

Constitution Alteration (Simultaneous Elections) Bill 1977

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Explanatory Memorandum

(Circulated by the Attorney-General, the  
Honourable R.J. Ellicott, Q.C.)

2: This clause amends section 7 of the Constitution consequentially upon the change in the term of the senators by omitting the reference to the term of six years.

3: This clause amends section 9 of the Constitution by omitting the sentence that confers on the Parliament of a State power to make laws for determining the times and places of elections of senators for the State and substituting a provision that will confer this power on the Commonwealth Parliament. This is a necessary change because, if the elections of Senators are to be brought into line with elections of members of the House of Representatives, the control of the timing of elections of senators cannot be left in the hands of the States.

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

12: The new section 12 does not make any changes of substance except to extend the application of the provision as to the time within which writs are to be issued to all cases where places of senators become vacant and not merely to cases where there is a double dissolution. To remove administrative difficulties it also extends the period within which writs shall be issued from 10 days to 14 days.

on 13:

The new section 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 existing senators.

on 13(1):

Sub-section (1) of new section 13 states the general rule as to the term of service of senators, namely, a term that expires in each case upon the expiry or dissolution of the second House of Representatives to expire or be dissolved after he was chosen or, if the Senate is sooner dissolved on a double dissolution, upon that dissolution.

on 13(2)

(3) Sub-sections (2) and (3) of section 13 provide for the division of senators into two classes, so as to ensure the system of rotation as at present.

on 13(4)

Sub-section (4) of section 13 provides that senators in the first class have a term of office in accordance with sub-section (1), that is to say, in the ordinary course for the period of two Houses of Representatives. Senators in the second class have terms equal only to one House of Representatives. No express provision is made for determining the classes - no provision is made in the existing provisions - but the practice of the Senate has been to classify senators in accordance with their relative order of success at their elections.

on 13(5)

Sub-section (5) of section 13 provides for the case where a casual vacancy occurs following a dissolution of the Senate (a double dissolution) but before the division of senators into classes in pursuance of the section has taken place. The sub-section provides that the division

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of senators into classes is to be made as if the casual vacancy had not occurred and that, for the purposes of section 15 (filling of casual vacancies), the term of service of the senator whose place becomes vacant is to be deemed to be the period for which he would have held his place if it had not become vacant. The purpose of this provision is to enable his place to be filled under section 15 for the appropriate term. While the sub-section is technical, it is essential to avoid the position that could otherwise arise that a casual vacancy could fall to be filled in respect of which a term of service has not been determined.

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on 13(6)

Sub-section (6) of section 13 makes provision for the terms of service of senators holding office at the commencement of the new section (that is to say, at the date on which the Constitution Alteration (Simultaneous Elections) Bill receives the Royal Assent). Those whose terms would have expired on 30 June 1978 (that is to say, those elected at the 1975 double dissolution elections who are short-term senators) will hold office until the expiry or dissolution of the first House of Representatives to expire or be dissolved after the date of that Royal Assent. These senators will, therefore, in the ordinary course have a term extending for approximately 3 years.

Those senators whose terms would have expired on 30 June 1981 (the existing long-term senators) will have terms expiring upon the expiry or dissolution of the second House of Representatives to expire or be dissolved after the Constitution Alteration (Simultaneous Elections) Bill receives the Royal Assent. This will mean that they

will, in the ordinary course, have terms of approximately six years.

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on 13(7)

Sub-section (7) of section 13 covers the special case of a casual vacancy occurring that has been filled before the date on which the Bill becomes law. If the senator holding such a casual vacancy at that date was chosen by a State Parliament he will hold office until the next House of Representatives election; if he was appointed by the Governor of a State he will hold office until the expiration of fourteen days after the beginning of the next session of the State Parliament that commenced or commences after he was appointed. Thereafter the new provisions will govern further replacement action.

on 13(8)

Sub-section (8) of section 13 is again a technical provision of a transitional nature. It covers a case where a casual vacancy falls to be filled under the second paragraph of section 15 in respect of a senator elected before the Constitution Alteration (Simultaneous Elections) Bill receives the Royal Assent for a term expiring after that time. The second paragraph will now provide for election of a successor at the next Senate election for the balance of the term of the senator whose place became vacant. It is necessary to define the balance of the term for this purpose. Sub-section (8) does this by ascertaining the term that the senator whose place is to be filled would have had under sub-section (6) if he had continued to hold his place until the Constitution Alteration (Simultaneous Elections) Bill received the Royal Assent.

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This clause makes several amendments of section 15 (providing for the filling of casual vacancies) consequential on the proposed changes in the terms of service of senators.

This clause provides that if the Constitution Alteration (Senate Casual Vacancies) is passed the provisions in this Bill with respect to Senate casual vacancies will not take effect. This provision is necessary because the Constitution (Senate Casual Vacancies) Bill provides for the omission of existing section 15 of the Constitution and for its replacement by a new section, which will be capable of operating whether or not this Bill is passed.

The following resolution was adopted at the Hobart meeting of the Australian Constitutional Convention:

- '6. That this Convention recommends that the Constitution be amended, in terms of the Constitution Alteration (Simultaneous Elections) Bill that was submitted to referendum in May 1974 so as to ensure that Senate elections are held at the same time as House of Representatives elections.'