year 2022.

There is a large variety of committees,<sup>58</sup> each designed to perform a specific task or to cover a specific policy area. Generally speaking, there are two main types of committees: the Select Committees and the Standing Committees. Select Committees are created by way of a resolution of the Senate to inquire into and report upon a particular matter. As such, its size and scope are defined within the founding motion, and the committee usually ceases to exist upon the presentation of its final report, or when the allocated time for its function expires; Standing Committees on the other hand, are appointed at the beginning of each Parliament and continue to function until the end of the day of that particular Parliament.<sup>59</sup> The term itself is an umbrella category, as it covers a range of committees with various functions.

**Table 4.** An overview of the categories of Standing Committees of the Australian Senate

Standing Committee Category	Description
Domestic Committees	Comprised of eight committees. Deals with the internal operations of the Senate.
Legislative Scrutiny Committees	Comprised of two committees. Forms part of the legislative process.
Legislative and General Purpose Committees	Examines legislation, government administration, and references of a general nature.
Joint Committees	Established for the consideration of matters that should be the subject of simultaneous inquiry by both Houses.

57 Parliament of Australia, 'Senate Brief No. 4: Senate Committees' <[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Senate\\_Briefs/Brief04](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief04)> accessed 20 December 2019.

58 *ibid.*

59 That is, until the next Parliament meets after an election.

The Legislative Scrutiny Committees are particularly significant due to the nature of scrutiny they perform. There are two committees under this umbrella: the Scrutiny of Bills Committee and the Regulations & Ordinances Committee. The former examines proposed legislation before they are debated by the Senate, and assesses them against a criterion of personal rights and liberties to ensure that the legislation does not overstep its legal boundaries. This Committee does not usually recommend specific changes but merely highlights provisions that do not meet the criteria, and so the onus is on Senators to propose any changes in the Chamber; On the other hand, the Regulations and Ordinances Committee performs similar scrutiny on legislative instruments and regulations drawn up by the government. With the assistance of an independent legal adviser, the Committee reviews all legislative instruments tabled in the Senate to ensure that they are each in accordance with the scope granted by its parent Act, that it does not trespass unduly on personal rights and liberties, and does not contain matter more appropriate for parliamentary enactment instead.

Another notable Standing Committee is the Legislation Committee<sup>60</sup> which inquires into and reports upon proposed government expenditure, legislation, and also considers and examines government administration and annual reports. This is very notable as Westminster style upper Houses do not usually examine and question government expenditure at this level of detail.

### *Canada*

The legislative procedure of the Canadian Senate is identical to that of the lower House of Commons. Legislation goes through first and second readings, then a Committee and Report Stage, and is then put through its third reading. Committees are thus also a feature of the procedure of the Canadian Senate, with there being six main types of committees:<sup>61</sup> Standing Committees, Special and Legislative Committees, the Committee of Selection, Joint Committees, Subcommittees, and the Committee of the Whole. While there is some commonality with the committees of the Australian Senate, the scope of the Canadian committees are less thorough than their Australian counterparts, covering only specific legislations and issues without delving into the government's

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60 A type of legislative and general purpose standing committee.

61 The Senate of Canada, *Fundamentals of Senate Committees* (2015) ch 5 <<https://sencanada.ca/en/committees/about/fundamentals/>>.

proposed expenditure and regulations and ordinances as the Australian Senate does.

In terms of commonality, both Senates feature standing committees and joint committees; Of particular interest is the Special and Legislative committees, functioning as the Canadian Senate's mechanism to scrutinise or study specific pieces of legislation or particular issues.<sup>62</sup> These committees are established by a corresponding motion adopted by the Senate that also sets out the parameters of the committee's study, with no deviation permitted without the Senate's permission.<sup>63</sup> Due to the focused and limited nature of the scope, these committees cease to exist upon presentation of their final report.

### ***Canada and the question of an elected Senate***

Unlike the Australian Senators, Canadian Senators are appointed by the Governor-General<sup>64</sup> on the advice of the Prime Minister. The choice of an appointed Senate in Canada rather than an elected one was informed largely by experience gained from the legislature of the Province of Canada.<sup>65</sup> Experienced candidates had been disinclined to run for election to the Provincial legislature due to the cost of seeking votes in what were "very large" 19th century constituencies.<sup>66</sup> The Legislative Council<sup>67</sup> of the Province also started seeing its elected councillors being appointed to the provincial Executive Council,<sup>68</sup> which in turn diminished its role as a check on legislation; An additional problem faced by the Council that is also of interest was the gradual acquiring of career politicians of dubious quality,<sup>69</sup> which evidently threatened to undermine the expected quality and traditional role of an upper House. Indeed, it was envisioned that the duties and role of Senators would require "impartiality, expert training, patience, and industry",<sup>70</sup> and that the Canadian Senate's role was to provide "sober second thought"<sup>71</sup> on legislation.

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62 *ibid.* para 5.

63 *ibid.* para 6.

64 Constitution Act (Canada) 1867, s 24.

65 A precursor of modern day Canada. The Province was formed out of the merger of the Provinces of Lower and Upper Canada in 1841, and spanned the territory of the modern day provinces of Ontario and Québec.

66 *ibid.* para 5.

67 The upper house. The lower house was the Legislative Assembly.

68 The Senate of Canada (n 55) ch 1 para 5.

69 *ibid.*

70 *ibid.* para 8.

71 *ibid.* para 1.

There was also the fear of deadlock between the lower and upper Houses, as both Houses would be able to claim the popular mandate if both were elected – this being described as a “recipe for conflict and disaster”.<sup>72</sup> As this ran counter to the purpose of the Senate, the fathers of the Confederation thus chose an appointed Senate over an elected one.

### **Lessons for the *Dewan Negara***

The most prominent contrast between the two Senates is that Australian Senators are fully elected by the people of the States and Territories. This has led to key differences in the role and public stature of both Senates, with the Australian Senate enjoying far more prominence than its Canadian counterpart. In turn, the Australian Senate is able to claim the popular mandate, and is entitled to scrutinise the government to a greater extent than unelected counterparts like the *Dewan Negara*.

But it is important to observe that the Australian Senate is far removed from the Westminster tradition and is closer instead to the United States Senate. This is in contrast with the Canadian Senate and the *Dewan Negara*, as both chambers were designed to be secondary to their lower Houses. For example, Sir John A. Macdonald described the Canadian Senate as a chamber “that will never see itself in opposition against the deliberate and understood wishes of the people”,<sup>73</sup> whereas the *Dewan Negara*’s power to delay legislation was to be exercised only in exceptional cases.<sup>74</sup>

While the partisan element in an elected Senate could drive opposition Senators to scrutinise the Executive better, it does not guarantee the competence and calibre of incoming Senators. Issues could be raised simply to score political brownie points with the electorate rather than to provide any actual scrutiny. Nor does it guarantee Senators having the most agreeable ideological background – a prominent example being former Australian Senator Fraser Anning, who gained worldwide prominence after the 2019 Christchurch Mosque Shooting for his highly insensitive, racist remarks following the incident, together with his views sympathetic of the shooter.

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72 *ibid.*

73 The Senate of Canada (n 55) ch 2 para 1.

74 Reid Commission (n 2) para 64 (iv); Likewise, while the Canadian Senate possessed an absolute veto on constitutional amendments until the patriation of the Canadian Constitution in 1982, it only ever used its veto powers twice – in 1936 and 1960.

At the same time, neither are unelected chambers free from partisan sentiments due to the ease with which the executive could nominate Senators of its choice to ensure a favourable balance of power in the chamber. The chamber would take on an inherently partisan character, thus negating the possibility of an independent and technocratic chamber. Similar concerns are present in the Canadian Senate, with the officially non-affiliated Independent Senators Group voting with the government “94.5% of the time” in 2017.<sup>75</sup> This demonstrates that partisanship can and will remain present in unelected Senates, especially if Senators retain their existing party affiliations.

Another crucial lesson is the importance of committees within the legislative process. The Australian and Canadian Senates’ committee system allows for extensive scrutiny of both government legislation & expenditure, and allows the Senate to function as a second layer of check and balance on the Government in every sense of the phrase; Pertinently is the fact that primary and secondary legislation are scrutinised by the Australian committees to ensure they do not infringe on personal rights and liberties. This is an important function, particularly as secondary legislation are not created under the oversight of Parliament or any other body. The fact that the *Dewan Negara* does not have any comparable committees mean that it is unable to perform such detailed scrutiny despite being well placed to do so, and is a glaring omission that limits its role and authority greatly.

## **Potential choices for reform of the *Dewan Negara***

### ***The Role of the Dewan Negara***

The reformed *Dewan Negara* should be an esteemed and influential forum for debate.<sup>76</sup> It must be democratic, be composed of competent and qualified Senators, and must be able to hold members of the Executive to account to a greater extent than before. Successful reform can turn the *Dewan Negara* into an effective legislative chamber and raise its public profile, allowing it to be the influential forum it was supposed to be. Furthermore, the trend of Executive oversteps and dominance in Malaysia can be reversed with this empowerment of the *Dewan Negara*

75 É. Grenier, ‘Why the Senate is unpredictable – and its independents not so independent’ *CBC News* (19 June 2017) <<https://www.cbc.ca/news/politics/grenier-senators-votes-1.4162949>> accessed 20 December 2019.

76 This is a return to the chamber’s original founding intent.

if it provided useful check and balance. This can reduce Executive dominance of Parliament, making Parliament a truly independent and professional institution.

### ***A Professional and Competent Dewan Negara***

The first step is the establishment of select committees specialising in a wide range of policy fields. This can be implemented very easily, as it only requires the *Dewan Negara* to pass a motion<sup>77</sup> establishing the committees and defining their composition and assigned scope and areas. As we have learned from the Australian Senate, these committees allow Senators to conduct in-depth scrutiny of policies implemented by the Executive as well as incoming Bills from the lower House. This will allow the *Dewan Negara* to function more effectively as a legislative chamber beyond its traditional role as a chamber for debate, giving it a professional and technocratic character distinct from the more partisan Dewan Rakyat.

Additionally, committees also allow the chamber to manage its workload more effectively. The scrutiny of Bills and policies require a large amount of time and attention to detail, potentially intruding upon the time allotted for other businesses. The main chamber's primary function as a debating chamber also renders it inherently unsuited for the task of performing detailed examinations on policy and legislative matters. This is because scrutinising policies and Bills tend to require a focused approach on a specific subject matter - Committees, with their defined policy and subject areas, provide a setup and environment more suited for the detailed questioning and examination that forms part of the scrutiny process.

The professional competency of federally appointed Senators is also a crucial element. The generality of Article 45(2)<sup>78</sup> means that the solution would be to remove the Prime Minister entirely from the process of nominating federally appointed Senators or to reduce their role and prominence in the process. Either solution necessarily requires the creation of a *Dewan Negara* appointments committee composed of a set number of Senators, and similar in function to the House of Lords' Appointments Commission in the United Kingdom. This may require an amendment to Article 45(2) of the Federal Constitution,<sup>79</sup> admittedly

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77 Standing Orders of the Dewan Negara, SO 74.

78 Federal Constitution of Malaysia, art 45(2).

79 *ibid.*



making it difficult to implement. Alternatively, a simple majority legislation may be introduced to create a committee responsible for recommending candidates to the Prime Minister, with the caveat that the Prime Minister's ability to reject the recommendations be limited.<sup>80</sup>

Such a committee should be empowered to thoroughly vet all nominations for federally appointed Senators to ensure the professional competency of nominees in their given fields, the highest levels of propriety, as well as their overall merits and suitability for the position of Senators. To ensure a rigorous vetting process, this paper proposes that nominees be subject to a comprehensive evaluation involving the use of public interviews to ascertain their professional background and competencies, as well as to address any controversies involving the nominees in the past (if any). In the interest of transparency, the qualifications of the nominees and the findings of this vetting process should be made publicly available as much as possible to ensure wider public awareness over the nominees and the vetting process itself.

The effect of this committee would be a significantly raised barrier of entry for federally appointed Senators. The Federal Government would have to ensure that their nominees are capable of meeting the standards enforced by the committee, in turn discouraging the existing practice of nominating individuals on the sole basis of their political loyalty; Furthermore, the committee would also be able to ensure that the federally appointed Senators are professionally competent and qualified, able to contribute meaningfully to the chamber's legislative and policy work, in turn raising the quality of the chamber's performance and output.

A broad range of select committees will ensure that legislation and government policy will be subject to effective and robust review. Not only will Bills and policy be subject to stricter and more effective scrutiny than before, but Senators will also be able to propose more holistic and meaningful amendments to Bills and government policy. This will raise the quality and equity of legislation and governmental policy, and at the same time cement a reputation for the *Dewan Negara* as a forum for serious and effective discourse on legislation and policy.

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80 A proviso could provide for the Prime Minister being unable to reject the recommendations, or to allow rejections subject to the Prime Minister providing reasons for the rejection, and for a replacement candidate to be chosen from the same list of recommended candidates.

## ***Democratising the Dewan Negara***

The chamber's democratic deficit is centred on the lack of public engagement in the appointment of Senators<sup>81</sup> coupled with a lack of a mechanism for the public to hold them to account. Under the current framework, the public is unable to vote for their choice of Senators,<sup>82</sup> and neither do Senators face the consequences of public dissatisfaction in their actions. As a solution, elections may be held for Senators. This option is easily implemented as Article 45(4)(b) already allows Parliament to pass a Bill implementing elections for State Senators.<sup>83</sup> Hypothetically speaking, this democratises the chamber almost instantly - The public will be able to vote for their preferred candidate and Senators can be held to account through the electoral process.

However, this may be unsustainable in the long term. The ability of elected Senators to claim the popular mandate alongside the elected MPs of the lower House<sup>84</sup> may contribute to instances of conflict and deadlock between both chambers over contentious issues. In this scenario, elected Senators could claim the popular mandate to oppose such laws despite the governing party's own popular mandate to pass and implement them; Additionally, focusing on elections for Senators without properly addressing the underlying organisational issues will merely result in a superficial reform effort that will not yield tangible improvements in the chamber's performance and stature.

While the Australian Parliament resolves deadlock between the Houses with a double dissolution,<sup>85</sup> the Malaysian Parliament is not so equipped. It must be remembered that the *Dewan Negara* was created specifically to be secondary to the elected Dewan Rakyat, and only to delay legislation in exceptional circumstances; Furthermore, the appointment of Senators also allows professional individuals and ethnic minorities to be appointed to the chamber in accordance with Article 45(2), thus

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81 Here, "State Senators" refers to both State and FT Senators.

82 This is particularly evident in the case of State & FT Senators, as despite representing a defined territory the local residents are unable to vote for their choice of Senators to represent them.

83 "State Senator" here does not include the Federal Territory Senators.

84 In this case, the *Dewan Rakyat*.

85 Constitution of the Commonwealth of Australia, s 57; In the event of an unresolvable conflict between the House of Representatives and the Senate, both chambers are dissolved. If the conflict persists in the reconvened Parliament after the elections, the Governor-General is empowered to call a joint session to resolve the matter.

maintaining a professional standard<sup>86</sup> in the chamber and ensuring minority representation in the legislative process.<sup>87</sup> These would be difficult to achieve in a fully elected *Dewan Negara*, as individuals may be reluctant to stand for election,<sup>88</sup> and neither can minority representation be guaranteed unless ethnic quotas are introduced.<sup>89</sup>

### **Recall Mechanisms**

As an alternative, this paper proposes the implementation of a mechanism to recall State and FT Senators.<sup>90</sup> This would entail the revocation of a Senator's (indirect) election or appointment once certain criteria are met. The basis for this mechanism is taken directly from the UK's Recall of MPs Act 2015, under which a petition to recall a Member of the House of Commons can be initiated if one of three criteria are met:

1. where the MP is convicted of an offence and sentenced or ordered to be imprisoned,<sup>91</sup>
2. where the MP is suspended by the House following a report from the Committee on Standards,<sup>92</sup> or
3. where the MP is convicted of an offence under s.10 of the Parliamentary Standards Act 2009.<sup>93</sup>

Petitions are deemed successful if signed by at least 10% of elected voters in the MP's constituency<sup>94</sup> and will result in the seat being vacated, triggering a by-election.

The Federal Constitution already provides for a list of criteria governing automatic disqualification of Members of both chambers, one of which

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86 M. Daud, 'Revolutionising the Senate in Malaysia: Lessons from Australia and Canada' (2020) 3 *MLJ* xxxvii, xl.

87 Harding (n 1) 62.

88 This was a reason raised by the Reid Commission when justifying an unelected Dewan Negara.

89 The topic of ethnic quotas itself is a sensitive one, and will be difficult to implement for the Dewan Negara.

90 A recall mechanism is more suited for State & FT Senators as, unlike their 40 federally appointed colleagues, State & FT Senators represent the residents of a defined region.

91 Recall of MPs Act (United Kingdom) 2015, s 1(3)(a).

92 *ibid.* s 1(4).

93 *ibid.* s 1(9); Section 10 of the Parliamentary Standards Act 2009 concerns the offence of providing false or misleading information for allowances claim.

94 Recall of MPs Act (United Kingdom) 2015, s 14(3).

is the conviction of a Member of an offence and their sentencing to imprisonment for not less than a year. However, the current list omits any criterion relevant to public dissatisfaction over a Senator's performance, negating the possibility of disqualifying a Senator on those grounds. Rectifying this requires a constitutional amendment<sup>95</sup> to insert public dissatisfaction as a criterion, and to provide for a recall mechanism to be created and utilised when the criterion is triggered.

It is foreseeably necessary to involve the State Legislatures (DUN) in the recall process for State Senators to conform to Malaysia's federal structure. Hypothetically speaking, recall petitions for a State Senator would be debated by the relevant DUN once a minimum quota of signatures is reached. Assuming the motion passes in the chamber, the DUN then informs the President of the Senate on the Senator's recall and their seat's vacancy. In this hypothetical process, the inclusion of a minimum quota of signatures and the subsequent debate in the DUN plays the role of a safeguard to filter out spurious and vexatious petitions; Conversely, the absence of devolved legislatures in the Federal Territories makes it necessary for petitions to recall an FT Senator be sent directly to the *Dewan Negara* for debate. To ensure a higher level of safeguard, it may be necessary to set higher thresholds for petitions to recall FT Senators.

This mechanism can be challenging to implement, as constitutional amendments require a two-thirds majority to pass; There is also the issue of "public dissatisfaction" being extremely vague and being open to misuse should it be made a criterion, requiring a relevant specific criterion to be defined<sup>96</sup> instead if this were to be taken up as a reform option.

### **State Representation**

The numerical imbalance between State Senators and federally appointed Senators creates the possibility of federal overstep in the chamber. This theoretically allows federally appointed Senators to vote down

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95 Further operational specifics for the process could be inserted in the Seventh Schedule. These should cover the signature quotas to be met, the requirement for the DUNs to debate a qualifying petition, and for priority to be given to motions to debate the petition over State Executive and Federal Government business (if appropriate).

96 In practice, this is likely to be an action that would cause widespread public dissatisfaction, such as the utterance of controversial and widely criticized statements, or even a sudden switch in partisan allegiance.

and override the concerns of State Senators on matters affecting their respectively States. The solutions available to address this imbalance are to either increase the number of State Senators to three per State,<sup>97</sup> reduce the number of (non-FT) appointed Senators,<sup>98</sup> or to abolish appointed Senators outright.<sup>99</sup> These are options already provided for in the Federal Constitution and require a Bill passed by a simple majority of both Houses to implement.

It must be acknowledged that altering the composition of the chamber may cause new complications. For example, abolishing appointed Senators or reducing their numbers would directly reduce the opportunities available to appoint professionally qualified individuals and ethnic minorities as Senators, as the partisan nature of State Senatorship requires a level of political involvement<sup>100</sup> that may discourage politically inactive individuals from seeking election; Additionally, there may also be calls to improve Sabah and Sarawak's representation in Parliament in line with the spirit of the Malaysia Agreement 1963 by increasing their allocation of Senators. This is likely to be difficult, as while the Sabah and Sarawak state governments possesses powers not available to their Peninsular counterparts, the principle of equality<sup>101</sup> would dictate that Sabah and Sarawak are not superior to the Peninsular states in the Malaysian Federation,<sup>102</sup> and may prompt the other states to demand an increase in their Senator allocations as well. Clearly, increasing the Senator allocations of only Sabah and Sarawak may initiate wide-ranging discourse on federalism and states' rights in Malaysia.<sup>103</sup> Unless the intent is to trigger such a discourse, the simplest option here is to increase the Senator allocation of all States while retaining the current amount of federally appointed Senators. This will give the *Dewan Negara* a new breakdown of 43 State & FT Senators versus 40 federally appointed Senators, returning the chamber to its old majority of State Senators.

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97 Federal Constitution of Malaysia, art 45(4)(a).

98 *ibid.* art 45(4)(c).

99 *ibid.*

100 It is to be expected that individuals would have to be active enough within the State's ruling party to be nominated as a State Senator.

101 That is, the principle of equality in federalism. This principle requires that all member governments within a federal state be of equal status vis-à-vis each other.

102 K.A. Mokhtar, 'Confusion, Coercion and Compromise in Malaysian Federalism' in A.J. Harding and J. Chin (eds), *50 years of Malaysia: Federalism Revisited* (Marshall Cavendish, 2016).

103 Harding (n 1) 63.

## Conclusion

Effective reform of the *Dewan Negara* is crucial for it to regain its function as a professional and competent legislative chamber, thereby allowing it to play an important role in the legislative and political process of Malaysia. It must be emphasised this requires a multi-pronged approach: A robust committee system will build legislative and professional capacity in the chamber, the implementation of a recall mechanism will mitigate the existing inherent democratic deficit, and while the question of State representation in the *Dewan Negara* may take longer to be resolved, returning to a majority of State Senators can nonetheless be a catalyst for better State representation at the Federal level. In short, a singular surface-level approach to reform, no matter how politically popular, will likely be unable to accomplish significant improvements in the current state and stature of the *Dewan Negara*.

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