

1980-81

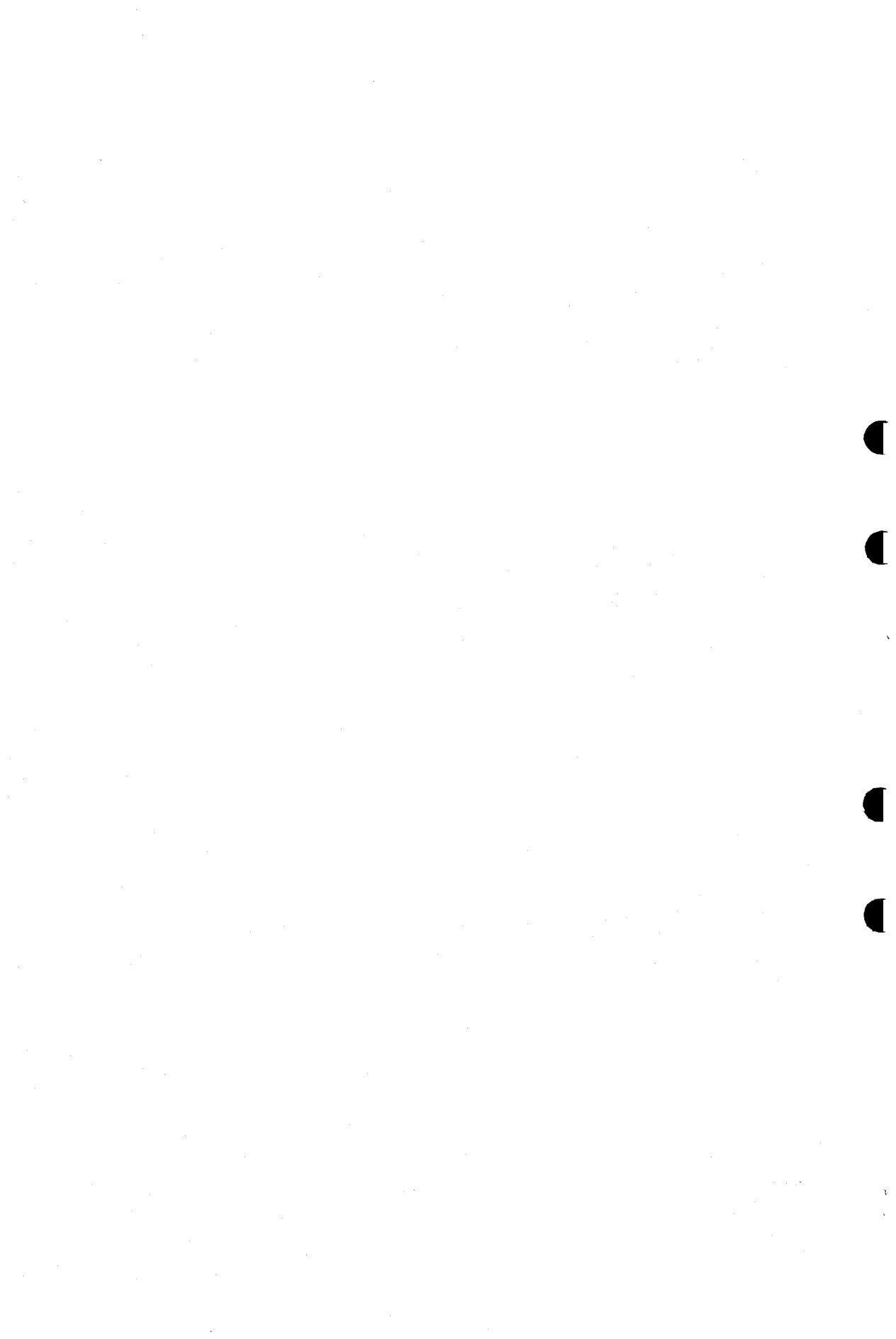
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CONSTITUTION ALTERATION (FIXED TERM PARLIAMENTS) 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator G.J. Evans)



CONSTITUTION ALTERATION (FIXED TERM PARLIAMENTS) 1981

Outline

This proposed constitutional amendment is designed to ensure that a duly elected Government can see out its full term of office, so long as it retains the confidence of the House of Representatives. The trade-off for this security is that the Government of the day loses its power to manipulate election dates to suit its own advantage: elections in future are to take place on a fixed date, set as the third Saturday in November in every third year.

The Bill allows for exceptions to the rigid fixed term rule in two situations:

- (a) where a section 5 dissolution occurs - as a result of the Government of the day being defeated on a formal no confidence resolution, of which notice has been given, and no alternative Government capable of securing the confidence of the House being able to be formed within 7 days; and
- (b) where a s.57 double dissolution occurs - as a result of the Government in the House of Representatives pressing its legislation against Senate resistance, and advising a double dissolution.

The central provisions in the Bill are new section 5 (which limits the Governor-General's power to dissolve Parliament), new section 13 (which limits Senate terms to those of the House of Representatives) and new section 28 (which fixes the terms of the House of Representatives). Consequential or lesser changes are, however, made to a number of other existing sections of the Constitution. In approximate order of importance, these changes are to section 64 (to codify the conventions governing the appointment and dismissal of Ministers, consistently with the Governor-General's new obligations under s.5), section 53 (to formally limit the Senate's powers with respect to money bills), section 57 (to remove references to money Bills, and to introduce the option of a joint sitting as well as a double dissolution to resolve deadlocks), and sections 7, 9, 12 and 32 (to ensure that the fixed term timetable is maintained, and that there will be synchronisation between House and Senate elections).

NOTES ON CLAUSESClause 2 - Section 5: Sessions of Parliament

The Governor-General's power to dissolve the House of Representatives is limited, apart from a s.57 double dissolution, to situations where

- (a) The House of Representatives has passed a resolution of no confidence, of which 24 hours notice has been given, in the Government; and
- (b) No alternative Government, or possible alternative Government, has been able to secure a confidence vote within 7 days - the House being required to meet for that purpose.

The section is constructed in such a way that, following the passage of a resolution of no confidence, the Governor-General is obliged to dissolve the House unless a further resolution expressing confidence in an alternative Government is passed within 7 days. The new paragraphs cover situations both where the Government resigns immediately following the no confidence motion, and where it does not resign. There is no obligation upon a Government to resign immediately : it may choose to wait and see whether an alternative Ministry can command the confidence of the House, and in the event that it cannot, to go to the polls still in office as the Government.

This proposed new section 5 should be read in conjunction with proposed new Section 64 (clause 10 below), which defines the circumstances in which the Governor-General may appoint and dismiss Ministers.

Clause 3 - Section 7: The Senate

The description of Senators' terms as "six years" is deleted, and replaced in s.13 with a provision that they be two House of Representatives terms in duration.

Clause 4 - Section 9: Election of Senators

The power to determine the times and places of elections of Senators is vested in the Commonwealth Parliament, rather than State Parliaments, to ensure that the synchronisation of House and Senate elections is maintained.

Clause 5 - Sections 12 and 13: Senate Writs and Terms of Service

Section 12 makes the issue of writs by State Governors for Senate elections mandatory rather than discretionary, to ensure that the synchronisation of House and Senate elections is maintained.

Section 13 specifies the term of a Senator as being two terms of the House of Representatives - i.e. it expires on the expiry or dissolution of the second House of Representatives to conclude after the Senator was chosen.

The provisions relating to the division of Senators into long-term and short-term classes following a dissolution of the whole Senate are the same in effect as the existing provisions.

A transitional provision is included to clarify the position of present Senators: for example, in the event that the amendment takes effect on or before November 1983, the situation would be that those Senators now due to retire on 30/6/84 would come up for election in November 1983, and hold office for two House of Representatives' terms thereafter; while those now due to retire on 30/6/87 would hold office for one House of Representatives term following the November 1983 election.

Clause 6 - Section 28: Duration of House of Representatives

This section sets out the basic new fixed term rule and identifies the dates on which future elections are to be held:

- (a) In the event of the House expiring after seeing out its full three year term, the House is dissolved in the last Thursday in October and the election held in the third Saturday in November;

- (b) In the event of the House being dissolved prematurely, under either s.5 or s.57, this occurring within the six months after November in any year (i.e. between November in one year and May in the next) - the extraordinary election is held on the fourth Saturday after the dissolution, and the House so elected continues for three minus years (i.e. for three years calculated from the previous "last Thursday in October");
- (c) In the event of the House being dissolved prematurely under either s.5 or 57, and this occurring within the six months preceding November in any year (i.e. between June and October) - the extraordinary election is held on the fourth Saturday after the dissolution, and the House so elected continues for three plus years (i.e. for the period, however long it may be, up until the "last Thursday in October" in the year in question, and for three years after that).

A transitional provision is included to make it clear that whenever the amendment comes into force, even if it is midway during the life of a particular Parliament, it will have immediate application to that existing Parliament, the term of which will be fixed accordingly.

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

This provision now makes it mandatory rather than discretionary for writs for House of Representatives elections to be issued within 10 days after expiry or dissolution, to ensure that the fixed term timetable is maintained.

Clause 8 - Section 53: Powers of the Houses in Respect of Legislati

This section is amended to make it clear that the power of the Senate no longer extends to the rejection or blocking of appropriation or taxation bills. This merely formalises what the practical situation would be under the new fixed term rules, at least so far as the major money bills

on which the survival of any government depends are concerned: there would be little point in any Senate blocking supply if it were impossible thereby (in the absence of a Government willing to pass a motion of no confidence in itself, or of an available stockpile of s.57 Bills) to force a dissolution of the Parliament, or dismissal of the Government.

The Senate retains the power under this amendment to reject and/or block all other classes of Bills: the sanction available to the Government and House of Representatives for a misuse of this power is the section 57 deadlock procedure.

Clause 9 - Section 57: Disagreement between the Houses

The present section 57 is amended in two ways by this provision: references to disagreements about money bills are removed as unnecessary in the light of the new section 53, and the section as a whole is rewritten to embody, with minor modifications, the recommendations of the all-party 1959 Joint Committee on Constitutional Review.

As a result of the latter change, the Government of the day has the alternative of advising either a double dissolution or a joint sitting (with special absolute majority requirements as at present) to resolve a deadlock situation. The decision is one for the Governor-General in Council, i.e. for the Governor-General acting on the advice of his Ministers.

The new section also describes much more precisely than does the existing "fails to pass" language, the circumstances in which a deadlock is deemed to arise. The initial criterion is simply whether the Senate has passed the Bill in question within 90 days after it has been transmitted from the House; if the House then passes again the same Bill, and the Senate has not passed it within 30 days of its transmission, then a deadlock has arisen.

Clause 10 - Section 64: Prime Minister and other Ministers of State

This provision codifies the conventions governing the powers of the Governor-General to appoint and dismiss Prime Ministers (who are now explicitly referred to as such) and other Ministers of State. In the absence of these changes to s.64, there may possibly have been uncertainty about, or conflict with, the new provisions in section 5 relating to dissolution of the House of Representatives.

The provision makes it clear that the only circumstances in which a Government may be dismissed from office are if (a) it is the subject of a no-confidence motion in the House of Representatives, and (b) an alternative Government does then receive a vote of confidence in the House of Representatives, and (c) the original Government does not resign forthwith.

* * * * *