CONSTITUTION ALTERATION (SIMULTANEOUS ELECTIONS)
BILL 1984

Date Introduced: 13 June 1984
House: Senate
Presented by: The Attorney-General, Senator the Hon. Gareth Evans

Short Digest of Bill

Purpose

Subject to approval by referendum to amend the Constitution to require simultaneous elections for the Senate and the House of Representatives by providing that half-Senate elections be brought into line with elections for the House of Representatives whenever these elections may occur.

Background

Despite defeat of the Right Honourable the Prime Minister's motion in support of fixed term Parliaments at the Australian Constitutional Convention in Adelaide on 28 April 1983 the Honourable the Attorney-General on 12 May 1983 introduced into the Senate the Constitution Alteration (Fixed Term Parliaments) Bill 1983. This Bill, discussed in Bills Digest no.26 of 1983, provided, inter alia, for amendment of the Constitution to make simultaneous elections for the House of Representatives and the Senate mandatory.

On 21 September 1983 the Attorney-General sought, and was granted, leave to withdraw the Constitution Alteration (Fixed Term Parliaments) Bill 1983 and introduced the Constitutional Alteration (Simultaneous Elections) Bill 1983 and the Constitutional Alteration (Parliamentary Terms) Bill 1983. These Bills were passed by the Senate and subsequently by the House of Representatives on 17 November 1983 but were not put to the electorate by way of referendum within the 6 months stipulated by Section 128 of the Constitution.

The present Bill apart from its long title, altered on the basis of the form of referendum questions now prescribed in the Referendum (Machinery Provisions) Bill, and the transitional provisions, is identical to the Bill introduced on 21 September 1983.
Under this Bill Senators will hold office for 2 terms of the House of Representatives as opposed to the present 6 years, subject to any earlier dissolution of both Houses under S.57 of the Constitution, and all elections for the House of Representatives and the half of the Senators whose terms expired on the expiry or dissolution of the House, are to be held on the same day. Thus a Prime Minister who obtains an early dissolution of the House of Representatives from the Governor-General will take with him half the Senate if this Bill is passed and approved by referendum.

Main Provisions

Clause 2 amends Section 7 of the Constitution by deleting the provision that Senators shall be chosen for a period of 6 years (see Clause 4 infra.).

Clause 3 amends Section 7 of the Constitution by removing the power of State Parliaments to make laws for determining the times and places of elections of Senators for a State. The existing State legislation in respect of Senate elections if not repealed would become inoperative by virtue of legislation under the existing Section 10 of the Constitution and the proposed Section 13(7) - see Clause 4 and Section 57 - see Clause 5.

Clause 4 inserts new Sections 12 and 13 in the Constitution. The new Section 12 makes it mandatory for State Governors to issue writs for Senate elections within 10 days after the expiration of Senators terms.

The new Section 13 inserted by Clause 4 makes the substantive provisions as to the terms of Senators and for rotation of Senators. It also includes transitional provisions in relation to existing Senators. The principal changes are:

(a) the normal terms of a Senator will be two terms of the House of Representatives (subject to a double dissolution) - S.13(1).

(b) the practice of the Senate in dividing its members into 'short-term' and 'long-term' members following a double dissolution based on the criteria of relative success at the election is formalised by the new S.13(2) to 13(5) inclusive and, by S.13(6) Parliament is given the power to make laws determining what constitutes 'relative success' at elections. Under this power it would be possible for
instance for Parliament to implement the recommendation of the Joint Select Committee on Electoral Reform that following a double dissolution election, the Australian Electoral Commission conduct a second count of Senate votes, using the half Senate quota, in order to establish the order of election to the Senate, and therefore the terms of election. This could conceivably be used to relegate minor party and independent Senators to a 'short-term' irrespective of the fact that they might have achieved a quota on primary votes for a full Senate election.

(c) In the proposed S.13 the terminology in respect of 'long-term' and 'short-term' Senators has been reversed and, whereas under the existing S.13 the 'short-term' Senators are described as Senators of the first class and the 'long term' as Senators of the second class, under the new S.13 the 'short term' Senators are Senators of the second class and the 'long term' Senators are Senators of the first class - S.13(1), 13(4)(6), 13(7).

(d) Following a double dissolution 'long term' Senators will have a term equal to 2 terms to the House of Representatives whilst 'short term' Senators will have a term equal to one term of the House of Representatives - S.13(7).

(e) All elections for the House of Representatives and the half of the Senators whose terms expired on the expiry or dissolution of the House, are to be held on the same day - S.13(8).

(f) Where a casual vacancy occurs after an election following a double dissolution but prior to the division of Senators into classes, the division into classes will be made on the basis that the place had not become vacant and the Senator appointed to fill the vacancy shall have the same terms as his predecessor would have had if he had remained in office - S.13(9).

(g) The terms of Senators presently serving are varied so that Senators whose term is due to expire on 30 June 1985 will terminate on the
expiry (30 April 1986) or earlier dissolution of the present House of Representatives and those due to expire on 30 June 1988 will terminate on the expiry or earlier dissolution of the subsequent House of Representatives - S.13(10).

(h) Provision is also made for casual vacancies contingencies which may exist at the time these provisions come into effect - S.13(11).

Clause 5 of the Bill amends Section 57 of the Constitution by adding a new paragraph which ensures that where there is a double dissolution of the Parliament the election for Senators is held simultaneously with the general election for the House of Representatives.

For further information, if required, contact:

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