

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1°, 12 May 1983)

(THE ATTORNEY-GENERAL, SENATOR GARETH EVANS)

No 26

A BILL

FOR

**An Act to alter the Constitution in relation to the duration of
the House of Representatives, the terms of service of senators,
the holding of elections for the Senate and House of
Representatives, and the appointment, and the termination of
the appointment, of Ministers of State**

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 (Fixed Term
Parliaments) 1983*.

Sessions of Parliament

Prorogation and dissolution

2. (1) Section 5 of the Constitution is altered by inserting in the first
paragraph “, subject to this section,” after “may” (last occurring).

(2) Section 5 of the Constitution is altered by omitting the last paragraph and substituting the following paragraphs:

Dissolution of House of Representatives

“If the House of Representatives, in pursuance of a motion of which not less than 24 hours’ notice has been given in accordance with the rules and orders of the House made in pursuance of section 50 of this Constitution, passes a resolution (in this section referred to as a ‘resolution of no confidence’) expressing a lack of confidence in the Prime Minister and the other Ministers of State for the Commonwealth, the Governor-General shall, subject to the next 2 succeeding paragraphs, dissolve the House on the eighth day after the day on which the resolution of no confidence is passed unless he has sooner dissolved the Senate and the House of Representatives in accordance with section 57 of this Constitution. 5 10

“The Governor-General shall not dissolve the House of Representatives in pursuance of the last preceding paragraph if, after the passing of the resolution of no confidence and before the eighth day after the day on which that resolution was passed, the House passes a further resolution declaring that, if a person named in the resolution were to be appointed by the Governor-General as Prime Minister, that person and any Ministers of State for the Commonwealth who might be appointed on the advice of that person would have the confidence of the House. 15 20

“The Governor-General shall not dissolve the House of Representatives in pursuance of the third paragraph of this section if—

- (a) after the passing of the resolution of no confidence and before the passing of such a further resolution as is mentioned in the last preceding paragraph the Prime Minister resigns and a person is appointed as Prime Minister by the Governor-General; and 25
- (b) after the appointment of the Prime Minister and before the eighth day after the day on which the resolution of no confidence was passed the House passes a further resolution declaring that the Prime Minister and the Ministers of State for the Commonwealth who were appointed on the advice of the Prime Minister have the confidence of the House. 30

“The Governor-General is not entitled to dissolve the House of Representatives except in accordance with this section or section 57 of this Constitution. 35

Calling together of House of Representatives

“Where a meeting of the House of Representatives is not fixed to take place within 7 days after the day on which a resolution of no confidence is passed, the House shall be called together to meet within 7 days after that day.”.

The Senate 40

3. Section 7 of the Constitution is altered by omitting from the fourth paragraph “senators shall be chosen for a term of six years, and the”.

Times and places

4. Section 9 of the Constitution is altered by omitting from the second paragraph "The Parliament" and substituting "Subject to this Constitution, the Parliament".

5 5. The Constitution is altered by omitting sections 12 and 13 and substituting the following sections:

Issue of writs

10 "12. Subject to section 15 of this Constitution, the Governor of a State shall cause writs to be issued for elections of senators for the State not earlier than 30 days before the day on which the places to be filled are expected to become vacant or, if the places to be filled have become vacant, not later than 10 days after the day on which the places to be filled became vacant.

Terms of service of senators

15 "13. (1) Subject to this Constitution, the term of service of a senator for a State who has been chosen otherwise than at the election next following a dissolution of the Senate and the House of Representatives begins on the day of his election or the day on which the place that he was chosen to hold becomes vacant, whichever is the later, and expires—

20 (a) at the expiration of the last Thursday in the October sixth occurring after the day on which that term of service began; or

(b) if there is an earlier dissolution of the Senate—upon that dissolution.

"(2) The term of service of a senator for a State who has been chosen at the election next following a dissolution of the Senate and the House of Representatives shall be ascertained as follows:

25 (a) the term of service of each senator begins on the day of his election;
(b) as soon as practicable after the first meeting of the Senate following the dissolution the Senate shall divide the senators chosen for each State into 2 classes;

30 (c) in the case of each State, where the number of senators to be divided is an even number, the number of senators in each of the classes shall be equal and, where the number of senators to be divided is an odd number, the number of senators in the first class shall be one more than the number in the second class;

35 (d) subject to this Constitution, the term of service of a senator included in the first class expires—

(i) at the expiration of the last Thursday in the October third occurring after the day on which the House of Representatives would have expired if it had not been dissolved; or

40 (ii) if there is an earlier dissolution of the Senate—upon that dissolution;

(e) subject to this Constitution, the term of service of a senator included in the second class expires—

(i) at the time at which the House of Representatives would have expired if it had not been dissolved; or

(ii) if there is an earlier dissolution of the Senate—upon that dissolution.

“(3) Where, since the election of senators for a State following a dissolution of the Senate but before the division of the senators for that State into classes in pursuance of this section, the place of a senator chosen at that election has become vacant, the division of senators shall be made as if the place of that senator had not become vacant and, for the purposes of section 15 of this Constitution, the term of service of that senator shall be deemed to be, and to have been, the period for which he would have held his place, in accordance with this section, if his place had not become vacant.

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“(4) For the purposes of the division into 2 classes of the senators for a State chosen at the election next following a dissolution of the Senate and the House of Representatives—

(a) the Senate shall cause the names of those senators to be placed on a list in order of their relative success at the election, beginning with the name of the most successful senator; and

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(b) the senators to be included in the first class shall be ascertained by taking names in order from the list, beginning with the first name on the list, until the required number of senators to be included in that class is obtained, and the remainder of the senators shall be the senators to be included in the second class.

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“(5) The Parliament has, subject to this Constitution, power to make laws with respect to the manner in which the relative success at an election of senators for a State is to be ascertained for the purposes of sub-section (4) of this section but, until the Parliament makes such laws, the manner in which the relative success at an election of senators for a State is to be ascertained for those purposes shall be determined by the Senate.

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“(6) Where a House of Representatives expires, an election of senators to fill the places of senators whose terms expired at the time at which that House expired shall be held on the same day as the general election of members of the next House of Representatives.

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“(7) Where a House of Representatives is dissolved in pursuance of section 5 of this Constitution not more than 3 months before the day on which that House would have expired if it had not been dissolved, an election of senators to fill the places of senators whose terms expire at the time at which that House would have so expired shall be held on the same day as the general election of members of the House of Representatives next following the dissolution.

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“(8) If the term of service of a senator for a State (other than a senator appointed by the Governor of the State) who is holding office at the commencement of the *Constitution Alteration (Fixed Term Parliaments) 1983* would, under the provisions in force before that commencement, have expired before the expiration of 3 years after that commencement, that term of service shall expire at the time at which the House of Representatives that is in existence at that commencement would, if not sooner dissolved, expire or, if there is an earlier dissolution of the Senate, upon that dissolution.

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“(9) If the term of service of a senator for a State (other than a senator appointed by the Governor of the State) who is holding office at the commencement of the *Constitution Alteration (Fixed Term Parliaments) 1983* would, under the provisions in force before that commencement, have expired after the expiration of 3 years after that commencement, that term of service shall expire at the expiration of the last Thursday in the October third occurring after the October in which the House of Representatives that is in existence at that commencement would, if not sooner dissolved, expire or, if there is an earlier dissolution of the Senate, upon that dissolution.

“(10) If—

(a) a senator for a State holding office at the commencement of the *Constitution Alteration (Fixed Term Parliaments) 1983* was appointed by the Governor of a State in consequence of the place of a senator chosen by the people of a State having become vacant; or

(b) the place of a senator chosen by the people of a State was vacant at that commencement and had become so vacant in circumstances in which section 15 of this Constitution applies,

the term of service of the senator whose place so became vacant shall, for the purposes of section 15 of this Constitution, be deemed to be, and to have been, the period for which that senator would have held his place, in accordance with sub-section (8) or (9), as the case may be, of this section if his place had not become vacant.”.

6. The Constitution is altered by omitting section 28 and substituting the following section:

Duration of House of Representatives

“28. (1) A House of Representatives shall continue from the first meeting of that House until the expiration of—

(a) if the last preceding House expired— the last Thursday in the October third occurring after the day of the expiry of that last preceding House;

(b) if the last preceding House was dissolved more than 3 months before the day on which it would have expired if it had not been dissolved—the day on which that last preceding House would have expired if it had not been dissolved; or

(c) if the last preceding House was dissolved not more than 3 months before the day on which it would have expired if it had not been dissolved—the last Thursday in the October third occurring after the day on which that last preceding House would have expired if it had not been dissolved,

or, if there is an earlier dissolution of the first-mentioned House, until that dissolution.

“(2) After the expiry of a House of Representatives, a general election of members of the House shall be held on the third Saturday in the November immediately following the October in which the expiry occurred.

“(3) Sub-section (1) of this section does not apply in relation to the House of Representatives that is in existence at the commencement of the *Constitution Alteration (Fixed Term Parliaments) 1983* but that House shall continue until the expiration of the last Thursday in the October third occurring after the day of the first meeting of that House or, if there is an earlier dissolution of that House, until that dissolution.”. 5

7. The Constitution is altered by omitting section 32 and substituting the following section:

Issue of writs for general elections

“32. The Governor-General in Council shall cause writs to be issued for general elections of members of the House of Representatives not earlier than 30 days before the expected expiry of a House of Representatives or, if a House of Representatives has expired or been dissolved, not later than 10 days after the expiry or dissolution.”. 10

Disagreement between the Houses 15

8. Section 57 of the Constitution is altered by adding at the end thereof the following paragraph:

“Where the Senate and the House of Representatives are dissolved simultaneously in pursuance of this section, an election of senators shall be held on the same day as the general election of members of the House of Representatives next following the dissolution.”. 20

9. The Constitution is altered by omitting section 64 and substituting the following section:

Prime Minister and other Ministers of State

“64. (1) The Governor-General shall appoint an officer, to be known as the Prime Minister, to administer a department of State of the Commonwealth established by the Governor-General in Council. 25

“(2) On the advice of the Prime Minister, the Governor-General shall appoint officers to administer such other departments of State of the Commonwealth as the Governor-General in Council establishes and the Governor-General may, on the advice of the Prime Minister, dismiss from office an officer so appointed. 30

“(3) The Prime Minister, and the other officers referred to in sub-section (2) of this section, shall be members of the Federal Executive Council and shall be Ministers of State for the Commonwealth. 35

“(4) If—

(a) the House of Representatives in accordance with section 5 of this Constitution passes a resolution expressing a lack of confidence in the Prime Minister and the other Ministers of State for the Commonwealth and also passes a further resolution declaring that, if a person named in the further resolution were to be appointed by the Governor-General as Prime Minister, that person and any Ministers of State for the Commonwealth who might be appointed on the advice of that person would have the confidence of the House; and 40

- (b) the Prime Minister has not resigned from office before the passing of that further resolution and does not resign from office forthwith after the passing of that further resolution,

the Governor-General shall dismiss the Prime Minister from office.

5 “(5) A Minister of State shall not hold office for a period of more than 3 months unless he is or becomes—

- (a) in the case of the Prime Minister—a member of the House of Representatives; or

- 10 (b) in any other case—a senator or a member of the House of Representatives.

“(6) Notwithstanding the alterations made to this section by the *Constitution Alteration (Fixed Term Parliaments) 1983* .

- 15 (a) any departments of State of the Commonwealth that were in existence immediately before the commencement of those alterations continue in existence; and

- (b) any persons who, immediately before that commencement, held appointments as officers to administer those departments continue to hold those appointments,

20 but this section as altered by those alterations applies after that commencement in relation to those departments and officers as if those departments had been established, and those officers had been appointed, under this section as so altered.”.

