

Labor's Carr trick brings Australia within a whisker of US cabinet model

A big difference between Australian government and the US's is the way a cabinet is chosen. The US president can choose from an unlimited pool – a Wall Street executive to become treasurer; a retired general to be secretary of state. Academics are often chosen to take senior cabinet positions. In Australia, the pool is more limited because cabinet is chosen from the Parliament.

Well, that used to be the case until Julia Gillard reached outside Parliament to appoint retired NSW premier Bob Carr as her foreign affairs minister. Carr will have to enter the Parliament to hold the office but Labor has made ingenious use of the constitutional provisions that allow a political party to fill a casual vacancy in the Senate.

From now on, the Prime Minister can choose any of her ministers from outside the Parliament so long as her political party can manufacture a



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Senate vacancy to accommodate the new entrant. The only limit is the number of senators willing to retire at the disposal of the party machine.

There is nothing to prevent a treasurer being chosen from outside the Parliament. True, treasurers have always been members of the House of Representatives but there is nothing in the constitution that specifies this must be the case. The constitution specifies that bills appropriating money or imposing taxation must originate in the House. It would be possible to have a junior minister

move them on behalf of a senator-treasurer. Some of the states have appointed their treasurers from the upper house and used this parliamentary arrangement.

Technically, even a prime minister could be chosen from outside Parliament and whisked into office via the Senate – as long as they could convince the governor-general to issue a commission on the basis they commanded a majority in the House of Representatives. This is how Mario Monti was recently appointed as Prime Minister in Italy.

But leaving aside the high offices of prime minister and treasurer, where there are arguments of history and precedent against it, we have now established every other ministry can be awarded to an outsider as long as they are prepared to join a party, enter the Senate and manipulate a vacancy.

The original provisions of the constitution stipulated that State

Parliament should choose the person it wished to fill a vacancy in that state's Senate representation. A practice had grown up of choosing a person from the same party as the retiring senator but it was not the law. In the heady politics of the Whitlam government, the Queensland premier, Joh Bjelke-Petersen, refused to accept Labor's nominee (one Mal Colston) to fill the vacancy caused by the death of a sitting Labor senator.

So the prime minister, Malcolm Fraser, proposed a constitutional amendment to require a state to fill a Senate vacancy with someone who is a member of the same party as the retiring or deceased senator. This was passed by referendum and became effective in 1977. It ensured that party numbers in the Senate would never be altered by a casual vacancy.

But it also gave the political parties much greater control over the composition of the Senate. They

could now organise a vacancy at any time, comfortable in the knowledge they would not lose the Senate seat and with no risk the replacement would not be to their liking. What the Carr appointment has shown is how to take this to the next level and use it

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to recruit people into cabinet who need never stand for election.

One thing I am sure of – Bob Carr will not serve out his full Senate term if Labor is defeated next year and he is no longer foreign affairs minister. That will give Labor another vacancy to share around. The Queensland Liberal senator Santo Santoro was

appointed to a casual vacancy, served as a minister and resigned from the Senate before ever being elected. It avoids the time-wasting activity of spending time with voters. In total, 24 of the current 76 senators were first appointed by way of a casual vacancy. Most of them have gone on to be elected at subsequent elections.

So how has the Senate fared in the aftermath of the constitutional entrenchment of party control over casual vacancies? Notwithstanding the Carr appointment, the fact that public election has become optional for senators has, in my opinion, not improved the overall quality.

Writing that Carr would improve Labor's Senate team, the *Australian Financial Review* journalist Laura Tingle (no friend of the Liberal Party) described Labor's Senate representation as "abysmal" and claimed Senate spots were being handed out "to people on the wrong side of union

power plays, or even as part of divorce settlements".

And the reason is simple. If the parties want the luxury of timing a vacancy to suit political demands outside the electoral cycle, they need people they can rely upon, people who will resign when it is needed – loyal foot soldiers who will take a fall for the team like Mark Arbib did in favour of Bob Carr.

It is better not to have people with wide electoral appeal, lest they start to think their legitimacy comes from the voters who elected them rather than the party that preselected them. Nothing would worry the party machine more than a senator going rogue. It would hamper its flexibility and – who knows – might even make it much harder to find outsiders to bring into the cabinet.

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