

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 10 May 1988

(Attorney-General)

**A BILL**

FOR

**An Act to alter the Constitution to provide for fair and democratic parliamentary elections throughout Australia**

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

**Short title**

- 5       1. This Act may be cited as the *Constitution Alteration (Fair Elections) 1988*.

**Commencement**

- 10       2. This Act commences on the day on which it receives the Royal Assent.
3. The Constitution is altered by omitting section 8 and substituting the following section:

**Qualification of electors.**

“8. Subject to this Constitution, the qualification of electors of senators shall be in each State or Territory that which is prescribed by the Parliament as the qualification of electors of members of the House of Representatives.”.

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**Provision as to races disqualified from voting**

4. The Constitution is altered by omitting section 25.

5. The Constitution is altered by omitting sections 29 and 30 and substituting the following sections:

**Electoral divisions.**

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“29. (1) Subject to this Constitution, the Parliament may make laws providing for electoral divisions for which members of the House of Representatives may be chosen and fixing the number of members to be chosen for each division.

“ (2) The number of members shall be the same for each division of a particular State.

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“ (3) A division shall not be formed out of parts of different States.

“ (4) A division may be formed out of an area comprising two or more areas each of which is a Territory or part of a Territory.

**Qualification of electors.**

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“30. Subject to this Constitution, the qualification of electors of members of the House of Representatives shall be, in each State or Territory, that which is prescribed by the Parliament.”.

**Right of electors of States**

6. The Constitution is altered by omitting section 41.

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7. The Constitution is altered by inserting after section 107 the following section:

**Election of State Parliaments.**

“107A. (1) A House of the Parliament of a State shall be composed of members directly chosen by the people of the State.

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“ (2) Subject to this Constitution, the qualification of electors of members of a House of the Parliament of the State shall be that which is prescribed by the laws of the State.”.

8. The Constitution is altered by inserting after section 122 the following section:

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**Election of certain Territory legislatures.**

“122A. (1) The legislature of a Territory forming part of Australia or a combination of such Territories shall be composed of members directly chosen by the people of the Territory or Territories.

5 “(2) Subject to this Constitution and to any law made by the Parliament of the Commonwealth, the qualification of electors of members of the legislature shall be that which is prescribed by the laws of the Territory or Territories.”.

10 9. The Constitution is altered by inserting after Chapter VI the following Chapter:

**“CHAPTER VIA.  
FAIR ELECTIONS.**

**Interpretation.**

“124A. In this Chapter:

15 ‘election’, means an election for choosing:

- (a) members of the House of Representatives for an electoral region;
- (b) members of a House of the Parliament of a State; or
- (c) members of the legislature of a Territory forming part of Australia or a combination of such Territories;

20 otherwise than for the purpose of filling casual vacancies;

‘electoral region’ means:

- (a) a State or Territory; or
- (b) an area comprising two or more areas each of which is a Territory or part of a Territory;

25 ‘fair distribution’ means a determination of electoral divisions in accordance with section one hundred and twenty-four B.

**Fair distributions of electoral divisions.**

30 “124B. (1) Where a law provides for electoral divisions in an electoral region, the divisions shall be determined so that the number of electors in each division does not depart to a greater extent than one-tenth more or one-tenth less from the number calculated under subsection (2).

“(2) For the purposes of subsection (1), a number, in relation to a particular electoral division, shall be calculated by:

- 35 (a) dividing the total number of electors in all the electoral divisions in the electoral region by the total number of members to be chosen in all those divisions; and
- (b) multiplying the result by the number of members to be chosen for that electoral division.

“(3) If, in relation to a determination of electoral divisions:

- (a) no proceedings challenging the determination have been instituted as provided by this Chapter; or
- (b) any proceedings so instituted have been withdrawn or dismissed;

the determination shall be taken to have been made in accordance with this section. 5

**Elections in divisions.**

“124C. (1) An election in an electoral region may be held in electoral divisions only if:

- (a) the divisions have been determined by a fair distribution made after the commencement of this Chapter and not more than seven years before the election; and 10
- (b) subsection (2) does not apply in relation to the electoral divisions.

“(2) Subject to subsection (3), this subsection applies to electoral divisions for an election if, on the last day of each of any two or more successive months since the last fair distribution before that election, the numbers of the electors in more than one-third of the divisions were such that, if the divisions had been determined with those numbers of electors, the determination would not have been a fair distribution. 15

“(3) In ascertaining whether subsection (2) applies in relation to electoral divisions for an election, a particular month shall be disregarded if the last day of that month occurs within twenty-six weeks before the date of expiry, by effluxion of time, of the terms of service of all or any of the members of the House concerned. 20

“(4) This section does not apply to an election held before the end of one year after the commencement of this Chapter. 25

“(5) In this section:

‘House’ means:

- (a) the House of Representatives;
- (b) a House of the Parliament of a State; or 30
- (c) a chamber (by whatever name called) of the legislature of a Territory or combination of Territories;

‘month’ means one of the twelve months of the year.

**Elections where electoral region to be one electorate.**

“124D. (1) Where an election in an electoral region is not to be held in electoral divisions or, if so held, is or would be contrary to section one hundred and twenty-four C, the region shall be one electorate. 35

“(2) Where a region is to be one electorate, an election in the electorate shall be held:

- (a) if the election is for the purpose of choosing members of the House of Representatives—as the Parliament provides; or 40

- (b) if the election is for the purpose of choosing members of a House of the Parliament of a State or the legislature of a Territory or a combination of Territories—in accordance with the law of the State, Territory or Territories, as the case requires, or, if there is no such law, as the Parliament provides;

but so that the method of choosing those members shall be, as nearly as practicable, the same as the method of choosing senators.

**Casual vacancies.**

“124E. Nothing in this Constitution prevents the filling of a casual vacancy in the membership of:

- (a) a House of the Parliament of a State; or  
(b) the legislature of a Territory forming part of Australia or a combination of such Territories;

in the manner provided by the Parliament of that State or, subject to any law made by the Parliament of the Commonwealth, by that legislature, as the case requires.

**Right to challenge determinations of electoral divisions.**

“124F. (1) Subject to subsection (2), a determination of electoral divisions may be challenged by an elector in a court of competent jurisdiction on the ground that the determination was not a fair distribution.

“(2) An elector shall not institute proceedings under subsection (1) after the end of forty days after both of the following have been notified to the public, namely:

- (a) the results of the determination; and  
(b) all statistics necessary to ascertain whether or not the determination was a fair distribution.

“(3) In this section, ‘elector’, in relation to a determination of electoral divisions, means a person whose name is on a roll of electors qualified to vote at an election in those divisions.

**Right to vote.**

“124G. (1) Laws prescribing the qualifications of electors for elections shall be such that each Australian citizen who:

- (a) complies with reasonable conditions prescribed by those laws as to residence and enrolment; and  
(b) has reached the age of eighteen years;

is entitled to vote, subject to any disqualification prescribed by those laws as to persons who:

- (c) because of unsoundness of mind, are incapable of understanding the nature and significance of enrolment and voting; or  
(d) are undergoing imprisonment for an offence.

“(2) If:

- (a) a person applies to a court of competent jurisdiction for an order under this subsection; and
- (b) the person would be qualified as an elector as provided by this section but for the fact that the relevant law is inconsistent with this section;

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the court may order that the person shall be enrolled, and is entitled to vote, as if the person were so qualified.

“(3) This section does not apply in relation to an election held before the end of one year after the commencement of this Chapter.

**Electors to have only one vote.**

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“124H. In the choosing of:

- (a) senators;
- (b) members of the House of Representatives;
- (c) members of a House of the Parliament of a State; or
- (d) members of the legislature of a Territory forming part of Australia or a combination of such Territories;

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each elector shall vote only once.”.



