

# *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 6 months after the establishment of the Commonwealth<sup>1</sup>, which occurred on 1 January 1901. The first general election was held on 29 and 30 March 1901<sup>2</sup>, 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 held<sup>3</sup>, 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.<sup>4</sup>

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 laws<sup>5</sup>, and
- the laws in force in each State relating to elections apply to elections of Members of the House of Representatives<sup>6</sup>

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.<sup>7</sup> 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. Laws made by the States for the first election ceased to have effect when the Parliament legislated in 1902.<sup>8</sup> This legislation and subsequent amendments were consolidated in 1918 and form the basis of the electoral law of today.<sup>9</sup>

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 the number of Senators. The number of Members in each State was to be

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 *Commonwealth Electoral Act 1918*. For comprehensive details of Commonwealth electoral law and electoral statistics see (i) *Commonwealth Electoral Procedures*, Australian Electoral Office, AGPS, 1976, (ii) *A Summary of Commonwealth Election and Referendum Statistics 1901-1975*, Australian Electoral Office, AGPS, 1976, and (iii) *Conspectus of the Electoral Legislation of the Commonwealth, States of Australia, the Northern Territory and the Australian Capital Territory*, New South Wales Legislative Council Office, 5th edn, April 1980.

proportionate to the populations of the respective States and the manner in which the number was to be determined, although set down in the Constitution, was a matter in respect of which the Parliament could legislate, and has subsequently done so.<sup>10</sup>

## 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.<sup>11</sup>
- 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.<sup>12</sup>
- The Governor-General in Council may cause writs to be issued for general elections of Members of the House of Representatives.<sup>13</sup>

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.<sup>14</sup>

A general election follows the dissolution of the House by the Governor-General<sup>15</sup> or the expiration of the House by effluxion of time, 3 years from its first meeting. The period between the first meeting and dissolution, called a Parliament, has varied between 7 months (11th Parliament) and a period just short of the 3 year maximum term (18th and 27th Parliaments). The 3rd Parliament has been the only one to have expired by effluxion of time.<sup>16</sup> 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 and call a general election for both the House and the Senate.<sup>17</sup>
- 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-General<sup>18</sup>, the decision to call a general election can only be made on and with the advice of the Executive Council, that is, the Government.<sup>19</sup>

While the majority of Parliaments have extended for more than 2 years and 6 months some Parliaments have been dissolved well short of the maximum 3 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);

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

11 Constitution, s. 5.

12 Constitution, s. 28.

13 Constitution, s. 32.

14 Constitution, s. 5.

15 See Ch. on 'The Parliament'.

16 For a list of all federal elections see Appendix 13.

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

18 In practice this power is exercised with the advice of the Federal Executive Council; see *Quick and Garran*, pp. 404-06. For further discussion see Ch. on 'The Parliament'.

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

- synchronisation of House elections with Senate elections (e.g. 1955, 1977), and
- perceived political or electoral advantage.

Occasionally reasons for dissolving the House have been published.<sup>20</sup>

## BY-ELECTIONS

Whenever a vacancy occurs in the House because of the death, resignation, absence without leave, expulsion or disqualification or ineligibility of a Member<sup>21</sup>, a writ may be issued by the Speaker for the election of a new Member.<sup>22</sup> From Federation to the 1980 general election 103 by-elections have been held.<sup>23</sup> A by-election may be held on a date to be determined by the Speaker or in his absence from Australia by the Governor-General in Council. The polling must take place on a Saturday.<sup>24</sup>

If there is no Speaker or if he is absent from the Commonwealth, the Governor-General in Council may issue the writ.<sup>25</sup> 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.<sup>26</sup> A writ has been issued by the Chairman of Committees as Deputy Speaker during the Speaker's absence within the Commonwealth<sup>27</sup>, and the Chairman of Committees as Deputy Speaker has informed the House of the Speaker's intention to issue a writ.<sup>28</sup>

There are no constitutional or statutory requirements that writs be issued for by-elections within any prescribed period.<sup>29</sup> 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 2 elections within a short period of time<sup>30</sup>, and
- a writ has been issued and then withdrawn by the Speaker when a dissolution of the House has intervened.<sup>31</sup>

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 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

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

21 For discussion see Ch. on 'Members'.

22 Constitution, s. 33.

23 For a list of by-elections see Appendix 13.

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

25 Constitution, s. 33.

26 S.O. 14; and see Ch. on 'Speaker and Officers of the House'.

27 VP 1920-21/575. There is some doubt as to the constitutional validity of this action.

28 VP 1956-57/63; but see Ch. on 'Speaker and Officers of the House'.

29 For the last 10 by-elections prior to the 32nd Parliament the average time between vacancy and polling day has been 55 days. There was some disagreement on the dates determined for the by-elections to be held following the resignation of 2 Members on 22 January 1981, H.R. Deb. (24.2.81) 1-2.

30 VP 1926-28/649; VP 1964-66/621; H.R. Deb. (18.8.66) 157.

31 VP 1929-31/950.

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.

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.<sup>32</sup> Based on this procedure new elections have been held before the meeting of Parliament<sup>33</sup> and after the meeting of Parliament.<sup>34</sup>

When the Court of Disputed Returns declares an election absolutely void, a writ may be issued by the Speaker for the purposes of a new election<sup>35</sup> (*see p. 136*).

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.<sup>36</sup>

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 Chief Australian Electoral Officer 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 is prepared and embossed with the House of Representatives Seal;
- the writ, addressed to the Divisional Returning Officer, is forwarded to the Chief Australian Electoral Officer and the Divisional Returning Officer is advised of the dates in connection with the by-election;
- notification of the by-election is published in the Gazette<sup>37</sup>;
- the Broadcasting Control Board is advised (*see p. 133*), and
- the House is advised.

## SENATE ELECTIONS

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

- each State votes as one electorate<sup>38</sup>;
- Senators are elected to serve for 6 years from the beginning of their term of service<sup>39</sup>;
- the term of service of a Senator normally commences on the first day of July following his election<sup>40</sup>;
- in the case of an election following dissolution of the Senate, the term of a Senator commences on the first day of July preceding the day of his election<sup>41</sup>, and

32 Constitution, s. 33.

33 VP 1964-66/3-5.

34 VP 1917/4.

35 VP 1904/26,44; VP 1907-08/4; VP 1920-21/190.

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

37 Gazette S192(9.9.77).

38 Constitution, s. 7.

39 Constitution, s. 13.

40 Constitution, s. 13.

41 Constitution, s. 13.

- there is an election for half the number of Senators at least every 3 years.

The Senate may only be dissolved under the provisions of section 57 of the Constitution. After an election following a dissolution of the Senate, the Senators chosen for each State are divided into 2 classes as nearly equal in number as practicable.<sup>42</sup> A system of rotation is implemented which provides continuity of membership for the Senate. The plan for the rotation of Senators provides that the places of Senators of one class (those Senators elected last, that is, with the least numbers of votes at the relevant election) become vacant at the expiration of 3 years while the places of Senators of the second class (those elected with the largest numbers of votes) become vacant at the end of 6 years.<sup>43</sup>

At the first election in 1901, 36 Senators, 6 from each original State, were elected.<sup>44</sup> The Parliament is empowered to make laws which increase or decrease the number of Senators for each State, excepting that equal representation of the original States must be maintained and no original State shall have less than 6 Senators.<sup>45</sup> The Parliament has increased the number of Senators on 2 occasions:

- in 1948 the number of Senators was increased to 10 from each State<sup>46</sup>, 30 Senators retiring every 3 years, and
- in 1974 provision was made for the election of 2 Senators each for the Northern Territory and the Australian Capital Territory.<sup>47</sup>

The term of Territorial Senators expires upon dissolution of the House of Representatives and elections are conducted concurrently with general elections for the House of Representatives.<sup>48</sup>

The election to fill places vacated by Senators whose terms of service are to expire shall be held within one year before the places are to become vacant.<sup>49</sup> Subject to this requirement, the decision as to when Senate elections are to be held rests with the 6 State Governors who issue the writs for the election.<sup>50</sup> The elections must be held on a Saturday. By convention the Governor-General (acting with the advice of the Executive Council) invites State Governors to issue the writs. This facilitates joint Senate elections for all States although a Governor is not obliged so to act. The Senate may proceed to business notwithstanding the failure of any State to provide for its representation in the Senate.<sup>51</sup>

No time is fixed for the issue of the writs except in the case of the Senate having been dissolved under section 57 of the Constitution, when the 6 State Governors must issue the writs within 10 days from the proclamation of the dissolution.<sup>52</sup>

Because Senators are normally elected for a fixed 6 year term and Members of the House for a maximum term of 3 years, the elections for the 2 Houses do not necessarily occur at the same time. The majority of elections since Federation have been timed however so that both Senate and House of Representatives elections have been held concurrently. A proposal has twice been put to the people of Australia at referendum

42 Constitution, s. 13.

43 The Senate has been divided on the following occasions: 1901, 1914, 1951, 1974 and 1975 (J 1976-77/23-4). The *Representation Act 1948* (Act No. 16 of 1948) made provision for dividing the Senate consequent upon the increase in the size of the Senate after the 1949 election.

44 Constitution, s. 7.

45 Constitution, s. 7; see also Ch. on 'The Parliament' for discussion of nexus provisions.

46 *Representation Act 1948*; effective from the election of 10 December 1949.

47 *Senate (Representation of Territories) Act 1973* (assented to 7 August 1974); effective from the election of 13 December 1975.

48 *Senate (Representation of Territories) Act 1973*, s. 7(2).

49 Constitution, s. 13.

50 Constitution, s. 12. The Governor-General issues writs for the election of Territory Senators.

51 Constitution, s. 11.

52 Constitution, s. 12.

to alter the Constitution to require simultaneous elections<sup>53</sup> and on both occasions<sup>54</sup> the proposal was rejected. Double dissolutions, of course, ensure that elections are held concurrently.

The House of Representatives proceeds to a by-election when a vacancy occurs. A Senate casual vacancy is filled by a person chosen by the Houses of Parliament of the State which the former Senator represented and, as far as practicable, must be a person of the same political party as the Senator chosen by the people. The person chosen fills the vacancy until the end of the former Senator's term. If the State Parliament is not sitting, the Governor in Council may appoint a person to hold the place up until the expiration of 14 days from the beginning of the next session of the State Parliament or the expiration of the former Senator's term, whichever first happens.<sup>55</sup>

If the place of a Senator for the Northern Territory becomes vacant before the expiration of his term of service, the Legislative Assembly of the Territory chooses a person to hold the place until the expiration of the term. If the Assembly is not in session when the vacancy is notified the Administrator of the Territory may appoint a person to hold the place up until 14 days after the beginning of the next session of the Assembly or the expiration of the term, whichever occurs first. The filling of a casual Senate vacancy for the Australian Capital Territory follows the same procedure except that the Senate and the House of Representatives, sitting and voting together, choose a person, unless the Parliament is not in session, in which case the Governor-General may appoint a person to hold the place.<sup>56</sup>

## ELECTORAL DIVISIONS

The Constitution determines 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.<sup>57</sup>

These provisions, together, express the concept of proportional 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 how the people are to be represented by way of dividing the States into electoral Divisions. Electoral Divisions are also commonly known as electorates or constituencies.

The Constitution states that, until the Parliament otherwise provides, any State may make laws which determine the Divisions within that State for which Members of the House of Representatives may be chosen, and the number of Members to be chosen for each Division, with the qualification that a Division cannot be formed out of parts of different States.<sup>58</sup> The provisions in force for determining Divisions for the first election of the House of Representatives (*see* p. 117) were superseded by legislation of the Commonwealth Parliament in 1902<sup>59</sup> and the first distribution was conducted in 1903.

53 Constitution Alteration (Simultaneous Elections) Bill 1974; Constitution Alteration (Simultaneous Elections) Bill 1977.

54 For further discussion *see* Ch. on 'The Parliament'.

55 Constitution, s. 15.

56 *Senate (Representation of Territories) Act* 1973, s. 9. The first joint sitting for this purpose was held on 5 May 1981, J. 1980-81/227. For rules adopted for the

sitting *see* Supplement to Standing Orders. For further information on the system of election of Senators and the filling of vacancies in the Senate *see* *Odgers*, pp. 113 ff.

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

58 Constitution, s. 29.

59 *Commonwealth Electoral Act* 1902.

The Commonwealth Electoral Act provides that each State 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, and one Member of the House of Representatives shall be chosen for each Division.<sup>60</sup> These Divisions are known as single-member constituencies. Multi-member constituencies allowed for in the Constitution have not been used.<sup>61</sup>

In order to determine these Divisions, the Chief Australian Electoral Officer, whenever necessary, ascertains a 'quota' for each State as follows:

The whole number of electors in each State, as nearly as can be ascertained, shall be divided by the number of Members of the House of Representatives to be chosen for the State.<sup>62</sup>

It then remains for the Distribution Commissioners to determine the boundaries of each Division, based on the quota, which, if ratified by Parliament, are proclaimed by the Governor-General.

The number of electors in the Territories are not taken into consideration when deciding the number of Members to be chosen for the House of Representatives<sup>63</sup> nor are the Territories included for the purposes of determining electoral Divisions. The representation of the Territories is provided for by means of an alternative constitutional provision.<sup>64</sup> Under present electoral legislation the Northern Territory is one Division, while the Australian Capital Territory is divided into 2 single-member constituencies.<sup>65</sup>

## Redistribution

The Commonwealth Electoral Act prescribes the conditions under which a redistribution is required or allowed.<sup>66</sup> For the purposes of a redistribution the Chief Australian Electoral Officer ascertains a quota for each State in accordance with the provisions of section 18 of the Act. A redistribution shall be made whenever directed by the Governor-General, acting with the advice of the Executive Council, by proclamation. The proclamation:

- shall be made forthwith after the making of a determination that results in an alteration in the number of Members of the House of Representatives to be chosen for the State<sup>67</sup>;
- may be made whenever in one-quarter of the Divisions of the State the number of electors differs from the quota to a greater extent than one-tenth more or one-tenth less<sup>68</sup>, and
- may be made at such other times as the Governor-General thinks fit.<sup>69</sup>

A proclamation directing the redistribution within a State may be made notwithstanding that, at the time when it is made, a redistribution of that State has been directed by an earlier proclamation and, in such a case, the later proclamation does not prevent sections 16 to 24 of the Act (steps within the redistribution process) from continuing to apply for the purposes of the redistribution directed by the earlier proclamation.<sup>70</sup>

60 *Commonwealth Electoral Act* 1918, s. 15. The means of determining the number of Members is laid down in the *Representation Act* 1905; and see Ch. on 'Members'.

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

62 *Commonwealth Electoral Act* 1918, s. 18.

63 See Ch. on 'Members'.

64 Constitution, s. 122.

65 *Gazette* 33(19.4.74)92 (*Australian Capital Territory*).

66 *Commonwealth Electoral Act* 1918, s. 25. The States having been distributed into Divisions once are there-after redistributed. The words 'distributed' and 'redistributed' are commonly used synonymously. For a list of redistributions see Appendix 12.

67 See Ch. on 'Members'.

68 *Commonwealth Electoral Act* 1918, s. 25.

69 *Commonwealth Electoral Act* 1918, s. 25.

70 *Commonwealth Electoral Act* 1918, s. 25.

Where, for the purposes of a general election, a State has not been divided into electoral Divisions equal in number to the number of Members which it has been determined should be chosen for the State, the State shall be one electorate for the purposes of that election.<sup>71</sup> If this were to occur, the election would be known as an 'election at large'.

In order to conduct a redistribution the Governor-General appoints 3 Distribution Commissioners for each State. One shall be the Chief Australian Electoral Officer (or a similarly qualified officer) and one shall be the Surveyor-General for the State (or a similarly qualified officer). The third Commissioner is selected by the Government, usually from a panel of names submitted by the Chief Australian Electoral Officer.<sup>72</sup>

The Distribution Commissioners are required to consider any suggestions and comments lodged with them pursuant to public advertisement in the Gazette.<sup>73</sup> Under the Act no person shall seek to influence a Commissioner in the performance of his duties<sup>74</sup> (see p. 126). In making any proposed redistribution of a State into Divisions, the Distribution Commissioners are required to give due consideration, in relation to each proposed Division, to:

- community of interests within the Division, including economic, social and regional interests;
- the means of communication and travel within the Division;
- the trend of population changes within the State;
- the physical features of the Division, and
- the existing boundaries of Divisions and sub-Divisions.

Subject to these considerations the quota of electors shall be the basis for the redistribution. The Distribution Commissioners may adopt a margin of allowance in respect of the quota but in no case shall the quota be departed from to a greater extent than one-tenth more or one-tenth less.<sup>75</sup> The Commissioners are also required to take into account the relative size of electorates to the extent that no 'large' Division (one of an area of 5000 square kilometres or more) may contain a greater number of electors than any 'small' Division (one of less than 5000 square kilometres).<sup>76</sup>

Once the initial proposals are determined, maps of the proposed Divisions are exhibited at post offices throughout the State and suggestions or objections are invited.<sup>77</sup> After the Commissioners have considered all submissions they formulate their final proposals and as soon as practicable forward to the responsible Minister their report, the number of electors in each proposed Division, a signed map showing each proposed Division and copies of any suggestions, comments or objections lodged.<sup>78</sup> A Commissioner may submit a statement of dissent from proposals relating to any Division.<sup>79</sup>

### *Parliamentary procedure*

A copy of the Distribution Commissioners report together with a map and a copy of suggestions, comments or objections must be laid before each House within 5 sitting days of that House after the report has been received by the Minister.<sup>80</sup>

71 *Commonwealth Electoral Act* 1918, s. 25A.

72 *Commonwealth Electoral Act* 1918, s. 16; by Letters Patent; see 'Redistribution of Electoral Divisions', *Report by Distribution Commissioners for Victoria*, PP 227(1977).

73 *Commonwealth Electoral Act* 1918, s. 18A; *Gazette* S73(26.4.77).

74 *Commonwealth Electoral Act* 1918, s. 22.

75 *Commonwealth Electoral Act* 1918, s. 19 (previously one-fifth; amended by Act No. 38 of 1974).

76 *Commonwealth Electoral Act* 1918, s. 19 (inserted by Act No. 14 of 1977).

77 *Commonwealth Electoral Act* 1918, ss. 20, 21; *Gazette* S177(24.8.77).

78 *Commonwealth Electoral Act* 1918, ss. 21, 23.

79 'Redistribution of the State of New South Wales into Electoral Divisions 1968', *Statement by Distribution Commissioner F. L. Ley*, PP 105(1968).

80 *Commonwealth Electoral Act* 1918, s. 23A; report and map are printed, PP 227(1977); VP 1977/352.



If both Houses of the Parliament pass a resolution<sup>81</sup> approving any proposed redistribution, the Clerks of both Houses inform the Minister of the resolution approving the redistribution. The Governor-General shall, as soon as practicable thereafter, by proclamation<sup>82</sup>, declare the names and boundaries of the Divisions and direct new electoral rolls to be prepared on the new boundaries.<sup>83</sup> Until altered such Divisions shall be the electoral Divisions for the State in which they are situated. In the case of a by-election to fill a vacancy in the House during the course of that Parliament however, the previously existing Divisions and electoral rolls have full force and effect, notwithstanding that new rolls for the new Division may have been prepared.<sup>84</sup>

If either House disapproves of<sup>85</sup> or negatives a motion for approval of<sup>86</sup> any proposed redistribution, the Minister may direct the Commissioners to propose a fresh distribution as was the case in 1912, 1936 and 1968.<sup>87</sup> In this event the Commissioners are not required to apply the provision relating to public advertisement and invitation of suggestions and comments.<sup>88</sup>

In 1975 a redistribution was conducted for all States (except Western Australia which had been redistributed in 1974<sup>89</sup>) and the reports of the Distribution Commissioners were tabled on 15 April, 17 April and 13 May 1975.<sup>90</sup> The House approved the redistribution for all States<sup>91</sup> but the Senate negated a motion for approval of the redistribution in respect of each State.<sup>92</sup> On 28 May the redistribution proposals were again submitted to the House in the form of a bill with respect to each State.<sup>93</sup> This unprecedented method was taken by the Government in a further attempt to implement the Distribution Commissioners' proposals rejected by the Senate. The Government considered it unnecessary to direct a fresh distribution for each of the States and regarded the matter as one of urgent necessity.<sup>94</sup> Each of the bills was negated at the second reading by the Senate.<sup>95</sup> Further bills (Electoral Redistribution Bills 1975 [No. 2]) were again passed by the House and again negated in the Senate.<sup>96</sup> These bills were cited in the double dissolution proclamation of 11 November 1975.

There have been instances of the Parliament taking no final action in respect of redistribution proposals. In 1905 and 1931 reports for 4 States were tabled<sup>97</sup> but no motions to approve the proposed redistributions were moved. In 1962 reports for all States were tabled<sup>98</sup> and a motion to approve the proposed redistribution of New South Wales was moved<sup>99</sup> and debated.<sup>100</sup> The motion lapsed at dissolution. No motions were moved in respect of the other States.

### *Naming of Divisions*

The Parliament has on occasions adopted proposed boundaries but altered the names of proposed Divisions.<sup>101</sup> The House appointed a select committee in 1968 to consider and report upon:

- the criteria which should be adopted in naming electoral Divisions, and

81 VP 1977/372-4; J 1977/337-9.

82 Gazette P12(7.11.77).

83 *Commonwealth Electoral Act* 1918, s. 33.

84 *Commonwealth Electoral Act* 1918, s. 24.

85 VP 1934-37/607-8.

86 J 1974-75/704-6.

87 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.

88 *Commonwealth Electoral Act* 1918, s. 24(3).

89 VP 1974/40,91.

90 VP 1974-75/582,595,626.

91 VP 1974-75/672-3,684-7.

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

93 VP 1974-75/727-8.

94 H.R. Deb. (28.5.75)2911-14.

95 J 1974-75/794-6.

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

97 VP 1929-31/487,491.

98 VP 1962-63/222.

99 VP 1962-63/315-16.

100 VP 1962-63/340-1.

101 VP 1978-80/1230; J 1978-80/1103.

- whether the Distribution Commissioners should attach names to Divisions at the time of publishing their proposals or whether some other person or persons should attach the names and, if so, when.<sup>102</sup>

The committee recommended certain criteria which should be adopted in the naming of Divisions and further recommended that a committee of the House be appointed at the time of each redistribution for the purpose of recommending names.<sup>103</sup> This latter recommendation has not been acted upon.

In practice the Distribution Commissioners regularly propose names (although they are not required to), the Parliament adopts or changes the names (although there is no requirement) and the Governor-General declares the names (and boundaries) of the Divisions.<sup>104</sup> In essence the naming of Divisions by the Commissioners has been provisional and for the convenience of themselves, the people and the Parliament. Historically, Parliament has resolved to determine the names for proposed Divisions except in 1906<sup>105</sup> and in relation to New South Wales in 1912<sup>106</sup> thus reserving the declaration of names for the Governor-General. On numerous occasions the House has resolved to vary the names provisionally allotted to Divisions by the Commissioners.<sup>107</sup>

While both Houses must pass a resolution approving redistribution proposals for implementation to take place, it has been argued that redistribution is properly a matter for the decision of the House of Representatives. As has been shown, the Senate has rejected proposed redistributions (*see* p. 125). The Senate has also resolved to vary names proposed by the Commissioners<sup>108</sup> but only in order to be consistent with resolutions previously agreed to by the House.

On 24 April 1978 the Governor-General, by Letters Patent, appointed a Royal Commission 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', by reason of:

- anything said or action taken by or on behalf of the Hon. Eric Robinson;
- any action taken by the Distribution Commissioners or any of them as a result of anything said or action taken by or on behalf of the Hon. Eric Robinson, or
- any communication by the Distribution Commissioners to the Hon. Eric Robinson.<sup>109</sup>

On 30 May 1978 by further Letters Patent the Governor-General extended the terms of reference<sup>110</sup> to include whether any breach of a law of the Commonwealth or any impropriety occurred by reason of:

- anything said or action taken by or on behalf of any person;
- any action taken by the Distribution Commissioners or any of them as a result of anything said or action taken by or on behalf of any person, or
- any communication by the Distribution Commissioners to any person.<sup>111</sup>

In relation to the Letters Patent of 24 April 1978, the Royal Commissioner reported that:

no breach of a law of the Commonwealth or impropriety occurred in the course of the Redistribution in 1977 of the State of Queensland into Electoral Divisions for the election of

102 VP 1968-69/253.

103 'The Naming of Electoral Divisions', *Report from House of Representatives Select Committee*, PP 35(1969).

104 *Commonwealth Electoral Act* 1918, s. 24(1).

105 VP 1906/12.

106 VP 1912/211,267,299.

107 VP 1977/372-3; VP 1978-80/1230.

108 J 1968-69/243; J 1978-80/1103.

109 Gazette S72(27.4.78).

110 Terms of reference previously extended on 10 May 1978 for purposes not relevant to this text *see* Gazette S81(11.5.78).

111 Gazette S92(31.5.78).

Members of the House of Representatives, including the change of the name of a proposed Division from "Gold Coast" to "McPherson" by reason of

- (a) anything said or action taken by or on behalf of the Honourable Eric Robinson;
- (b) any action taken by the Distribution Commissioners or any of them as a result of anything said or action taken by or on behalf of the Honourable Eric Robinson; or
- (c) any communication by the Distribution Commissioners to the Honourable Eric Robinson.

With reference to the Letters Patent of 30 May 1978, the Royal Commissioner's findings were as follows:

*Breach of a law*

In the course of the re-distribution in 1977 of the State of Queensland into Electoral Divisions for the election of Members of the House of Representatives (including the change of the name of a proposed Division from "Gold Coast" to "McPherson") in so far as the re-distribution affected that part of the State of Queensland that prior to the re-distribution comprised the Division of "McPherson" no breach of a law of the Commonwealth occurred by reason of—

- (a) anything said or action taken by or on behalf of any person;
- (b) any action taken by the Distribution Commissioners or any of them as a result of anything said or action taken by or on behalf of any person; or
- (c) any communication by the Distribution Commissioners to any person.

*Impropriety*

The action of Senator the Right Honourable R.G. Withers constitutes impropriety within the meaning of the Letters Patent dated 30 May 1978. Senator Withers used his position to further a political purpose by an approach (not open to members of the public) to the Distribution Commissioners. That purpose was not made known to them, and it was foreign to the matters which were proper for their consideration. Had the Commissioners been made aware of what was behind the approach, they would not have entertained it. However, believing they were being invited merely to correct an error on their part, they went along with the suggestion which was put to them. 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 did seek to influence them, and he did in fact influence them, through an intermediary, as to something which they proposed to say in their Report, that is to say, the names which they tentatively attached to two Electoral Divisions. What he did, having regard to the purpose with which he did it, in my judgment constitutes impropriety.

The Royal Commissioner exonerated completely the Hon. Eric Robinson, the Chief Australian Electoral Officer and the 3 Distribution Commissioners.<sup>112</sup>

The Government accepted the Royal Commissioner's report<sup>113</sup> which 'had inevitable consequences in respect of the finding of impropriety'.<sup>114</sup> 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.<sup>115</sup>

*Redistribution in general*

Since the 1948 redistribution and the concomitant increase in the size of the Senate and the House of Representatives after the general election of 1949, there have been 5 proposed general redistributions. The Parliament however acted to implement the

<sup>112</sup> H.R. Deb. (15.8.78) 18.

<sup>114</sup> H.R. Deb. (15.8.78) 19.

<sup>113</sup> 'Matters in relation to electoral redistribution, Queensland 1977', *Report of the Royal Commission of Inquiry*, PP 263 (1978).

<sup>115</sup> Gazette S149 (8.8.78); and see Ch. on 'The structure of the House'.

redistributions on only 3 occasions, so that between 1955 and 1969 and between 1969 and 1977 no redistributions were implemented.

Prior to the 1977 redistribution, enrolled electors as at June 1977 exceeded 90 000 in 11 Divisions. The Division of McPherson had 114 067 electors, an increase of 66 696 since 1968.

In recognition of the need for regular redistributions based on the most recent population statistics, amendments were made to the Commonwealth Electoral Act, Representation Act and the Census and Statistics Act in 1977. These amendments now ensure that a determination of the representation entitlement of the several States will be made in the twelfth month of the life of a House of Representatives. Where, as a result, the representation entitlement of any State is altered, a redistribution of that State will be effected. The first redistribution pursuant to these provisions was effected in Western Australia in 1979.

In 1949 the size of the House of Representatives was increased from 75 to 123 seats at which time the Members represented 4.91 million electors, a ratio of 39 948 electors per Member. The ratio of electors per Member remained fairly constant in the ensuing years. However since 1958 there has been a steady increase in the ratio of electors per Member, which has meant an ever increasing representational load for Members of the House.

**TABLE 3 RATIO OF ELECTORS PER MEMBER 1958-80**

<i>Year of election</i>	<i>Electors</i>	<i>Members(a)</i>	<i>Average number of electors per Member</i>
1958 . . . . .	5 412 865	124	43 652
1961 . . . . .	5 692 364	124	45 906
1963 . . . . .	5 860 935	124	47 266
1966 . . . . .	6 193 881	124	49 951
1969 . . . . .	6 606 873	125(b)	52 855
1972 . . . . .	7 074 070	125	56 592
1974 . . . . .	7 898 922	127(c)	62 196
1975 . . . . .	8 262 413	127	65 058
1977 . . . . .	8 548 779	124(d)	68 934
1980 . . . . .	9 014 920	125(e)	72 119

(a) Including 2 Territory Members, and from 1974, 3 Territory Members. (b) An additional Member for both South Australia and Western Australia and the loss of one seat in New South Wales. (c) An additional Member for both Western Australia and the Australian Capital Territory. (d) A loss of one seat in both South Australia and Victoria; a loss of 2 seats in New South Wales and an additional Member for Queensland. (e) An additional Member for Western Australia.

These figures are even more significant when the lighter representational load of Members from Tasmania<sup>116</sup> (an average of 54 695 electors in 1980) and the Northern Territory (55 160 electors in 1980) is considered.

Unless there is a change in the constitutional requirement that the number of Members in the House of Representatives be approximately twice the number of Senators<sup>117</sup> (sometimes referred to as the 'nexus') or the number of Senators is increased, the representational load of Members of the House will continue to increase with population growth.

The largest Division, in terms of area, is Kalgoorlie in Western Australia which covers some 2.29 million square kilometres. The smallest is Phillip in New South Wales

<sup>116</sup> Constitution, s. 24 prescribes that at least 5 Members shall be chosen in each original State.

<sup>117</sup> Constitution, s. 24; see also Chs on 'Members' and 'The Parliament'.

which covers an area of 17 square kilometres. At the time of the 1980 general election the Division of Macquarie in New South Wales had the largest number of electors (85 784) and Braddon in Tasmania the least (53 854).

## 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.<sup>118</sup> The voting provisions for federal elections (including Senate elections) were established in 1902.<sup>119</sup> Since then elections have been characterised by:

- adult suffrage (except Aborigines);
- secret ballot, and
- single vote.<sup>120</sup>

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 every eligible voter (other than an Aboriginal) is required to enrol.<sup>121</sup>
- **Compulsory voting** became effective at the 1925 general election.<sup>122</sup>  
It is the duty of every elector to record his vote at each election.<sup>123</sup>
- **Preferential voting system** since 1918<sup>124</sup>  
Up until 1918 the first-past-the-post system was used at federal elections (*see* p. 130).
- **Extension of franchise** to all Aborigines since the 1963 general election<sup>125</sup>, and all persons 18 years of age and over since the 1974 general election.<sup>126</sup>

In summary persons entitled to enrol and to vote at federal elections (subject to certain disqualifications) are all persons not under 18 years of age, whether male or female, married or unmarried who have lived in Australia for 6 months continuously, and who are British subjects (that is, including persons naturalised or who acquire Australian citizenship).

A person who is the holder of a temporary entry permit for the purposes of the Migration Act, or a person who is a prohibited immigrant under that Act, is not entitled to enrolment. No person who is of unsound mind, or who is attainted of treason, or who has been convicted and is under sentence for an offence punishable under the law by imprisonment for one year or longer, is entitled to enrolment or to retain enrolment.<sup>127</sup> A person who has served his sentence may once again secure enrolment providing he is otherwise qualified.

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 deaths, marriages and convictions, as the case may be, with respect to all persons not under 18 years of age.<sup>128</sup>

<sup>118</sup> Constitution, ss. 30,41.

<sup>119</sup> *Commonwealth Electoral Act* 1902.

<sup>120</sup> Plural voting is precluded by the Constitution, s. 30.

<sup>121</sup> *Commonwealth Electoral Act* 1918, ss. 29,42.

<sup>122</sup> *Commonwealth Electoral Act* 1924 (Act No. 10 of 1924).

<sup>123</sup> *Commonwealth Electoral Act* 1918, s. 128A.

<sup>124</sup> *Commonwealth Electoral Act* 1918, s. 124.

<sup>125</sup> Amending legislation passed in 1962 in response to recommendations of Report from Select Committee on Voting Rights of Aborigines, H of R I (1961).

<sup>126</sup> *Commonwealth Electoral Act* 1918, s. 39.

<sup>127</sup> *Commonwealth Electoral Act* 1918, s. 39.

<sup>128</sup> *Commonwealth Electoral Act* 1918, ss. 49,50.

## Method of voting

There are several different systems of election and the system used usually depends upon a number of factors, for example, whether the electorates are to have single-member or multi-member representation; whether the result is to be determined by an absolute majority of the voters or by a relative majority only; the number of voters in the election and the number of candidates to be elected.

With every system of election there are 2 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.<sup>129</sup>

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 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 vote on the ballot paper by placing the number one (1) against the name of the candidate of his first choice, and gives contingent votes for all the remaining candidates in order of his preference by the consecutive numbers 2, 3, 4 and so on.<sup>130</sup>

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

If the number of first preference votes recorded in favour of a candidate is greater than one-half of the total number of formal votes in the election (i.e. an absolute majority of the formal votes), that candidate is elected. If no candidate has received an absolute majority of the votes, the candidate who has received the fewest first preference votes is excluded from the count and each ballot paper counted to him is transferred to the candidate next in order of the voter's preference. This process of excluding candidates one by one is continued until a candidate receives more than half the number of votes in the count, when he is elected.<sup>131</sup>

This method of counting 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 is also marked preferentially but 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.<sup>132</sup>

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

<sup>129</sup> *Commonwealth Electoral Act* 1918, ss. 136-40.

<sup>130</sup> *Commonwealth Electoral Act* 1918, s. 124.

<sup>131</sup> *Commonwealth Electoral Procedures*, p. 35. For an example of this method of counting see p. 76 of the publication.

<sup>132</sup> *Commonwealth Electoral Act* 1918, s. 135. For a more detailed account of this system see *Commonwealth Electoral Procedures*, pp. 34-5, 37 and *Odgers*, pp. 94-101.

supporters. It is generally recognised that this system has increased the influence of parties in the Senate resulting in:

- greater opportunity for the election of minority parties and independents than in the House (often holding the balance of power), and
- a majority group or combination of groups opposed to the party or parties having a majority in the House.<sup>133</sup>

## THE TIMETABLE FOR ELECTIONS

The following table, based on the 1980 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.<sup>134</sup>

TABLE 4 GENERAL ELECTIONS FOR 32ND PARLIAMENT—SCHEMA

Stage	Limitation(a)	Actual date	Constitutional or statutory provision
Dissolution	—	19.9.80	Constitution, ss. 5, 28
Issue of writs (at 6 p.m.)	Within 10 days of dissolution—before 30 September	19.9.80	Constitution, s. 32; Commonwealth Electoral Act, s. 59
Nominations close (at 12 noon)	Not less than 7 days nor more than 21 days after date of writ—between 26 September and 10 October	27.9.80	Commonwealth Electoral Act, s. 62
Date of polling (a Saturday)	Not less than 7 days nor more than 30 days from date of nomination(b)—either 4, 11, 18 or 25 October	18.10.80	Commonwealth Electoral Act, ss. 63, 64
Return of writs	Not more than 90 days after issue—on or before 17 December 1980	Various dates	Commonwealth Electoral Act, s. 65
Meeting of new Parliament	Not later than 30 days after the day appointed for the return of writs—not later than 16 January 1981	25.11.80	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 14 nor more than 51 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-General<sup>135</sup>, or in the case of a by-election by the Speaker (*see* p. 119), commanding a Divisional Returning Officer<sup>136</sup> to conduct an election in accordance with the prescribed procedures.

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 on which the poll is to be taken and the date for the return of the

<sup>133</sup> See Ch. on 'Disagreements between the Houses'.

<sup>134</sup> Appendix 14 shows significant dates in relation to each general election since 1940.

<sup>135</sup> Constitution, s. 32.

<sup>136</sup> *Commonwealth Electoral Act* 1918, s. 61 and the Schedule.

writ. The writ is deemed to have been issued at 6 p.m. on the day of issue.<sup>137</sup> A separate writ is issued for each electoral Division.

In the case of dissolution or expiry of the House of Representatives the writs shall be issued within 10 days<sup>138</sup>, 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 referendum<sup>139</sup> is also issued by the Governor-General (in Council) and is addressed jointly to the Chief Australian Electoral Officer and the Australian Electoral Officers for the several States. The writ specifies the date for holding the referendum and for the return of writs.

### **Nomination of candidates**

No person may contest an election to the House of Representatives unless he has been nominated by at least 6 electors in the Division he is to contest.<sup>140</sup> Nominations are made to the Divisional Returning Officer at any time between the issue of the writ and the close of nominations. The date for the close of nominations cannot be less than 7 days or more than 21 days after the issue of the writ. The time for nominations closes at 12 noon on the appointed day.<sup>141</sup> 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.<sup>142</sup>

A Member of a State Parliament may not be nominated unless he ceases to be a Member at least 14 days prior to the date of nomination.<sup>143</sup> Likewise a Member of the Senate or the House is required to resign to contest an election for the House of which he is not a Member.<sup>144</sup> A Commonwealth<sup>145</sup> or State public servant is not eligible to be nominated unless he has resigned from the public service before nomination. If unsuccessful, a Commonwealth public servant **may** be reappointed to the service on certain conditions.

A deposit of \$100 is required to be lodged with the nomination. The deposit is returned if, at the election, the candidate polls more than one-fifth of the total first preference votes polled by the successful candidate.<sup>146</sup> A candidate may withdraw his nomination up to the close of nominations but he cannot do so after nominations have closed.<sup>147</sup> If one candidate only is nominated then he shall be declared duly elected without an election being necessary.<sup>148</sup>

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 election<sup>149</sup> is issued forthwith. This provision is 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

137 *Commonwealth Electoral Act* 1918, s. 59. Form B of the Schedule to the Act prescribes the form in which writs are issued.

138 Constitution, s. 32.

139 See Ch. on 'The Parliament'.

140 *Commonwealth Electoral Act* 1918, ss. 68, 71. Form D of the Schedule to the Act contains a sample nomination form.

141 *Commonwealth Electoral Act* 1918, ss. 62, 72, 78.

142 *Commonwealth Electoral Act* 1918, s. 73. Qualification and disqualification requirements are outlined in the Ch. on 'Members'.

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

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

145 *Public Service Act* 1922, ss. 47C, 82B.

146 *Commonwealth Electoral Act* 1918, ss. 73, 76. Electoral Laws Amendment Bill 1974 proposed a deposit of \$250 but the bill was laid aside, VP 1974-75/771.

147 *Commonwealth Electoral Act* 1918, s. 80.

148 *Commonwealth Electoral Act* 1918, s. 82(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.

149 *Commonwealth Electoral Act* 1918, ss. 83, 84.



writ for polling and the return of the writ were retained.<sup>150</sup> The record number of nominations for all electoral Divisions was 533 for the 1972 general election.

What is known as an 'election campaign' period commences with the close of nominations and runs through to polling day. Coverage of the 'election campaign' by the electronic media ceases 2 days before the Saturday of the election. The media 'blackout' and other media restrictions or requirements during election campaigns are prescribed by the Broadcasting and Television Act.<sup>151</sup>

In order to ensure fair elections, the Commonwealth Electoral Act prescribes that bribery, undue influence and a number of other illegal practices are prohibited, and provides for penalties for these offences.<sup>152</sup>

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 section 209 of the Commonwealth Electoral Act alleging a breach of the bribery provisions of the Act.<sup>153</sup> As a result of the proposed action Mr Garland had resigned his commission as a Minister on 6 February 1976.<sup>154</sup> 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.<sup>155</sup> 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 names of the candidates are placed on the ballot paper in alphabetical order according to their surnames.<sup>156</sup> Each voter is required to mark his ballot paper preferentially (*see* p. 130) and secrecy of voting is assisted by the provision of private voting cubicles. Since the introduction of compulsory voting in 1925, an average of some 95 per cent of enrolled voters have cast a vote at general elections.<sup>157</sup>

### 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.<sup>158</sup>

### Counting

Each candidate may also appoint one scrutineer at each place where votes are being counted.<sup>159</sup> Counting commences in the presence of the scrutineers as soon as possible after the poll closes and when all electors present in the polling booth have voted.<sup>160</sup> Informal ballot papers are not included in the count.<sup>161</sup> If any preferences are to be distributed, a fresh count is made (*see* p. 130). The average number of informal votes cast at general elections has been approximately 2.65 per cent of the total votes cast.<sup>162</sup>

150 Gazette 112(13.11.72).

151 *Broadcasting and Television Act* 1942, ss. 116, 117.

152 *Commonwealth Electoral Act* 1918, Part XVII; *see also* Appendix 15.

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

154 Gazette S28(9.2.76).

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

156 *Commonwealth Electoral Act* 1918, s. 106. Form F

of the Schedule to the Act contains a sample ballot paper.

157 *Commonwealth Election and Referendum Statistics*, p. 36 (figures for elections to 1980 inclusive).

158 *Commonwealth Electoral Act* 1918, s. 108.

159 *Commonwealth Electoral Act* 1918, s. 130.

160 *Commonwealth Electoral Act* 1918, ss. 131, 136.

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

162 *Commonwealth Election and Referendum Statistics*, p. 38 (figures for elections to 1980 inclusive).

**Recount**

At any time before the declaration of the result of an election, the officer conducting the election may, if he thinks fit, at the written request of a candidate, or of his own volition, recount the ballot papers.<sup>163</sup> A recount is generally undertaken only where the closeness of the final result makes it desirable to do so.

**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.<sup>164</sup> Because the time for counting will vary from Division to Division declarations of the various polls do not necessarily occur on the same day.

**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. As soon as convenient after the result has been ascertained and the poll has been declared, the Divisional Returning Officer endorses on the writ the name of the candidate elected and returns the writ through the Australian Electoral Officer for the State. The Divisional Returning Officer may return a writ notwithstanding that all ballot papers have not been received or inquiries completed providing there could not possibly be any effect on the result.<sup>165</sup> 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.<sup>166</sup>

**Meeting of a new Parliament**

On the meeting of a new Parliament, the writ, or copy writ of the election of each Member, must be laid upon the Table by the Clerk and the Members are then sworn.<sup>167</sup> Over the last 10 Parliaments an average period of 21 days has elapsed between the date, prior to the 1980 general election, fixed for return of the writs and the first meeting of the House. Following the 1980 general election the House met 22 days *before* the date fixed for return of the writs.

**ELECTORAL EXPENSES**

The *Commonwealth Electoral Amendment Act 1980*<sup>168</sup> repealed those provisions of the principal Act which limited and circumscribed a candidate's electoral expenditure and which laid down the procedures and penalties relating to the filing of returns by candidates, political organisations, trade unions, and other persons and bodies, except newspapers. The provisions were considered to be unsatisfactory in a number of respects and had proved to be unworkable. It was the view of the Government when presenting the bill that it would serve to protect the public interest to retain the provision in the Act which requires returns of electoral matter published in newspapers and to continue the present practice of broadcasting and television stations disclosing electoral matter which is broadcast or televised.<sup>169</sup>

<sup>163</sup> *Commonwealth Electoral Act 1918*, s. 138.

<sup>164</sup> *Commonwealth Electoral Act 1918*, s. 142.

<sup>165</sup> *Commonwealth Electoral Act 1918*, s. 142.

<sup>166</sup> *Gazette* 26(30.4.10)973.

<sup>167</sup> S.O. 2(d); and see Ch. on 'The parliamentary calendar'.

<sup>168</sup> Act No. 102 of 1980.

<sup>169</sup> H.R. Deb. (15.5.80)2848-50.

## 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.<sup>170</sup> 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.<sup>171</sup> This legislation did not apply to the election of a Member to fill a vacancy in the House of Representatives during the 1st Parliament.<sup>172</sup> On 22 November 1907 legislation was enacted extending the jurisdiction of the Court of Disputed Returns to any question respecting the qualifications of a Senator or Member of the House of Representatives 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.<sup>173</sup>

Under the original procedure 3 petitions were presented to the House of Representatives disputing the election of certain Members.<sup>174</sup> All 3 petitions were referred to the existing Committee of Elections and Qualifications for inquiry and report.<sup>175</sup> In all 3 cases the Committee's report, adopted by the House, did not support a change in the election result.<sup>176</sup>

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.<sup>177</sup>

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 2 witnesses. The petition must be filed with a deposit of \$100 in the Principal Registry of the High Court in the capital city of the State in which the election was held within 40 days of the return of the writ.

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 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.<sup>178</sup> When the Court finds that any person has committed an illegal act, this fact is reported to the responsible Minister.<sup>179</sup>

The Principal Registrar or District 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.<sup>180</sup> 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.<sup>181</sup> A Member continues to hold his seat 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

170 Constitution, s. 47.

171 *Commonwealth Electoral Act* 1902, ss. 192-206.

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

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

174 VP 1901-02/59,83,419. See Appendix 15.

175 The Senate at the commencement of each Parliament still appoints a Committee of Disputed Returns and Qualifications but it has not functioned since

1907; and see *Odgers*, pp. 120-1.

176 VP 1901-02/61,87,441.

177 *Commonwealth Electoral Act* 1918, s. 183.

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

179 *Commonwealth Electoral Act* 1918, s. 192.

180 *Commonwealth Electoral Act* 1918, s. 196; VP 1929-31/91-2.

181 *Commonwealth Electoral Act* 1918, s. 195; VP 1929-31/91-2.

declared to have been duly elected may take his seat in the House of Representatives. If any election of any Member is declared absolutely void, then a new election is held.<sup>182</sup>

Since the establishment of the Court of Disputed Returns there have been 27 cases of the Court being petitioned in connection with a seat in the House of Representatives. Thirteen of the 27 petitions of similar intent were lodged after the 1980 general election.<sup>183</sup> In 4 of these cases the Court ruled the election absolutely void and the Speaker issued a writ for a new election to be held.<sup>184</sup>

In 1920 a Member (Mr McGrath) was elected at a second election after the first election was declared void. The House agreed to a motion that compensation be paid to him because he had been compelled to contest 2 elections as a result of official errors and had thus been involved in much unnecessary but unavoidable expenditure.<sup>185</sup>

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.<sup>186</sup> The Speaker sends to the Court a statement of the question together with any papers possessed by the House relating to the question.<sup>187</sup> 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 Principal Registrar or District 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.<sup>188</sup>

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.<sup>189</sup>

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

... 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.<sup>190</sup>

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 2 other legal opinions, on the matter. The question was negatived, on division.<sup>191</sup>

182 *Commonwealth Electoral Act* 1918, s. 201.

183 See Appendix 15.

184 VP 1904/25-6, 43-44; VP 1907-08/3-4; VP 1920-21/189-90.

185 VP 1920-21/468.

186 *Commonwealth Electoral Act* 1918, s. 203.

187 *Commonwealth Electoral Act* 1918, s. 204.

188 *Commonwealth Electoral Act* 1918, s. 207.

189 J 1974-75/628-9; and see Ch. on 'Members'.

190 NP 11(31.3.77)580-3.

191 H.R. Deb. (5.5.77)1598-1610; VP 1977/108-12.