

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Constitution Alteration (Terms of Senators) Bill 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Deputy Prime Minister and
Minister Representing the Attorney-General, the Honourable
Lionel Bowen, M.P.)

This memorandum takes account of amendments made by the
Senate to the Bill as introduced.

OUTLINE

This Bill proposes to amend the Constitution to provide for simultaneous elections for the Senate and the House of Representatives. It provides for half-Senate elections to be brought into line with elections of the House of Representatives, whenever those elections may occur.

Under the Bill the general rule would be that senators hold office for 2 terms of the House of Representatives (compared with 6 years at present). This would be subject to any earlier dissolution of both Houses that may take place under the existing s.57 of the Constitution.

The terms of the present short-term senators (those whose terms expire on 30 June 1985) will not be affected by the Bill. The transitional provisions of the Bill alter the terms of the next short-term senators (those whose terms will expire on 30 June 1988) to the expiry or earlier dissolution of the next House of Representatives and the terms of the next long-term senators (those whose terms will expire on 30 June 1991) to the expiry or earlier dissolution of the second House of Representatives after the Bill commences.

NOTES ON CLAUSES

Clause 1 - This is a formal provision specifying the short title of the Act.

Clause 2 - Section 7 : The Senate

The description of senators' terms as being for 6 years is deleted and replaced (in clause 4) by a term consisting of two House of Representatives terms. Under this Bill, where there is no early election this term would total 6 years.

Clause 3 - Section 9 : Times and Places of Elections of Senators

The power vested in State Parliaments by s.9 of the Constitution to make laws for determining the times and places of Senate elections is repealed. The times and places of Senate elections are to be closely regulated by the Constitution itself and by laws of the Commonwealth Parliament (see existing s.10 of the Constitution, proposed new s.13(8) and clause 5 below).

Clause 4 - Sections 12 and 13 : Senate Writs and Senators' Terms

This clause contains the substance of the new provisions. It substitutes new sections 12 and 13 for existing sections 12 and 13 of the Constitution.

New s.12 makes the issue of writs by State Governors for Senate elections mandatory rather than discretionary, to ensure that synchronization of House and Senate elections is maintained. The issue of writs for the election of senators, whether

there is a half-Senate election or a double dissolution of Parliament, is to occur within 10 days after the expiry of senators' terms or the dissolution of the Senate. (At present the 10 day period applies only following a double dissolution).

New s.13 makes the substantive provision as to both the term of senators for the future and rotation of senators. It also includes transitional provisions in relation to senators whose terms are due to expire on 30 June 1988 and those senators to be elected at the next election.

Sub-section (1) states the general rule that the term of a senator is two terms of the House of Representatives (instead of 6 years) unless there is a double dissolution, in which case all senators' terms are cut short, as at present.

After a double dissolution election the Senate would be required by sub-sections (2) and (3) to divide its members into 'short-term' and 'long-term' senators in a particular manner so that the cycle of Senate rotation can recommence.

Sub-section (4) writes in the practice, which has invariably been followed in the past, of allocating senators to short-term and long-term lists according to their relative success at the election.

Sub-section (5) provides that, for the purpose of the division of senators into two classes, following a double dissolution, the 'order of

relative success at an election of the Senators for a State' shall be such as is determined by the Senate. This will ensure that it is open to the Senate to adopt the recommendation of the Joint Select Committee on Electoral Reform on this matter.

Sub-section (6) provides, in effect that the senators who are more successful at the election following the double dissolution, have terms equal to 2 terms of the House of Representatives whilst the other senators have terms equal to one term of the House of Representatives.

Sub-section (7) makes it clear that all elections for the House of Representatives and the half of the State senators whose terms expired on the expiry or dissolution of the House, are to be held on the same day.

Provision is made by sub-section (8) for a situation where, following the election of senators for a State after a double dissolution but before the division of senators for that State into classes of long-term and short-term senators, the place of a newly elected senator becomes vacant. In that event the division of senators is made as

if the place of the senator had not become vacant and the term of service of the senator who is subsequently chosen by his State Parliament to fill the vacancy is the same as his predecessor's term would have been if he had remained in office.

The transitional provisions are sub-sections (9) to (12).

Sub-section (9) provides that the present constitutional provisions will continue to apply to senators whose terms are due to expire on 30 June 1985.

Sub-section (10) alters the terms of the senators whose terms are due to expire on 30 June 1988 to the expiry or earlier dissolution of the next House of Representatives.

Sub-section (11) alters the terms of the senators to be elected at the next election (whose terms will be due to expire on 30 June 1991) to the day of expiry or dissolution of the second House of Representatives to expire or be dissolved after the commencement of the constitutional amendment, or the day of any earlier dissolution of the Senate.

Sub-section (12) provides for 2 alternative situations which could arise when the constitutional amendments provided for by the Bill commence operation.

The first is where a casual vacancy has not been filled at the time the constitutional amendment

takes effect. The second situation is one in which a State senator is holding office by virtue of an appointment under s.15 of the Constitution by a State Governor, with the advice of the Executive Council of the State, following the occurrence of a casual vacancy in a position occupied by a senator of that State.

In both cases the term of service of the senator who was originally elected is deemed, for the purpose of determining the term of service of his successor, to be the term he would have had if his place had not become vacant.

Clause 5 - Section 57 : Disagreement Between the Houses

The clause amends s.57 of the Constitution by adding a new provision to ensure that an election of senators is held simultaneously with a general election for the House of Representative on occasions when the simultaneous dissolution of the House of Representatives and the Senate occurs.