

Elections and the electoral system

THE FIRST ELECTION

The Constitution made specific provision for the first general election of the Parliament. The 1st Parliament was to be summoned to meet not later than six months after the establishment of the Commonwealth¹, which occurred on 1 January 1901. The first general election was held on 29 and 30 March 1901², and the Parliament was summoned and first met on 9 May 1901. Following the enactment of the Constitution on 9 July 1900 and before the election for the 1st Parliament was held³, opportunity was given to the State Parliaments under the Constitution to make laws determining the Divisions in each State for which Members of the House were to be chosen, and the number of Members to be chosen for each Division up to the limits imposed by the Constitution. If a State failed to make a determination, the State was to be considered to be one electorate.⁴

The Constitution made further provision that, until the Parliament otherwise provided:

- the qualification of electors of Members of the House of Representatives be that which was prescribed by State laws⁵; and
- the laws in force in each State relating to elections apply to elections of Members of the House of Representatives⁶;

being those laws applying to the more numerous House of Parliament of the State.

The first general election was conducted on the basis of State laws. The number of Members elected was 75, which was consistent with that prescribed by the Constitution.⁷ A conference of statisticians held early in 1900 determined the population of Australia as at the end of 1899 and initial representation was based on these statistics. State electoral laws ceased to have effect for the Federal Parliament when it passed its own legislation in 1902.⁸ This legislation and subsequent amendments were consolidated in 1918 and formed the basis of the Commonwealth's electoral law. The *Commonwealth Electoral Act 1918* has been substantially amended over the years. This chapter outlines the provisions applicable at the beginning of the 38th Parliament (1996).⁹

The Constitution also determines the composition of the House of Representatives and provides that it shall consist of Members directly chosen by the people of the Commonwealth and that the number of Members shall be, as nearly as practicable, twice

1 Constitution, s. 5.

2 New South Wales, Victoria, Western Australia and Tasmania on 29 March 1901, and Queensland and South Australia on 30 March 1901.

3 *Quick and Garran*, p. 409.

4 Constitution, s. 29; South Australia and Tasmania each voted as one electorate.

5 Constitution, s. 30.

6 Constitution, s. 31.

7 Constitution, s. 26.

8 *Commonwealth Electoral Act 1902; Commonwealth Franchise Act 1902*.

9 Comprehensive details of electoral procedures are available from the Australian Electoral Commission. For election statistics see Australian Electoral Commission, *Election Statistics* series (consolidated to 1975 in Australian Electoral Office, *A Summary of Commonwealth Election and Referendum Statistics 1901-1975*, AGPS, 1976). Historical coverage of election results is also contained in the *Parliamentary Handbook*.

the number of Senators. The number of Members in each State shall be proportionate to the populations of the respective States. The manner in which the number is determined, although set down in the Constitution, was a matter in respect of which the Parliament could legislate, and it has subsequently done so.¹⁰

THE GROWTH OF THE HOUSE

Appendix 11 shows the number of Members of the House of Representatives and the representation of each State and Territory for each Parliament since 1901. Significant variation in membership has occurred as follows:

- In 1949 the membership of the House increased from 75 to 123 following legislation increasing the number of Senators from six to 10 for each original State.¹¹
- In 1977 the High Court ruled¹² that the four Territory Senate places created in 1974¹³ could not be included for the purpose of calculating the number of Members of the House under the 'nexus' provision of the Constitution, and consequently the number of Members, which had reached 127 during 1974–75, was reduced to 124 for the ensuing Parliament.
- In 1984 the membership of the House increased from 125 to 148 following legislation increasing the number of Senators to 12 for each original State.¹⁴

In both 1949 and 1984 a major reason given for the enlargement of the House was the increase in the number of people to be represented.

TABLE 2 RATIO OF ELECTORS TO MEMBERS

<i>Year of election</i>	<i>Electors</i>	<i>Members</i>	<i>Average number of electors per Member</i>
1901	907 658	75	12 102
1946	4 744 017	75	63 254
1949	4 913 654	123	39 948
1983	9 373 580	125	74 989
1984	9 866 266	148	66 664
1996	11 655 190	148	78 751

REVIEW OF THE ELECTORAL SYSTEM

A Joint Standing Committee on Electoral Matters has been appointed following each of the federal elections since 1983. The committee has inquired into and reported on the conduct of each election and related matters. As a result of the reports of the committee a number of amendments have been made to the Commonwealth Electoral Act.

¹⁰ Constitution, s. 24; *Representation Act 1922*; *Commonwealth Electoral Act 1918*.

¹¹ *Representation Act 1948*.

¹² *Attorney-General (NSW) ex rel. McKellar v. Commonwealth* (1978) 139 CLR 527.

¹³ *Senate (Representation of Territories) Act 1973*.

¹⁴ *Representation Act 1983*.

GENERAL ELECTIONS

The following constitutional provisions relate to a general election, that is, an election for all Members of the House of Representatives:

- The Governor-General may dissolve the House of Representatives.¹⁵
- Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.¹⁶
- The Governor-General in Council may cause writs to be issued for general elections of Members of the House of Representatives.¹⁷
- After any general election the Parliament shall be summoned to meet not later than 30 days after the day appointed for the return of the writs.¹⁸

A general election follows the dissolution of the House by the Governor-General¹⁹, or the expiration of the House by effluxion of time three years from its first meeting. The period between the first meeting and dissolution, called a Parliament, has varied between seven months (11th Parliament) and a period just short of the three year maximum term (18th and 27th Parliaments). The 3rd Parliament has been the only one to have expired by effluxion of time.²⁰ Notwithstanding the generality of the above:

- The Governor-General may dissolve both Houses simultaneously upon certain conditions having been met under section 57 of the Constitution, resulting in a general election for the House and an election for all the Senate.²¹
- Apart from section 57, the constitutional provisions relating to dissolution only concern the House of Representatives. The election of Senators does not necessarily take place at the same time as a general election for the House of Representatives. At dissolution Senators are 'discharged from attendance' until Parliament is summoned.
- The distinction between the 'Governor-General' dissolving the House and the 'Governor-General in Council' issuing writs for a general election should be noted. While the decision to dissolve the House may be made by the Governor-General²², the decision to call a general election can only be made on and with the advice of the Executive Council, that is, the Government.²³

While the majority of Parliaments have extended for more than two years and six months some Parliaments have been dissolved well short of the maximum three year term. Reasons for the early dissolution of the House have included:

- defeat of the Government on the floor of the House (1929, 1931);
- an insufficient working majority in the House (e.g. 1963);
- double dissolution situations (1914, 1951, 1974, 1975, 1983, 1987);
- synchronisation of House elections with Senate elections (e.g. 1955, 1977, 1984);
- and

15 Constitution, s. 5.

16 Constitution, s. 28.

17 Constitution, s. 32.

18 Constitution, s. 5.

19 See Ch. on 'The Parliament'.

20 For a list of federal elections see Appendix 12.

21 For further discussion see Ch. on 'Disagreements between the Houses'.

22 In practice this power is exercised with the advice of the Federal Executive Council; see *Quick and Garran*, pp. 404–6. For further discussion see Ch. on 'The Parliament'.

23 Constitution, s. 32; and see s. 62.

- perceived political or electoral advantage.

Occasionally reasons for dissolving the House have been published.²⁴

BY-ELECTIONS

Whenever a vacancy occurs in the House because of the death, resignation, absence without leave, expulsion or disqualification or ineligibility of a Member²⁵, a writ may be issued by the Speaker for the election of a new Member.²⁶ Since Federation there have been, on average, three or four by-elections per Parliament.²⁷ A by-election may be held on a date to be determined by the Speaker or in his or her absence from Australia by the Governor-General in Council. The polling must take place on a Saturday.²⁸

If there is no Speaker or if the Speaker is absent from the Commonwealth, the Governor-General in Council may issue the writ.²⁹ A by-election writ may be issued by the Acting Speaker performing the duties of the Speaker during the Speaker's absence within the Commonwealth.³⁰ A writ has been issued by the Deputy Speaker during the Speaker's absence within the Commonwealth³¹ and the Deputy Speaker has informed the House of the Speaker's intention to issue a writ.³²

There are no constitutional or statutory requirements that writs be issued for by-elections within any prescribed period.³³ The following cases have occurred:

- with a general election pending, the Speaker has declined to issue a writ in order to avoid the need for two elections within a short period of time³⁴; and
- a writ has been issued and then withdrawn by the Speaker when a dissolution of the House has intervened.³⁵

In so far as it concerns the sequence of events following the issuing of a writ, the Act makes no distinction between by-elections and ordinary (general) elections—for indicative timetable details *see* p. 119.

Notwithstanding that Speakers have decided not to issue writs pending general elections, a suggestion that the Speaker should withhold issue for other purposes has been rejected. In January 1946, the Speaker issued outside the House the following statement:

The guiding principle in fixing the date of a by-election has always been to hold the election as early as possible so that the electors are not left without representation any longer than is necessary. With that principle before me I submitted the dates I proposed to the Chief Electoral Officer; he suggested a minor alteration regarding the return of the writ, which I accepted, and the writ was accordingly issued early today. Representations were later made to me that sufficient time was not allowed for a particular State Member to resign. In reply to that I would point out that Mr Wilson's appointment to an office under the Crown had been announced early in December and was published later in December in the Gazette. Individuals and parties thus had ample notice of the pending vacancy in the House. I would also point out that in the last by-election (Fremantle) an exactly similar number of

24 *See* Chs on 'The Parliament', and 'Disagreements between the Houses'.

25 For discussion *see* Ch. on 'Members'.

26 Constitution, s. 33.

27 For a list of by-elections *see* *Parliamentary Handbook*.

28 *Commonwealth Electoral Act 1918*, s. 158.

29 Constitution, s. 33.

30 S.O. 14; and *see* Ch. on 'The Speaker, Deputy Speakers and Officers'.

31 VP 1920–21/575 (Chairman of Committees as Deputy Speaker). There is some doubt as to the constitutional validity of this action.

32 VP 1956–57/63 (Chairman of Committees as Deputy Speaker); *but see* Ch. on 'The Speaker, Deputy Speakers and Officers'.

33 For the last 10 by-elections prior to 1997 the average time between vacancy and polling day has been 43 days.

34 VP 1926–28/649; VP 1964–66/621; H.R. Deb. (18.8.66)157; VP 1990–92/1941.

35 VP 1929–31/950.

days was allowed between the issue of the writ and nominations. It has been represented to me that the writ should be withdrawn and a new writ issued. If I were to do this I would be considering the wishes of one particular individual, which should not enter into the matter and which would raise a justifiable protest from other candidates and parties. Moreover, the Chief Electoral Officer advises that the dates have already been notified to the commanders of service units outside Australia, and confusion and inconvenience would be likely if the writ were withdrawn and another issued.³⁶

A writ has been issued by the Governor-General between a general election and the meeting of a new Parliament consequent upon the death of an elected Member and when a Member has resigned to the Governor-General before the House has met and chosen a Speaker.³⁷ Based on this procedure new elections have been held before the meeting of Parliament³⁸ and after the meeting of Parliament.³⁹

When the Court of Disputed Returns declares an election absolutely void (*see* p. 127), a writ may be issued by the Speaker for the purposes of a new election.⁴⁰

The Clerk of the House was subpoenaed by the Supreme Court of Victoria to appear on 20 June 1904 and produce the original writ issued by the Speaker on 15 March 1904 for an election for the Division of Melbourne.⁴¹

In issuing a writ for a by-election Speakers normally follow the procedure set out below:

- the vacancy and cause of vacancy is notified to the House at the earliest opportunity;
- convenient dates are selected and the Electoral Commission is consulted as to their suitability for electoral arrangements;
- proposed dates are forwarded to party leaders for comment;
- dates determined by the Speaker are notified by a press release;
- a writ addressed to the Electoral Commissioner is prepared, signed by the Speaker and embossed with the House of Representatives seal;
- the writ is delivered to the Electoral Commissioner;
- notification of the by-election is published in the *Gazette*⁴²;
- the Australian Broadcasting Authority is advised; and
- the House is advised.

SENATE ELECTIONS

Senators are elected on a different basis to Members of the House of Representatives.

Key features of Senate elections are:

- Each State or Territory votes as one electorate. 12 Senators are chosen for each State and two Senators for each of the Australian Capital Territory and the Northern Territory.
- Senators are elected by a system of proportional representation which ensures that the proportion of seats won by each party or group is virtually the same as the proportion of the votes gained by that party or group.⁴³

³⁶ Members of State Parliaments previously had to resign 14 days before nomination.

³⁷ Constitution, s. 33; VP 1983–84/6.

³⁸ VP 1964–66/3–5.

³⁹ VP 1917/4.

⁴⁰ VP 1904/26, 44; VP 1907–8/4; VP 1920–21/190.

⁴¹ VP 1904/85; *and see* VP 1912/15 and Chs on 'The Parliament' and 'Papers and documents'.

⁴² *Gazette* S53 (17.2.95).

⁴³ There is thus greater opportunity for the election of minority parties than in the House. Since 1949, when proportional representation was introduced, the balance of power in the Senate has often been held by minority parties or independents, and their political influence has increased as a consequence.

- There is an election for half the number of State Senators at least every three years. It is not necessary for half-Senate elections and elections for the House of Representatives to occur at the same time, although elections for the two Houses are generally held concurrently.
- Elections for Territory Senators are held concurrently with general elections for the House of Representatives.
- State Senators serve for six years from the beginning of their term of service (except following a dissolution of the Senate when half of them serve for three years).⁴⁴ Territory Senators serve until the day before the poll of the next general election.
- A Senate casual vacancy is filled by a person chosen by the Houses of Parliament of the State concerned or, in relation to the Australian Capital Territory or Northern Territory, by the respective Legislative Assembly. The person chosen fills the vacancy until the end of the former Senator's term. A person of the same political party as the Senator previously filling the vacant position must be chosen, if there is one available.⁴⁵ Before the Australian Capital Territory achieved self-government the Senate and the House of Representatives, at a joint sitting, chose the person to fill a casual Senate vacancy in the Territory.⁴⁶

For further information on Senate elections *see Odgers*.

ELECTORAL DIVISIONS

Determination of Divisions

The Constitution provides that:

- the House of Representatives shall be composed of Members directly chosen by the people of the Commonwealth; and
- the number of Members chosen in the several States shall be in proportion to the respective numbers of their people.⁴⁷

These provisions, together, express the concept of equality of representation, the national concept and the democratic character of the House of Representatives.

The Constitution, having provided for the determination of the number of Members and the manner in which they are chosen, also specified that, until the Parliament otherwise provided, the Parliament of each State could make laws to determine the Divisions for the State. The Federal Parliament passed its own legislation in 1902 (*see p. 107*). Electoral Divisions are also commonly known as electorates or constituencies.

In order to determine the number of Members for the States and Territories the Electoral Commissioner first ascertains a quota by dividing the population of the Commonwealth (excluding territorial populations) by twice the number of Senators for the States. The number of Members to be chosen for each State or Territory is then determined by dividing the number of people of the State or Territory by the quota. If on such division there is a remainder greater than one half of a quota, an additional Member

44 Constitution, s. 13. The term of service normally starts on 1 July following the election. After a dissolution of the Senate it starts on 1 July preceding the election.

45 Constitution, s. 15; *Commonwealth Electoral Act 1918*, s. 44.

46 Joint sittings for this purpose were held on 5 May 1981 (J 1980–81/227) and 16 February 1988 (J 1987–89/477–8)—for rules adopted for this sitting *see* Rules for joint sittings. The mechanism of filling a casual Senate vacancy by means of a joint sitting of the Commonwealth Parliament is retained in the case of a vacancy in a Territory other than the ACT or NT (should any gain Senate representation), *Commonwealth Electoral Act 1918*, s. 44(2A).

47 Constitution, s. 24; *see also* Ch. on 'Members'.

is chosen.⁴⁸ This determination is subject to the constitutional requirement of there being a minimum of five Members for each of the original States⁴⁹ and the requirement of the Commonwealth Electoral Act that there be a minimum of one Member for both the Northern Territory and the Australian Capital Territory.⁵⁰

The Commonwealth Electoral Act provides that each State and the Australian Capital Territory, and the Northern Territory on becoming entitled to more than one Member, shall be distributed into electoral Divisions equal in number to the number of Members of the House of Representatives to be chosen for the State or Territory, and one Member of the House of Representatives shall be chosen for each Division.⁵¹ These Divisions are known as single-member constituencies. Multi-member constituencies, although allowed for in the Constitution, have not been used.⁵²

In order to determine these Divisions, the Electoral Commissioner ascertains a quota of electors for each State and the Australian Capital Territory by dividing the number of electors in the State or Territory by the number of Members to be chosen in that State or Territory.⁵³ The boundaries of each Division are then determined by the State or Territory Redistribution Committee, as outlined below.

Because of Australia's uneven distribution of population, Divisions vary greatly in area. In 1996 the largest Division in terms of area was Kalgoorlie in Western Australia (over 2.2 million square kilometres) and the smallest was Wentworth in New South Wales (26 square kilometres).

Redistribution

The Commonwealth Electoral Act provides for regular redistributions.⁵⁴ The Electoral Commissioner must direct a redistribution of a State or the Australian Capital Territory:

- when changes in the distribution of population (ascertained during the tenth month of the life of each House of Representatives, if still continuing⁵⁵) require a change to the number of Members in a State or the Territory;
- when more than one third of the Divisions within a State deviate from the average divisional enrolment for the State by more than 10 per cent, and have done so for more than two months, or in the case of the Australian Capital Territory, when one Division so deviates; or
- within 30 days of the expiration of a period of seven years since the previous redistribution, except that should the seven years expire during the last year of the life of a House of Representatives the redistribution is to commence within 30 days of the first meeting of the next House of Representatives.

These provisions will also apply to the Northern Territory once it becomes entitled to more than one Member, when it will be treated as a State for the purposes of redistribution.⁵⁶ To conduct a redistribution the Electoral Commission appoints a Redistribution Committee for the State or Territory, comprising:

48 *Commonwealth Electoral Act 1918*, s. 48.

49 Constitution, s. 24.

50 *Commonwealth Electoral Act 1918*, s. 48(2B).

51 *Commonwealth Electoral Act 1918*, ss. 56, 57. The means of determining the number of Members is laid down in s. 48; and see Ch. on 'Members'.

52 Except at the first election when both South Australia and Tasmania voted as one Division.

53 *Commonwealth Electoral Act 1918*, s. 65.

54 *Commonwealth Electoral Act 1918*, s. 59. The States having been distributed into Divisions once are thereafter redistributed. The words 'distributed' and 'redistributed' are commonly used synonymously.

55 *Commonwealth Electoral Act 1918*, s. 46.

56 *Commonwealth Electoral Act 1918*, s. 55A.

- the Electoral Commissioner;
- the Australian Electoral Officer for the State (in the case of the ACT the Senior Divisional Returning Officer for the Territory);
- the Surveyor-General for the State or the Deputy Surveyor-General (in the case of the ACT the Commonwealth Surveyor-General); and
- the Auditor-General for the State or the Deputy Auditor-General (in the case of the ACT a senior officer of the Australian Public Service nominated by the Governor-General).

The places of the Surveyor-General and Auditor-General may be filled by senior officers of the Australian Public Service from the State nominated by the Governor-General.⁵⁷

A quota of electors, ascertained by dividing the number of electors in the State or Territory by the number of Members⁵⁸, is the basis for the proposed redistribution. A proposed Division may not depart from this quota by more than 10 per cent.

In making the proposed redistribution, the Redistribution Committee is required, as far as practicable, to endeavour to ensure that, three years and six months after the redistribution, the number of electors enrolled in each proposed electoral Division in the State or Territory will be not less than 98% or more than 102% of the average divisional enrolment in the State or Territory. Subject to this requirement the Redistribution Committee shall give due consideration, in relation to each proposed electoral Division, to:

- community of interests within the proposed electoral Division, including economic, social and regional interests;
- means of communication and travel within the proposed electoral Division;
- the physical features and area of the proposed electoral Division; and
- the boundaries of existing Divisions in the State or Territory.⁵⁹

Redistribution Committees are required to consider any suggestions and comments lodged with them pursuant to public advertisement in the Gazette and the press. A period of 30 days is allowed for lodgement of suggestions. At the end of the 30 days lodgement period, the Redistribution Committee must make copies of all suggestions available for perusal at the office of the committee, and invite written comments on the suggestions. A period of 14 days is allowed for submission of comments.⁶⁰

Once the initial proposals are determined by the Redistribution Committee, maps showing the names and boundaries of each proposed Division must be exhibited at every Electoral Commission office in the State or Territory. Copies of any suggestions or comments made to the committee, detailed descriptions of the proposed boundaries and the committee's reasons for its proposals must be made available for perusal at Electoral Commission offices.⁶¹ A member of a Redistribution Committee may submit a statement of dissent to any proposal⁶² and copies of any such statement must also be made available.

Maps of proposed Divisions and the availability of other documents must be advertised publicly and written objections may be lodged within 28 days.⁶³ Objections to

57 *Commonwealth Electoral Act 1918*, ss. 60, 61.

58 *Commonwealth Electoral Act 1918*, s. 65.

59 *Commonwealth Electoral Act 1918*, s. 66.

60 *Commonwealth Electoral Act 1918*, s. 64.

61 *Commonwealth Electoral Act 1918*, s. 68.

62 *Commonwealth Electoral Act 1918*, s. 67.

63 *Commonwealth Electoral Act 1918*, s. 69.

proposed redistributions are considered by an 'augmented Electoral Commission', that is, the members of the Redistribution Committee concerned and the Chairperson and the non-judicial member of the Electoral Commission.⁶⁴ The augmented Electoral Commission must hold an inquiry into an objection unless it is of the opinion that the objection is frivolous or vexatious or is substantively the same as a submission previously made.⁶⁵ Objections are determined (within 60 days) by a majority vote of the augmented Electoral Commission. If the findings of the augmented Electoral Commission, in its own opinion, are significantly different from the original Redistribution Committee proposals, further objections can be made and a second round of hearings occur. The resultant determinations are final and conclusive. They are not subject to appeal of any kind and cannot be challenged in any court.⁶⁶

Parliamentary procedure

Following determination relevant documents are forwarded to the Minister responsible, who must have them tabled in each House within five sitting days of receipt.⁶⁷ Under the procedures now established, Parliament has no further role and has no opportunity to alter the determination in any way.

Prior to the 1983 amendments to the Electoral Act, redistributions were subject to the approval, by resolution, of each House of the Parliament. If either House disapproved of, or negatived, a motion for a proposed distribution, the Minister could direct that a fresh redistribution be proposed, as was the case in 1912, 1936 and 1968.⁶⁸ In 1975 the House approved redistributions which the Senate rejected⁶⁹ and the unprecedented step was taken of introducing the redistribution proposals in the form of bills⁷⁰ which were in turn also defeated at the second reading stage by the Senate on two occasions,⁷¹ being cited in the 1975 double dissolution proclamation. There were instances of the Parliament taking no final action in respect of redistribution proposals (e.g. 1905 and 1931)⁷², and of a motion to approve a proposed redistribution being debated but lapsing at dissolution (1962).⁷³ The Parliament also on occasions adopted proposed boundaries but altered the names of proposed Divisions.

Limited redistribution

If writs are issued for a general election and the number of Members to be elected in a State or the Australian Capital Territory does not correspond to the existing number of electoral Divisions, a so-called 'mini-redistribution' is conducted by the Electoral Commissioner and the Australian Electoral Officer for the State or the senior Divisional Returning Officer for the Australian Capital Territory.⁷⁴ To decrease or increase the number of Divisions, pairs of contiguous Divisions with the least number of electors are combined or pairs of contiguous Divisions with the greatest number of electors are

64 *Commonwealth Electoral Act 1918*, s. 70.

65 *Commonwealth Electoral Act 1918*, s. 72.

66 *Commonwealth Electoral Act 1918*, s. 77.

67 *Commonwealth Electoral Act 1918*, s. 75.

68 1912 proposals in the case of New South Wales, J 1912/153-4; 1935 proposals in the case of Western Australia, VP 1934-37/607-8; 1968 proposals in the case of Queensland, J 1968-69/241-3.

69 J 1974-75/696-7, 704-6.

70 VP 1974-75/727-8.

71 J 1974-75/794-6; VP 1974-75/931-6; J 1974-75/939-41.

72 VP 1929-31/487, 491.

73 VP 1962-63/315-16; VP 1962-63/340-1.

74 *Commonwealth Electoral Act 1918*, s.76.

divided into three, as the case may be. New electorates so created carry the names of the electorates from which they were formed, arranged alphabetically and hyphenated.

Improper influence

It is an offence punishable by fine or imprisonment to seek to influence improperly members of a Redistribution Committee, members of an augmented Electoral Commission or a Redistribution Commissioner in the performance of their duties.⁷⁵

On 24 April 1978 a Royal Commission was appointed to inquire into and report upon whether any breach of a law of the Commonwealth or any impropriety occurred in the course of the 1977 redistribution of the State of Queensland, including the change of the name of a proposed Division from 'Gold Coast' to 'McPherson'.⁷⁶ The Royal Commissioner found that no breach of a law of the Commonwealth had occurred by reason of anything said or action by or on behalf of the Hon. E. L. Robinson (the Member for McPherson), any action taken by the Distribution Commissioners or any of them as a result of any action taken or anything said by or on behalf of Mr Robinson or any communications by the Commissioners to Mr Robinson. The Royal Commissioner found however that Senator the Rt Hon. R. G. Withers (Minister for Administrative Services, with responsibility for electoral matters) had used his position to further a political purpose by an approach (not open to members of the public) to the Distribution Commissioners. The Royal Commissioner reported that, in his view, whilst Senator Withers did not seek to influence, or influence, the Commissioners in any way about how they should perform their duties of distribution of the electoral Divisions in Queensland, he had sought to influence them, and he had in fact influenced them, through an intermediary, as to something which they had proposed to say in their report, that is to say, the names which they had tentatively attached to two electoral Divisions. The Commissioner concluded that what Senator Withers had done, having regard to the purpose with which he had done it, in his judgment constituted impropriety.⁷⁷ The Government accepted the Royal Commissioner's report⁷⁸ which 'had inevitable consequences in respect of the finding of impropriety'.⁷⁹ The appointment of Senator Withers as Minister for Administrative Services was 'determined' and his appointment as Vice-President of the Executive Council terminated on 7 August 1978.⁸⁰

ELECTORS

Members of the House of Representatives are elected on the basis of universal adult franchise. This principle is based on the interpretation of constitutional provisions.⁸¹ The voting provisions for federal elections (including Senate elections) were established in 1902.⁸² Since then elections have been characterised by:

- adult suffrage⁸³;
- secret ballot, and
- single vote.⁸⁴

⁷⁵ *Commonwealth Electoral Act 1918*, s. 78.

⁷⁶ Gazette S72 (27.4.78); terms of reference extended *see* Gazette S81 (11.5.78); Gazette S92 (31.5.78).

⁷⁷ H.R. Deb. (15.8.78) 18.

⁷⁸ 'Matters in relation to electoral redistribution, Queensland 1977', *Report of the Royal Commission of Inquiry*, PP 263 (1978).

⁷⁹ H.R. Deb. (15.8.78) 19.

⁸⁰ Gazette S149 (8.8.78); *and see* Ch. on 'House, Government and Opposition'.

⁸¹ Constitution, ss. 30, 41.

⁸² *Commonwealth Electoral Act 1902*.

⁸³ Originally excluding Aboriginals.

⁸⁴ Plural voting is precluded by the Constitution, s. 30.

These features, together with the following innovations, make up the principal voting provisions which are currently followed in federal elections:

- **Compulsory registration** of voters since 1911. A roll of electors is kept for each State and Territory and every eligible voter is required to enrol.⁸⁵
- **Compulsory voting** became effective at the 1925 general election.⁸⁶ It is the duty of every elector to record his or her vote at each election.⁸⁷
- **Preferential voting system** since 1918.⁸⁸ Up until 1918 the first-past-the-post system was used at federal elections (*see below*).
- **Extension of franchise** to Aborigines since the 1963 general election⁸⁹, and persons 18 years of age and over since the 1974 general election.⁹⁰

In summary, persons entitled to enrol and to vote at federal elections (subject to certain disqualifications) are all persons who have attained 18 years of age and who are Australian citizens. British subjects whose names were on the electoral roll on 25 January 1984 are also entitled to be enrolled and vote. Provisional enrolment may be claimed by 17 year olds but they are not enrolled or entitled to vote until they turn 18.⁹¹ Persons who have applied for Australian citizenship may also apply for provisional enrolment which takes effect on the granting of citizenship.⁹²

A person who is the holder of a temporary visa for the purposes of the Migration Act, or a person who is an unlawful non-citizen under that Act, is not entitled to enrolment. A person who, being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting, or who has been convicted of treason or treachery and has not been pardoned, or who is serving a sentence of five years or longer for an offence against the law of the Commonwealth or of a State or Territory, is not entitled to enrolment or to retain enrolment.⁹³

The Registrar-General (of births, deaths and marriages) and the Controller-General of Prisons, or their equivalents, in each State and Territory are required to provide to the appropriate electoral authorities details of relevant deaths and convictions, as the case may be.⁹⁴

Electors should normally be enrolled in the Subdivision in which they live. Special provisions apply to enrolled persons leaving Australia but intending to return within three years⁹⁵, Australian citizens resident on Norfolk Island⁹⁶, itinerants⁹⁷, prisoners,⁹⁸ and Members of Parliament. Senators may be enrolled in any Subdivision in the State or Territory which they represent, and Members of the House of Representatives may be enrolled in any Subdivision of the Division which they represent and are not obliged to live in the electoral Division.⁹⁹

85 *Commonwealth Electoral Act 1918*, ss. 81, 101.

86 *Commonwealth Electoral Act 1924* (Act No. 10 of 1924).

87 *Commonwealth Electoral Act 1918*, s. 245.

88 *Commonwealth Electoral Act 1918*, s. 240.

89 Amending legislation passed in 1962 in response to recommendations of *Report from Select Committee on Voting Rights of Aborigines*, H of R 1 (1961).

90 *Commonwealth Electoral Act 1918*, s. 93.

91 *Commonwealth Electoral Act 1918*, s. 93, 100.

92 *Commonwealth Electoral Act 1918*, s. 99(A).

93 *Commonwealth Electoral Act 1918*, s. 93.

94 *Commonwealth Electoral Act 1918*, ss. 108, 109.

95 *Commonwealth Electoral Act 1918*, s. 94.

96 *Commonwealth Electoral Act 1918*, s. 95AA-AC.

97 *Commonwealth Electoral Act 1918*, s. 96.

98 *Commonwealth Electoral Act 1918*, s. 96A.

99 *Commonwealth Electoral Act 1918*, s. 99(4).

Method of voting

With every system of election there are two quite separate and distinct processes, the 'voting' process and the 'scrutiny' process, that is, the counting. The first is performed by the voters in the marking of their ballot papers while the second is carried out by the officials responsible for the conduct of the election. The procedure for the scrutiny of votes in House of Representatives elections is provided for in the electoral law.¹⁰⁰

Until 1918 the 'first-past-the-post' voting process was used. This is one of the simplest forms of voting as it requires the voter to indicate a vote for only one candidate and the candidate with the greatest number of votes, that is, a relative majority, is elected.

The voting process now in use is a preferential one, usually referred to as 'preferential voting' (also known as the 'alternative vote' or 'contingent vote' system).

The preferential voting system used is an absolute majority system where, for election, a candidate must obtain more than 50 per cent of the votes in the count. The voter is required to mark his or her vote on the ballot paper by placing the number one (1) against the name of the candidate of first choice, and give contingent votes for all the remaining candidates in order of preference by the consecutive numbers 2, 3, 4 and so on; all squares on the ballot paper must be numbered, although one square may be left unnumbered, in which case the blank square will be deemed to be the voter's last preference, provided a first preference has been indicated.¹⁰¹

In summary, a result is obtained in the following way:

The first preference votes recorded for each candidate are counted. If any candidate receives more than 50 per cent of the first preference votes, that candidate is immediately elected. Whether or not a candidate is elected on first preference votes, the counting continues. Candidates with the fewest votes are excluded in turn and second and later preferences on their ballot papers are distributed. A candidate who receives an absolute majority of votes during the exclusion process is elected. The process of excluding candidates and distributing preferences continues until only two candidates remain in the count.¹⁰²

Senate voting

The method of counting described above was also used for Senate elections from 1919 to 1949, when a system of proportional representation was introduced. This system is a relative majority system which means that for election a candidate must obtain a certain percentage of the votes in the count, usually referred to as the 'quota'. This system is only appropriate to multi-member constituencies, such as those for the Senate, where each State votes as one electorate.

For Senate elections the ballot paper may be marked preferentially or, alternatively, the voter may indicate his or her wish to vote for candidates on a registered party or group list by marking the appropriate box. The special feature of proportional representation is contained in the method of counting the votes which ensures that the proportion of seats won by each party or group is virtually the same as the proportion of the votes gained by that party or group.¹⁰³ There is thus greater opportunity for the election of minority parties and independents than in the House.

The result of proportional representation has been that since 1949 the numbers of the Senate have been fairly evenly divided between government and opposition supporters

¹⁰⁰ *Commonwealth Electoral Act 1918*, s. 274.

¹⁰¹ *Commonwealth Electoral Act 1918*, ss. 240, 268.

¹⁰² *Commonwealth Electoral Procedures*, p. 35; for an example of this method of counting see p. 73. *Commonwealth Electoral Act 1918*, s. 274(7)(d).

¹⁰³ *Commonwealth Electoral Act 1918*, s. 239. For a more detailed account of this system see *Commonwealth Electoral Procedures*, pp. 35 and 71 and *Odgers*, pp. 126-9.

with the balance of power often being held by minority parties or independents, whose political influence has increased as a consequence. Governments have frequently been confronted with the ability of the Opposition and minority party or independent Senators to combine to defeat or modify government measures in the Senate.

THE TIMETABLE FOR ELECTIONS

The following table, based on the 1996 general election, illustrates the constitutional and statutory requirements for the conduct of an election and the particular time limitations imposed between dissolution and the meeting of the new Parliament.¹⁰⁴

TABLE 3 GENERAL ELECTIONS FOR 38TH PARLIAMENT—SCHEMA

<i>Stage</i>	<i>Limitation(a)</i>	<i>Actual date</i>	<i>Constitutional or statutory provision</i>
Dissolution	—	29.1.96	Constitution, ss. 5, 28
Issue of writs (at 6 p.m.)	Within 10 days of dissolution—before 8 February	29.1.96	Constitution, s. 32; Commonwealth Electoral Act, ss. 151, 152
Close of electoral rolls (at 8 p.m.)	7 days after date of writ	5.2.96	Commonwealth Electoral Act, s. 155
Nominations close (at 12 noon)	Not less than 11 days nor more than 28 days after date of writ—between 9 and 26 February	9.2.96	Commonwealth Electoral Act, s. 156
Date of polling (a Saturday)	Not less than 22 days nor more than 30 days from date of nomination(b)—either 2 or 9 March	2.3.96	Commonwealth Electoral Act, ss. 157, 158
Return of writs	Not more than 100 days after issue—on or before 8 May	Various dates	Commonwealth Electoral Act, s. 159
Meeting of new Parliament	Not later than 30 days after the day appointed for the return of writs—not later than 7 June	30.4.96	Constitution, s. 5

(a) Advice from the Attorney-General's Department, dated 15 March 1904, states that the dates fixed are reckoned exclusive of the day from which the time is reckoned; and see *Acts Interpretation Act 1901*, s. 36(1).

(b) A general election (or by-election) must therefore take place not less than 33 nor more than 58 days after the issue of writ(s).

Issue of writs

The authority for holding an election or a referendum is in the form of a writ issued by the Governor-General¹⁰⁵, or in the case of a by-election by the Speaker (*see* p. 110), directed to the Electoral Commissioner commanding the Commissioner to conduct an election in accordance with the prescribed procedures¹⁰⁶.

The writs for general elections of the House of Representatives are issued by the Governor-General (acting with the advice of the Executive Council) and specify the date by which nominations must be lodged with the Divisional Returning Officer concerned, the date for the close of the electoral rolls, the date on which the poll is to be taken and

¹⁰⁴ Appendix 12 shows significant dates in relation to each general election since 1940.

¹⁰⁵ Constitution, s. 32.

¹⁰⁶ *Commonwealth Electoral Act 1918*, s. 154.

the date for the return of the writ. The writ is deemed to have been issued at 6 p.m. on the day of issue.¹⁰⁷ Eight writs are issued for a general election, one for each of the six States and the two Territories. The issue of writs is notified in the Gazette.¹⁰⁸

In the case of dissolution or expiry of the House of Representatives the writs shall be issued within 10 days¹⁰⁹, so that there cannot be undue delay before an election is held to elect a new House of Representatives.

A writ for the taking of a referendum¹¹⁰ is also issued by the Governor-General (in Council) and is addressed to the Electoral Commissioner. The writ specifies the date for the close of rolls, for holding the referendum and for the return of the writ.¹¹¹

Nomination of candidates

To contest an election to the House of Representatives a person must be nominated by at least six electors in the Division he or she is to contest or the registered officer of the party endorsing him or her as a candidate.¹¹² Nominations are made to the Divisional Returning Officer at any time between the issue of the writ and the close of nominations. Candidates of registered political parties may also be nominated in bulk for Divisions of a State by the registered officer of the party. Bulk nominations must be made to the Australian Electoral Officer for the State no later than 48 hours prior to the close of nomination. The date for the close of nominations cannot be less than 11 days nor more than 28 days after the issue of the writ. The time for nominations closes at 12 noon on the appointed day.¹¹³ For a nomination to be valid, it must have the candidate's consent and be accompanied by a declaration by the candidate that he or she is qualified under the Constitution and the laws of the Commonwealth to be elected as a Member of the House of Representatives. The declaration must also state that he or she will not be a candidate for any other election held on the same day, and give details of his or her Australian citizenship.¹¹⁴

A person who at the hour of nomination is a Member of a State Parliament or Territory Assembly may not be nominated.¹¹⁵ Likewise a Member of the Senate or the House is required to resign to contest an election for the House of which he or she is not a Member.¹¹⁶ There are constitutional prohibitions (outlined in the Chapter on 'Members') concerning persons who hold any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth. If unsuccessful, a Commonwealth public servant who has resigned to contest an election, if not a departmental secretary, must be reappointed to the service.¹¹⁷ Officers of the Electoral Commission are not eligible for nomination.¹¹⁸

A deposit of \$250 is required to be lodged with the nomination. The deposit is returned if, at the election, the candidate polls at least four per cent of the total first

107 *Commonwealth Electoral Act 1918*, s. 152. Form B of Schedule 1 to the Act prescribes the form in which writs are issued.

108 Gazette S35 (30.1.96).

109 Constitution, s. 32.

110 See Ch. on 'The Parliament'.

111 *Referendum (Machinery Provisions) Act 1984*, s. 8.

112 *Commonwealth Electoral Act 1918*, s. 166. Form D Schedule 1 to the Act contains a sample nomination form.

113 *Commonwealth Electoral Act 1918*, ss. 156, 175.

114 *Commonwealth Electoral Act 1918*, s. 170. Qualification and disqualification requirements are outlined in the Ch. on 'Members'.

115 *Commonwealth Electoral Act 1918*, s. 164.

116 Constitution, s. 43 (the resignation needs to be made before nomination).

117 *Public Service Act 1922*, s. 47C.

118 *Commonwealth Electoral Act 1918*, s. 36.

preference votes polled in the Division.¹¹⁹ A candidate may withdraw his or her nomination up to the close of nominations but cannot do so after nominations have closed.¹²⁰ If one candidate only is nominated then he or she shall be declared duly elected without an election being necessary.¹²¹

Should a candidate die during the nomination period the hour of nomination is extended by 24 hours to allow time for the nomination of an alternative candidate.¹²² If any candidate dies between the close of nominations and polling day, the election is deemed to have failed and a new writ for a supplementary election¹²³ is issued forthwith. These provisions are based on the principle that no political party should be disadvantaged at an election because of the death of its candidate. In the Division of Hume for the 1972 general election an independent candidate died after the close of nominations and a new writ was issued setting a new date for nominations. The dates of the original writ for polling and the return of the writ were retained.¹²⁴ During the 1993 general election in the Division of Dickson an independent candidate died shortly before the poll. A new writ was issued for a supplementary election, setting later dates for nominations, polling and the return of the writ.¹²⁵

In order to help ensure fair elections, the Commonwealth Electoral Act prescribes that bribery, undue influence and a number of other practices are prohibited, and provides for penalties for these offences.¹²⁶

On 16 February 1976 a case against a former Minister (Hon. R. V. Garland) and a former Senator (Mr G. H. Branson) was brought by the Attorney-General under the then section 209 of the Commonwealth Electoral Act alleging a breach of the bribery provisions of the Act.¹²⁷ As a result of the proposed action Mr Garland had resigned his commission as a Minister on 6 February 1976.¹²⁸ The charge was heard by a magistrate in the Court of Petty Sessions of the Australian Capital Territory and the decision given on 8 March 1976.¹²⁹ The magistrate dismissed the charge ruling that, although a prima facie case had been established, a jury, properly directed, would not convict the defendants. Both defendants were discharged.

Polling day

In an election for the House of Representatives the position of names of the candidates on the ballot paper is determined by a method of double randomisation.¹³⁰ Until 1983 candidates were listed in alphabetical order according to their surnames. Each voter is required to mark the ballot paper preferentially (*see* p. 118) and secrecy of voting is assisted by the provision of private voting cubicles. Since the introduction of compulsory voting in 1925, some 95 per cent of enrolled voters have cast a vote at general elections.¹³¹

119 *Commonwealth Electoral Act 1918*, ss. 170, 173.

120 *Commonwealth Electoral Act 1918*, s. 177.

121 *Commonwealth Electoral Act 1918*, s. 179(2). The last occasion of an uncontested election was in respect of the Northern Territory at the 1963 general election. In the 1955 general election 11 Divisions were uncontested.

122 *Commonwealth Electoral Act 1918*, s. 156.

123 *Commonwealth Electoral Act 1918*, ss. 180, 181.

124 *Gazette* S112 (13.11.72).

125 *Gazette* S78 (9.3.93).

126 *Commonwealth Electoral Act 1918*, Part XXI.

127 *Commonwealth Electoral Act 1918*, s. 326.

128 *Gazette* S28 (9.2.76).

129 Case unreported; but see 'Australia: Alleged breach of Electoral Act', *The Parliamentarian*, LVII, 4, 1976, p. 253.

130 *Commonwealth Electoral Act 1918*, s. 213. Form F of Schedule 1 to the Act contains a sample ballot paper.

131 The pre-1925 figure was about 60%, *see* Commonwealth Election and Referendum Statistics, p. 36.

Scrutineers

One scrutineer may be appointed by each candidate at each polling booth, in order to observe the proceedings of the poll and satisfy the candidate that the poll is conducted strictly in accordance with the law.¹³²

Counting

Each candidate may also appoint scrutineers at each place where votes are being counted.¹³³ Counting commences in the presence of the scrutineers as soon as possible after the poll closes.¹³⁴ After polling day a fresh count is made and preferences are distributed (*see* p. 118). Informal (i.e. invalid) ballot papers are not included in the count.¹³⁵ In recent years the number of informal votes cast at general elections has varied between 2.1 and 6.3 per cent of the total votes cast.¹³⁶

Recount

At any time before the declaration of the result of an election, the officer conducting the election may, at the written request of a candidate or of his or her own volition, recount some or all of the ballot papers.¹³⁷ A recount is generally undertaken only where the closeness of the final result makes it desirable to do so. If a recount confirms a deadlock, the officer must advise the Electoral Commissioner that the election cannot be decided.¹³⁸ In such circumstances the Electoral Commission must file a petition disputing the election with the Court of Disputed Returns, which must within three months declare either a candidate elected or the election void.¹³⁹

Declaration of the poll

The result of the election is declared as soon as possible after the scrutiny of the ballot papers has been completed (in some Divisions this may be a week or more after the election). In a House of Representatives election the declaration of the poll is made at the office of the respective Divisional Returning Officer.¹⁴⁰ Because the time for counting will vary from Division to Division declarations of the various polls do not necessarily occur on the same day. The poll may be declared notwithstanding that all ballot papers have not been received or inquiries completed, if the Returning Officer is satisfied that the votes recorded on the ballot papers concerned could not possibly affect the result.¹⁴¹

Return of writs

A writ is both the authority for an election to be held and the authority by which the successful candidate is declared elected. When all polls in a State or Territory have been declared at a general election or when the poll has been declared for a Division subject to a by-election, the Electoral Commissioner certifies on a writ for the election the name of the successful candidate for each Division, and forwards the writ to the Governor-

¹³² *Commonwealth Electoral Act 1918*, s. 217.

¹³³ *Commonwealth Electoral Act 1918*, s. 264.

¹³⁴ *Commonwealth Electoral Act 1918*, s. 265.

¹³⁵ *Commonwealth Electoral Act 1918*, s. 268.

¹³⁶ Australian Electoral Commission. *Electoral Newsfile*, no. 34 (figures for elections from 1980 to 1993 inclusive).

¹³⁷ *Commonwealth Electoral Act 1918*, s. 279.

¹³⁸ *Commonwealth Electoral Act 1918*, s. 274(9C).

¹³⁹ *Commonwealth Electoral Act 1918*, s. 357(1A); s. 367A.

¹⁴⁰ *Commonwealth Electoral Act 1918*, s. 284.

¹⁴¹ *Commonwealth Electoral Act 1918*, s. 284.

General or Speaker, as the case may be.¹⁴² Writs are returnable on or before the date fixed for their return. The date on which a writ is returned is the date on which the endorsed writ comes into the actual physical possession of the person authorised to act upon it (i.e. the Governor-General or the Speaker).¹⁴³ All writs for a general election are returnable by the same day and all writs are forwarded together by the Governor-General's Official Secretary to the Clerk of the House. The issuing authority may extend the time for holding an election or for returning the writs.¹⁴⁴

Meeting of a new Parliament

On the meeting of a new Parliament, returns to the eight writs for the general election must be laid upon the Table by the Clerk and the Members are then sworn.¹⁴⁵ After a general election the House must meet not later than 30 days after the day fixed for the return of the writs.¹⁴⁶ However, the House may meet as soon as the writs are returned and in recent Parliaments it has not been unusual for the House to meet before the date fixed for the return of writs.¹⁴⁷

PUBLIC FUNDING FOR ELECTIONS AND ELECTORAL EXPENSES

Public funding for election purposes

Since 1983 public funding has been available for election purposes. Responsibility for the operation of the system of public funding is vested in the Electoral Commission which has detailed handbooks available.

Principal features of the provisions include:

- To be eligible for public funding political parties must be registered with the Commission.
- For each valid first preference vote received a specified amount is payable, which is adjusted half yearly in accordance with increases in the Consumer Price Index. For the half year January to June 1996, the period covering the 1996 general election, the amount was 157.594 cents.
- No payment is made in respect of candidates or groups who do not receive at least four per cent of the eligible votes polled, that is, valid first preference votes.
- Funding for candidates endorsed by a party is paid to the relevant State branch of the party.¹⁴⁸

Disclosure of income and expenditure

Annual returns by political parties and associated entities

Each registered political party and each State or Territory branch of a registered political party must submit an annual return within 16 weeks after the end of each financial year showing the total amounts received and paid during the year and the total

142 *Commonwealth Electoral Act 1918*, s. 284.

143 Letter from Electoral Commissioner to Clerk of House 17.3.94 (citing advice from the Attorney-General's Department).

144 *Commonwealth Electoral Act 1918*, s. 286. Gazette 26 (30.4.10) 973.

145 S.O. 2(d); and see Ch. on 'The parliamentary calendar'.

146 Constitution, s. 5.

147 See Appendix 12.

148 *Commonwealth Electoral Act 1918*, ss. 294–302, 321.

of debts outstanding at the end of the year. Details of receipts, payments and debts are required if the total amount received from or paid to a person or organisation during the year, or owed at the end of the year, is \$1500 or more.¹⁴⁹ Entities closely associated with parties also must disclose receipts, payments and debts in the same manner as parties and additionally must disclose the source of deposits of capital.

Returns by candidates and political parties

After each election, all candidates and groups are required to disclose publicly donations received for electoral purposes and electoral expenditure incurred or authorised by them.¹⁵⁰ Parties are only required to disclose electoral expenditure.

Principal provisions include:

- Returns must be submitted to the Electoral Commission, within 15 weeks of polling day.
- Disclosure of donations covers the period extending from 31 days after the poll for the preceding election to 30 days after the poll of the current election. The returns of individual candidates who have not been candidates at a federal election within the previous four (House) or seven (Senate) years are to cover the period commencing on the day of nomination or announcement of candidature for the current election, or in the case of Senators appointed under the casual vacancy provisions, the day of their appointment.¹⁵¹
- Returns must set out the total amount or value of all gifts received, the number of persons who made gifts, the number of gifts, and for gifts from a single source of or greater than a specified total value (\$1000 in the case of a group and \$200 in the case of a candidate) details of each gift, including the date of the gift, its value and the name and address of the donor. Details of each gift are not required if the gift has been made and has been or will be used for purposes unrelated to an election.¹⁵²
- Returns must also be made setting out details of expenditure incurred in relation to the election in respect of advertising, electoral material, direct mailing, the conducting of opinion polls or other research.¹⁵³
- If no donations have been received or no expenditure has been incurred returns must nevertheless be lodged with a statement to this effect.¹⁵⁴

Returns by third parties and donors

Persons who have incurred or authorised electoral expenditure exceeding \$200 not authorised by a candidate, political party or group must furnish returns of expenditure.¹⁵⁵

Persons who have incurred expenditure of \$1000 or more must make returns listing gifts received by them with a value of \$1000 or more which were used to incur that expenditure.¹⁵⁶ Persons who have made gifts to candidates in relation to elections of \$200 or more, or to any person or body specified by the Electoral Commission of \$1000 or more, must furnish returns detailing such gifts.¹⁵⁷ Such returns must be submitted

149 *Commonwealth Electoral Act 1918*, ss. 314AA–AG.

150 *Commonwealth Electoral Act 1918*, ss. 303–314AG.

151 *Commonwealth Electoral Act 1918*, s. 287.

152 *Commonwealth Electoral Act 1918*, s. 304.

153 *Commonwealth Electoral Act 1918*, ss. 308–9.

154 *Commonwealth Electoral Act 1918*, s. 313.

155 *Commonwealth Electoral Act 1918*, ss. 309(4).

156 *Commonwealth Electoral Act 1918*, s. 305.

157 *Commonwealth Electoral Act 1918*, s. 305A.

within 15 weeks after polling day, covering the period extending from 31 days after the poll of the preceding election until 30 days after the poll of the current election.

Persons making gifts totalling \$1500 or more during a financial year to a registered political party must submit a return, within 20 weeks of the end of the year, showing details of all gifts made to that party. Gifts to any person or body made with the intention of benefiting a political party are also covered.¹⁵⁸

Returns by media

Broadcasters and publishers who, during the election period, broadcast or publish advertising relating to the election must furnish a return to the Electoral Commission giving particulars of such advertising or material, identifying the person authorising it and showing the charges involved, although publishers whose total charges do not exceed \$1000 are exempt from this requirement. Returns must be made within eight weeks of the day of polling.¹⁵⁹

Annual returns by government departments

Government departments must include in their annual reports details of amounts of \$1500 or more paid to advertising agencies, or to market research, polling, direct mail, and media advertising organisations.¹⁶⁰

Failure to make returns or keep records

It is an offence punishable by a fine of up to \$5000 to fail to make a return if required to do so or by a fine of up to \$1000 to make an incomplete return and by a fine of up to \$10000 to knowingly provide a return containing false or misleading information.¹⁶¹ Failure to provide required returns does not invalidate the election of a candidate.¹⁶² A penalty of \$1000 applies for failure to retain (for three years after polling day) records relating to matters which are or could be required to be set out in a return.¹⁶³

Unlawful gifts

It is unlawful to receive gifts of more than a specified value (\$1000 or more for a political party or group, \$200 or more for a candidate) where either the names or addresses of the donors are unknown at the time the gift is received. The amount or value of a gift received in breach of this provision is payable to the Commonwealth.¹⁶⁴

Public availability of returns

After 24 weeks from the date of the poll, returns may be inspected by members of the public at the main office of the Electoral Commission in Canberra and copies may be obtained on payment of a fee to cover the cost of copying. Annual returns may be inspected and copied from 1 February in the calendar year after the return is furnished.¹⁶⁵

158 *Commonwealth Electoral Act 1918*, ss. 305B.

159 *Commonwealth Electoral Act 1918*, ss.310–312.

160 *Commonwealth Electoral Act 1918*, s. 311A.

161 *Commonwealth Electoral Act 1918*, s. 315.

162 *Commonwealth Electoral Act 1918*, s. 319.

163 *Commonwealth Electoral Act 1918*, ss. 315, 317.

164 *Commonwealth Electoral Act 1918*, s. 306.

165 *Commonwealth Electoral Act 1918*, s. 320.

DISPUTED ELECTIONS AND RETURNS

At the commencement of the Commonwealth, any question concerning the qualification of a Member or Senator, a vacancy in either House, or any disputed election to either House was to be determined by the House in which the question arose.¹⁶⁶ On 10 October 1902, legislation was assented to which provided for the validity of any election or return to be disputed by petition addressed to the High Court sitting as the Court of Disputed Returns.¹⁶⁷ This legislation did not apply to the election of a Member to fill a vacancy in the House of Representatives during the 1st Parliament.¹⁶⁸ On 22 November 1907 legislation was enacted extending the jurisdiction of the Court of Disputed Returns to any question respecting the qualifications of a Member of the House of Representatives or a Senator to sit in Parliament or respecting a vacancy in either House of Parliament, such questions to be referred to the court by resolution of the House in which the question arose.¹⁶⁹

Under the original procedure three petitions were presented to the House of Representatives disputing the election of certain Members.¹⁷⁰ All three petitions were referred to the Committee of Elections and Qualifications for inquiry and report.¹⁷¹ In all three cases the committee's report, adopted by the House, did not support a change in the election result.¹⁷²

The provisions of the 1902 legislation relating to the Court of Disputed Returns have not changed substantially over the years. Under the present legislation the validity of any election or return may only be disputed by a petition addressed to the Court of Disputed Returns.¹⁷³

Such a petition must contain a form of words called a prayer, set out the facts relied on to invalidate the election or return, be signed by either a candidate or person qualified to vote at the election and be attested by two witnesses. The Electoral Commissioner may also file a petition disputing an election, on behalf of the Commission, and is obliged to do so if the election cannot be decided because of a deadlock.¹⁷⁴ The petition must be filed within 40 days of the return of the writ, with a deposit of \$500, in the Principal Registry of the High Court in the capital city of the State in which the election was held.

The petition is heard by the High Court sitting as the Court of Disputed Returns or is referred by the High Court for hearing by the Supreme Court of the State or Territory in which the election was held, which has all the powers and functions of the Court of Disputed Returns. In either court these powers may be exercised by a single justice or judge.¹⁷⁵ When the court finds that any person has committed an illegal act, this fact is reported to the responsible Minister.¹⁷⁶

¹⁶⁶ Constitution, s. 47.

¹⁶⁷ *Commonwealth Electoral Act 1902*, ss. 192–206.

¹⁶⁸ *Commonwealth Electoral Act 1902*, s. 4.

¹⁶⁹ *Disputed Elections and Qualifications Act 1907*, s. 6 (later repealed and its provisions incorporated in the *Commonwealth Electoral Act 1918*).

¹⁷⁰ VP 1901–02/59, 83, 419. See Appendix 13.

¹⁷¹ Until 1987, the Senate at the commencement of each Parliament appointed a Committee of Disputed Returns and Qualifications but it did not function from 1907.

¹⁷² VP 1901–02/61, 87, 441.

¹⁷³ *Commonwealth Electoral Act 1918*, s. 353.

¹⁷⁴ *Commonwealth Electoral Act 1918*, s. 357(1A) Such cases must be decided within three months, s. 367A.

¹⁷⁵ *Commonwealth Electoral Act 1918*, s. 354.

¹⁷⁶ *Commonwealth Electoral Act 1918*, s. 363.

The Chief Executive and Principal Registrar of the High Court sends a copy of the petition to the Clerk of the House of Representatives immediately it has been filed, and after the hearing sends the Clerk a copy of the order of the court. A copy of the order is also sent to the issuer of the writ, that is, the Governor-General or the Speaker.¹⁷⁷ The Clerk presents the petition and order of the court to the House at the earliest opportunity either separately or together. The decision of the court is final and no appeals are permitted.¹⁷⁸ A person whose election has been challenged continues to serve pending the outcome of the hearing.

Any person returned who is declared by the court not to have been duly elected ceases to be a Member of the House of Representatives. Any person not returned who is declared to have been duly elected following consideration of an election petition may take his or her seat in the House of Representatives. If any election of any Member is declared absolutely void, then a new election is held.¹⁷⁹

Since the establishment of the Court of Disputed Returns there have been 40 cases of the court being petitioned in connection with a seat in the House of Representatives, including 13 of similar intent lodged after the 1980 general election.¹⁸⁰ The court ruled the election absolutely void in six cases and the Speaker (or Acting Speaker) issued writs for new elections to be held.¹⁸¹ Following the 1993 general election petitions were lodged alleging irregularities in the conduct of a general election, against the Electoral Commission, and challenging the election of all Members elected, rather than challenging the election of specified Members. The cases were dismissed.¹⁸²

In 1920 a Member (Mr McGrath) was elected at a second election after the first election had been declared void. The House agreed to a motion that compensation be paid to him because he had been compelled to contest two elections as a result of official errors and had thus been involved in much unnecessary but unavoidable expenditure.¹⁸³

The House of Representatives may, by resolution, refer any question concerning the qualifications of a Member or a vacancy in the House to the Court of Disputed Returns.¹⁸⁴ The Speaker sends to the court a statement of the question together with any papers possessed by the House relating to the question.¹⁸⁵ The court has the power to declare any person not qualified or not capable of being chosen or of sitting as a Member of the House of Representatives, and to declare a vacancy in the House of Representatives. The Chief Executive and Principal Registrar of the High Court sends a copy of the order or declaration of the Court of Disputed Returns to the Clerk of the House, as soon as practicable after the question has been determined.¹⁸⁶

There has been no instance of the House of Representatives referring a question concerning the qualifications of a Member or a vacancy in the House to the Court of Disputed Returns although this has happened in the Senate.¹⁸⁷

On 30 March 1977 a Member gave a notice of motion:

177 *Commonwealth Electoral Act 1918*, s. 369; VP 1929–31/91–2.

178 *Commonwealth Electoral Act 1918*, s. 368; VP 1929–31/91–2.

179 *Commonwealth Electoral Act 1918*, s. 374.

180 See Appendix 13—(figures to end 1996).

181 VP 1904/25–6, 43–4; VP 1907–8/3–4; VP 1920–21/189–90; VP 1990–92/1907; VP 1996/428–30, 489.

182 VP 1993–95/176–7, 1106.

183 VP 1920–21/468.

184 *Commonwealth Electoral Act 1918*, s. 376.

185 *Commonwealth Electoral Act 1918*, s. 377.

186 *Commonwealth Electoral Act 1918*, s. 380.

187 J 1974–75/628–9; and see Ch. on 'Members'.

... that the question whether the place of the Honourable Member for Macarthur [Mr Baume] has become vacant pursuant to the provisions of Section 45(ii) of the Constitution of the Commonwealth of Australia be referred for determination to the Court of Disputed Returns pursuant to section 203 of the Commonwealth Electoral Act.¹⁸⁸

The motion was debated on 5 May 1977 and the Attorney-General tabled a joint opinion from the Attorney-General and the Solicitor-General, and two other legal opinions, on the matter. The question was negated, on division.¹⁸⁹

For further coverage of Members' qualifications and disqualifications and challenges to membership of the House *see* Chapter on 'Members'.

¹⁸⁸ NP 11 (31.3.77) 580–3.

¹⁸⁹ H.R. Deb. (5.5.77) 1598–1610; VP 1977/108–12.