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CONSTITUTION ALTERATION (SENATE CASUAL VACANCIES) 1977

Date introduced: 16 February 1977.

House : House of Representatives

Presented by : Attorney-General, Hon. R.J. Ellicott Q.C.

Short Digest of Proposed Law.

Purpose

The purpose of the proposed law is to replace the provisions of section 15 of the Constitution dealing with the filling of casual Senate vacancies with a provision having the effect that such a vacancy is filled by a member of the same political party as the Senator originally elected and for the remainder of his term.

Summary

The first paragraph of the proposed new section 15 provides that persons to fill casual vacancies are to be chosen by a vote of a joint sitting of both Houses of the relevant State Parliament, or if there is only one House, by a vote of that House. If the State Parliament is not in session, the State Governor-in-Council may appoint a replacement to hold office until 14 days after the beginning of the next session, unless the original Senator's term expires in the meantime.

With one major exception this first paragraph is substantially the same as the first paragraph of existing section 15, with minor changes to account for the existence of a unicameral State Parliament. The major change is that the replacement Senator holds office until the end of the original Senator's term of service.

The existing section 15 provides that, at the next general election for the lower House or at the next Senate election, an election to fill the Senate vacancy must be held regardless of whether or not the term of service of the original Senator would have expired at that time.

The second paragraph provides that elected Senators who were elected after campaigning as endorsed candidates of a political party shall be replaced by a person of the same political party, if such a person is available. Replacements for such elected Senators shall also be replaced by a person of the same party as the elected Senator. The provision is apparently intended to ensure that the political wishes of the electors at the time of the election of a Senator are reflected in his replacement. An elected Senator who was elected as an independent but joined a political party during his term of service need not be replaced by a member of his new political party. An elected Senator who was elected as a member of a political party and subsequently became an independent or joined another political party would be replaced by a member of his original political party.

The proposed provision applies to all vacancies whether caused by death, resignation or the operation of the constitutional provisions relating to disqualification.

The proposed new second paragraph does not state that the person chosen or appointed to fill the vacancy must have been nominated by the political party concerned or that the State Parliament or Governor-in-Council is limited in its choice of members of the relevant political party. Under the proposed new third paragraph, where a replacement Senator ceases to be a member of the relevant political party before he takes his seat the choice or appointment is ineffective and a new person must be chosen or appointed. This does not apply if the political party concerned has ceased to exist. It appears that if the State Parliament or Governor-in-Council chose or appointed a party member against the wishes of his party and the party member intended to accept the choice or appointment by taking up his seat, the course open to his party would be to expel him before he took his seat, but this would not ensure that the party's nominee was subsequently chosen.

The proposed new fourth paragraph requires the name of the replacement Senator to be certified by the State Governor to the Governor-General and is almost identical to the existing third paragraph of section 15.

The proposed new fifth paragraph deals with casual vacancies which have not been filled when the alteration comes into operation. These are to be treated as if they occurred after the commencement of the new provision and to be filled accordingly. The proposed new sixth paragraph deals with casual vacancies already filled by an appointment by the Governor-in-Council when the new provisions come into operation. The remaining steps in the procedure to fill the vacancy are to be taken under the new provisions.

The proposed new seventh paragraph deals with casual vacancies already filled by a choice of the State Parliament when the new provisions come into operation. The term of service of such Senators is to be the term of service of the Senators whose vacancy they were chosen to fill. Under the existing provision, as discussed above, such persons could not have held office beyond the next election for the lower House or the next half-Senate election, whichever first occurred.

Proposed new paragraph 8 depends on the coming into operation of the Constitution Alteration (Simultaneous Elections) 1977. This proposed law links the term of service of Senators to terms of the lower House and makes special provision for existing Senators. The proposed new paragraph 8 makes similar provisions for the terms of Senators filling casual vacancies.

Proposed new section 15 only applies on its face to Senators elected for a State. The Senate (Representation of Territories) Act 1973 provides for the filling of casual Senate vacancies for Senators for the Territories.

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