Constitution Alteration (Parliamentary Terms)
Bill 1988

Date Introduced: 10 May 1988
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose

To amend the Commonwealth of Australia Constitution Act 1900 (the Constitution) to provide a four year maximum term for the House of Representatives; that terms of service of Senators expire upon the expiry or dissolution of the House of Representatives, and that elections for the House of Representatives and Senate be held on the same day. The amendments also provide that the maximum term of service of current members of the House of Representatives is to remain three years. The term of service of current senators will end with the expiry or dissolution of the House of Representatives.

Background

On the 27 April 1988 the Constitutional Commission (the Commission) presented its first report on the revision of the Australian Constitution. With respect to the terms of the federal Parliament the Commission recommended that the Constitution be altered to provide that:

1. The maximum term of the House of Representatives be four years.
2. There be a minimum fixed term of three years for the House of Representatives after a general election unless the House passes a no confidence resolution in the Government and no Government can be formed from the existing House.
3. Senators hold their office for two terms of the House of Representatives except in the event of a double dissolution.
4. Senators chosen in the Territories hold their office for one term of the House of Representatives.
5. The polling day for election of senators be the same as that for members of the House of Representatives.
6. Where after the election of Senators but prior to the division of Senators into two classes, a Senator dies, resigns or becomes disqualified, the division is to be made as if the position had not become vacant.

The term for the House of Representatives is determined now by section 28 of the Constitution. The House of Representatives cannot continue for more than three years from the first meeting of the House, but may be dissolved sooner by the Governor-General (under section 5 of the Constitution).

Under the provisions of section 7 of the Constitution, the term of service for each Senator is six years, taking account of the rotation principle laid down in section 13 of the Constitution. These fixed six-year terms were designed to ensure continuity, stability and independence for the Senate as a special house of review but the Government argues that it can ensure such stability by reducing the frequency of Federal elections and by advising simultaneous elections. Section 13 prescribes a system of rotation under which one-half of the number of Senators’ positions are vacated at three-yearly intervals. A Senator’s term of service commences on 1 July following the date of his/her election. The only exceptions to these fixed Senate terms are Territorial Senators and double dissolutions of Parliament when the term of service of a Senator elected subsequent to the double dissolution is deemed to commence on 1 July preceding the date of his/her election. When a double dissolution occurs, the Senate divides all Senators into two classes in order to retain the rotation principle specified in section 13 of the Constitution. This division ensures that the term of office for one class of Senators will expire three years from 1 July preceding the date of the election consequential on the double dissolution. Territories Senators are elected for terms which are tied to elections for the House of Representatives. This means a maximum term of three years unless the House of Representatives is dissolved sooner by the Governor-General.

Under the provisions of section 9 of the Constitution, the federal Parliament has the power to prescribe the method of choosing Senators, but the choice of method cannot vary between States. A State Parliament also has this power, subject to the overriding power of the federal Parliament. A Parliament can also make laws for determining the times and places of elections for Senators for that State.

Section 12 of the Constitution provides that the Governor-General of any State may issue writs for elections of Senators for that State. The form of the writ is prescribed in Schedules to the Commonwealth Electoral Act 1918 and the Senate Elections Act 1903. Section 12 of the Constitution does not fix a time for the issue of writs except in the case of a double dissolution of Parliament. Precedent confirms that the actual issue of the writs is a matter for the State Governor acting with the advice of the State Executive Council, which could if it chose, disregard a request from federal authorities.
Main Provisions

Clause 2 amends the Constitution by omitting the provision in section 7 that the term of office for Senators shall be six years.

Clause 3 amends the Constitution by omitting the provision in section 9 that the Parliament of each State may make laws prescribing the method of choosing the Senators for that State.

Clause 4 amends the Constitution by inserting a provision requiring State Governors to issue writs for a Senate election within 10 days of the expiry or dissolution of the House of Representatives, so that the polling day shall be the same as for election of members of the House of Representatives.

Clause 5 repeals sections 13 and 14 of the Constitution, and inserts a new section 13. Sub-section 13(1) provides that the term of service of Senators expires on the expiry or dissolution of the House of Representatives. Sub-section 13(2) provides that the term of service of Senators holding office on the commencement of section 13 will cease when the House of Representatives is dissolved or its maximum term expires. Senators filling a casual vacancy at the commencement date will likewise cease to hold office.

Clause 6 amends the Constitution, to provide that the maximum term of the House of Representatives be extended to four years. The amendment does not incorporate the Commission's recommendation that there be a fixed minimum term for the House of Representatives.

References

2. Commonwealth Electoral Act 1918, sections 42 & 43.

For further information, if required, contact the Law and Government Group.

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Bills Digest Service
Legislative Research Service
This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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