

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1°, 11 November 1981)

(SENATOR EVANS)

No 240

A BILL

FOR

An Act to alter the Constitution in relation to the duration of the House of Representatives, the holding of elections for the Senate and House of Representatives, disagreement between the Houses with respect to proposed laws 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

1. This Act may be cited as the *Constitution Alteration (Fixed Term Parliaments)* 1981.

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 twenty-four hours’ notice has been given in accordance with the rules and orders of the House made in pursuance of section fifty 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 two succeeding paragraphs, dissolve the House on the eighth day after the day on which the resolution of no confidence is passed. 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 the other Ministers of State for the Commonwealth would have the confidence of the House. 15

“The Governor-General shall not dissolve the House of Representatives in pursuance of the third paragraph of this section if— 20

- (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
- (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 other Ministers of State for the Commonwealth have the confidence of the House. 25

“The Governor-General is not entitled to dissolve the House of Representatives except in accordance with this section or section fifty-seven of this Constitution. 30

Calling together of House of Representatives

“Where a meeting of the House of Representatives is not fixed to take place within seven days after the day on which a resolution of no confidence is passed, the House shall be called together to meet within seven days after that day.”. 35

The Senate

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 the second paragraph and substituting the following paragraph: 40

“The Parliament may make laws for determining the times and places of elections of senators.”.

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

5 **Issue of writs**

“12. The Governor of a State shall cause writs to be issued for elections of senators for the State within ten days from the date on which the places to be filled became vacant.

Term of service of senators

10 “13. Subject to this Constitution, the term of service of a senator for a State expires upon the expiry or dissolution of the second House of Representatives to expire or be dissolved after he was chosen or, if there is an earlier dissolution of the Senate, upon that dissolution.

15 “As soon as may be after the first meeting of the Senate following a dissolution of the Senate, the Senate shall divide the senators chosen for each State into two classes.

20 “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 two 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.

25 “The first paragraph of this section applies to senators included in the first class, but the term of service of senators included in the second class expires upon the expiry or dissolution of the first House of Representatives to expire or be dissolved after they were chosen.

30 “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 so become vacant and, for the purposes of section fifteen 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 so become vacant.

Transitional

35 “In the case of a senator for a State holding office at the commencement of the *Constitution Alteration (Fixed Term Parliaments)* 1981—

40 (a) if his term of service would, under the provisions in force before that commencement, have expired on or before the expiration of three years after that commencement, his term of service shall expire upon the expiry or dissolution of the first House of Representatives to expire or be dissolved after that commencement; or

(b) if his term of service would, under the provisions in force before that commencement, have expired after the expiration of three years after

that commencement, his term of service shall expire upon the expiry or dissolution of the second House of Representatives to expire or be dissolved after that commencement or, if there is an earlier dissolution of the Senate, upon that dissolution.”.

6. The Constitution is altered by omitting section 28 and substituting the following section: 5

Duration of House of Representatives

“28. Subject to this Constitution, every House of Representatives shall continue from the first meeting of the House after the expiry or dissolution of the last House to expire or be dissolved before that meeting until the expiration of— 10

- (a) if the last House expired—the last Thursday in the October third occurring after that meeting;
- (b) if the last House was dissolved and an election of the members of the first-mentioned House was held during the period of six months immediately preceding the third Saturday in any November—the last Thursday in the October third occurring after that November; or 15
- (c) if the last House was dissolved and an election of the members of the first-mentioned House was held during the period of six months commencing on the third Saturday in any November—the last Thursday in the October third occurring after that election, 20

unless there is a dissolution of the House in pursuance of section five or section fifty-seven of this Constitution before the last Thursday in that October.

“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. 25

“After the dissolution of a House of Representatives, a general election of members of the House shall be held on the Saturday fourth occurring after the day on which the House was dissolved.

Transitional 30

“If the *Constitution Alteration (Fixed Term Parliaments) 1981* comes into operation after the first meeting of a House of Representatives and before its expiry or dissolution, that House shall continue from the commencement of the *Constitution Alteration (Fixed Term Parliaments) 1981* until the time until which it would have continued if the *Constitution Alteration (Fixed Term Parliaments) 1981* had come into operation immediately before the first meeting of that House.”. 35

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

Issue of writs for general elections

5 “32. The Governor-General in Council shall cause writs to be issued for general elections of members of the House of Representatives within ten days from the expiry or dissolution of a House of Representatives.”.

Powers of the Houses in respect of legislation

8. Section 53 of the Constitution is altered by inserting after the fourth paragraph the following paragraph:

10 “Where the House of Representatives passes a proposed law appropriating revenue or moneys or imposing taxation and transmits it, at least one month before the date fixed under section twenty-eight of this Constitution for the expiry of the House of Representatives, to the Senate for the concurrence of the Senate and, at the expiration of one month after the date on which the proposed law is so transmitted to the Senate, the Senate has not passed the proposed law in the form in which it was so transmitted to the Senate, or with any amendments made or requested by the Senate to which the House of Representatives has agreed, the proposed law shall be presented to the Governor-General for the Queen’s assent as if it had been passed by both Houses of the Parliament.”.

9. The Constitution is altered by omitting section 57 and substituting the following section:

Disagreement between the Houses

25 “57. This section applies in relation to proposed laws other than proposed laws appropriating revenue or moneys or imposing taxation.

“For the purposes of this section, a deadlock shall be deemed to arise between the two Houses of the Parliament in relation to a proposed law where—

30 (a) the House of Representatives, in any session, passes the proposed law and transmits it to the Senate for the concurrence of the Senate and, at the expiration of a period of ninety days after the date on which the proposed law is so transmitted to the Senate, the Senate has not passed the proposed law and the session has not ended; and

35 (b) the House of Representatives, in the same or the next session, again passes the proposed law, either as originally passed by that House or with such amendments only as are amendments that were made, requested or agreed to by the Senate, and transmits it to the Senate for the concurrence of the Senate, and—

40 (i) at the expiration of a period of thirty days after the date on which the proposed law as passed again by the House of Representatives is transmitted to the Senate, the Senate has not

passed the proposed law and the session in which the proposed law was so passed again has not ended; or

- (ii) before the expiration of that period the Senate rejects the proposed law.

“Where a deadlock is deemed to arise between the two Houses in relation to a proposed law, the Governor-General in Council may— 5

- (a) convene a joint sitting of the members of the Senate and of the House of Representatives to deliberate and vote together upon the proposed law as passed by the House of Representatives or, if it was passed more than once by that House, as last passed by that House, and upon any amendments of the proposed law that have, since the proposed law was so passed or last passed, been made by one House but have not been agreed to by the other House; or 10
- (b) without convening such a joint sitting, dissolve the Senate and the House of Representatives simultaneously. 15

“If the Governor-General in Council convenes a joint sitting of the members of the two Houses under the last preceding paragraph and the proposed law is affirmed, with or without any of the amendments referred to in that paragraph, at the joint sitting, the proposed law, as so affirmed, shall be deemed to have been duly passed by both Houses of Parliament and shall be presented to the Governor-General for the Queen’s assent. 20

“A proposed law shall be deemed to be affirmed, with or without any amendment, at a joint sitting of members of the two Houses if it is so affirmed—

- (a) by an absolute majority of the total number of the members of the two Houses; and 25
- (b) in the case of each of at least one-half of the States, by at least one-half of the total number of the members of the two Houses chosen in or for the State.

“The Governor-General in Council may at any time terminate a joint sitting convened under the third paragraph of this section (whether or not the joint sitting has voted on the proposed law) and, where a joint sitting is so terminated without having affirmed the proposed law, with or without any amendment, the Governor-General in Council may dissolve both Houses of the Parliament simultaneously. 30

“A dissolution of the two Houses under the third or sixth paragraph of this section shall not take place within six months before the date fixed by section twenty-eight of this Constitution for the expiry of the House of Representatives. 35

“Where a dissolution of the two Houses takes place under the third or sixth paragraph of this section, or the dissolution or expiry of the House of Representatives next following a deadlock between the two Houses occurs within one year after the deadlock has arisen, and, in the next session of the Parliament and within six months after the commencement of that session, the House of Representatives again passes the proposed law, either as originally 40

passed by the House of Representatives or with such amendments only as are amendments that were at any time made, requested or agreed to by the Senate, and transmits it to the Senate for the concurrence of the Senate, and—

5 (a) at the expiration of a period of thirty days after the date on which the proposed law as passed again by the House of Representatives is transmitted to the Senate, the Senate has not passed the proposed law and the session in which the proposed law was so passed again has not ended; or

10 (b) before the expiration of that period the Senate rejects the proposed law,

the Governor-General in Council may convene a joint sitting of the members of the two Houses to deliberate and vote together upon the proposed law as last passed by the House of Representatives and upon any amendments of the proposed law that have, since the proposed law was last passed by the House of
15 Representatives, been made by one House but have not been agreed to by the other House.

“If, at the joint sitting, the proposed law is affirmed, with or without any such amendments, by an absolute majority of the total number of the members of the two Houses, the proposed law, as so affirmed, shall be deemed to have
20 been duly passed by both Houses of the Parliament and shall be presented to the Governor-General for the Queen’s assent.

“The Governor-General in Council may at any time terminate a joint sitting convened under the eighth paragraph of this section, whether or not the joint sitting has voted on the proposed law.

25 “For the purposes of this section, the Senate shall be taken to have passed a proposed law before the expiration of a particular period where, before the expiration of that period, the Senate passed the proposed law with amendments, if every such amendment had been made by the House of Representatives, or has been agreed to by the House of Representatives either
30 before or after the expiration of that period.

“Questions of procedure arising at a joint sitting of members of the two Houses of Parliament under this section shall be determined by a majority of the members present.”.

35 **10.** The Constitution is altered by omitting section 64 and substituting the following section:

Prime Minister and other Ministers of State

“64. 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.

40 “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.

“The Prime Minister, and the other officers referred to in the last preceding paragraph, shall be members of the Federal Executive Council and shall be Ministers of State for the Commonwealth.

“If the House of Representatives in accordance with section five of this Constitution—

(a) 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 the other Ministers of State for the Commonwealth would have the confidence of the House; and

(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, but the Governor-General shall not otherwise dismiss the Prime Minister from office.

“The Ministers of State for the Commonwealth other than the Prime Minister shall cease to hold office if the Prime Minister resigns from office following the passing of a resolution referred to in the last preceding paragraph or is dismissed from office in accordance with that paragraph.

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

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

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

Transitional

“The alterations made to this section by the *Constitution Alteration (Fixed Term Parliaments) 1981* do not affect any appointments of persons as officers to administer departments of State of the Commonwealth that were in force immediately before the commencement of those alterations but this section as altered by those alterations applies after that commencement in relation to those officers.”.