

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

Constitution Alteration (Fixed Term Parliaments) Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General Senator
the Hon. Gareth Evans)

OUTLINE

This Bill proposes to amend the Constitution to provide for elections for the House of Representatives to be held on a fixed date, on the third Saturday in November every three years, subject to two exceptions namely:

- (1) if the Government of the day loses a formal "no confidence" vote in the House and no alternative Government can be formed; or
- (2) if the conditions for a double dissolution contained in the present s.57 are satisfied.

In either case the incoming Government does not commence a new three-year term but merely serves out the remainder of the term of its predecessor, thus ensuring that the three-year cycle is restored.

The Bill also guarantees simultaneous elections for both the House of Representatives and the Senate whether half or the whole of the Senate is to be elected at the particular election.

Under the Bill the first election for the House of Representatives and half of the Senate would be held on the third Saturday in November 1985.

NOTES ON CLAUSES

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

Clause 2 - Section 5: Sessions of Parliament: Prorogation and Dissolution

This amends s.5 of the Constitution by removing the Governor-General's power to dissolve the House of Representatives except where there is a formal resolution of no confidence and no alternative government having the confidence of the House can be formed within 7 days. It makes clear that the Governor-General is not entitled to dissolve the House of Representatives except in accordance with this section or section 57 of the Constitution.

Clause 3 - Section 7: The Senate

The description of senators' terms as 6 years is deleted and replaced (in clause 5) by a term consisting of two Houses of Representatives terms. Where there is no early election for the Senate this would total 6 years.

Clause 4 - 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 expressly made subject to the Constitution. Now that the times of Senate elections are to be more closely regulated by the Constitution itself there is little of substance in the power.

Clause 5 - Section 12 and 13: Senate Writs and Senators' Terms

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. So as to ensure that adequate time is allowed for the electoral process it also provides that writs are to be issued within a period of 30 days before and 10 days after an expected expiry and within 10 days of a dissolution.

New s.13 specifies the term of a senator as being two terms of the House of Representatives and

accommodates senators' terms to the provision in clause 6 that, after an early election the new House of Representatives would only serve out the remainder of the 3 year cycle except where the early election occurs within 3 months of the expiry date.

The accommodation is that senators' terms are to remain fixed except where there is a double dissolution. House of Representatives elections are brought into phase with Senate elections except where the early election occurs within 3 months of the expiry date. In that circumstance the ordinary half-Senate election is brought forward so as to avoid an unnecessary multiplication of elections.

After a double dissolution election the Senate would be required by new s.13 to divide its members into 'short-term' senators and 'long-term' senators so that the cycle of Senate rotation can recommence. Section 13 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.

The transitional provisions (sub-clauses(8), (9) and (10)) would operate to extend the terms of the present short-term senators (those whose terms will expire on 30 June 1985) to the expiry of the present House of Representatives (under the transitional provision of clause 6 this date is fixed as the last Thursday in October 1985) and the terms of the long-term senators (those whose terms will expire on 30 June 1988) to the last Thursday in the October three years after the expiry of the present House of Representatives (i.e. October 1988).

Clause 6 - Section 28: Duration of the House of Representatives

New s.28 sets out the basic fixed terms proposal. The general scheme is that the House of Representatives expires on the last Thursday in each third October and the resulting election takes place on the third Saturday in each third November. An exception is made, however, where there has been an early election more than 3 months before the House is due to expire. In that case the new House only serves out the

remainder of the 3-year cycle. This is the effect of sub-paragraph (b) of sub-section (1) of the new s.28.

The transitional provisions would mean that the present House would expire on the last Thursday in October 1985 instead of early 1986.

Clause 7 - Section 32: Issue of Writs for General Election

New s.32 ensures that the fixed term timetable is maintained by requiring the Governor-General in Council to issue writs for general elections within a period of 30 days before and 10 days after the expected expiry or within 10 days of the dissolution of the House.

Clause 8 - 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 Representatives on occasions when a simultaneous dissolution of the House of Representatives and the Senate occurs.

Clause 9 - Section 64: Prime Minister and other Ministers of State

New s.64 expresses some of the conventions of responsible government. Provision is made for appointment of the Prime Minister and of other Ministers on his advice. The Governor-General is required to dismiss a Prime Minister who refuses to resign after a resolution of no confidence has been carried against him in the House.

