

AUSTRALIA

HOUSE OF REPRESENTATIVES

BILLS

(including amendments, explanatory memoranda, etc)

SESSION

1987-88-89-90

35th Parliament

Sittings from 14 September to 22 December 1989
Parliament dissolved 19 February 1990

VOLUME 8

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to COPYRIGHT REFORM 1989

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1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 10 May 1988

(Attorney-General)

A BILL

FOR

An Act to alter the Constitution to provide for fair and democratic parliamentary elections throughout Australia

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

- 5 1. This Act may be cited as the *Constitution Alteration (Fair Elections) 1988*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.
- 10 3. The Constitution is altered by omitting section 8 and substituting the following section:

6,350/10.5.1988—(85/88) Cat. No. 88 4435 3

Qualification of electors.

“8. Subject to this Constitution, the qualification of electors of senators shall be in each State or Territory that which is prescribed by the Parliament as the qualification of electors of members of the House of Representatives.”

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Provision as to races disqualified from voting

4. The Constitution is altered by omitting section 25.

5. The Constitution is altered by omitting sections 29 and 30 and substituting the following sections:

Electoral divisions.

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“29. (1) Subject to this Constitution, the Parliament may make laws providing for electoral divisions for which members of the House of Representatives may be chosen and fixing the number of members to be chosen for each division.

“(2) The number of members shall be the same for each division of a particular State.

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“(3) A division shall not be formed out of parts of different States.

“(4) A division may be formed out of an area comprising two or more areas each of which is a Territory or part of a Territory.

Qualification of electors.

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“30. Subject to this Constitution, the qualification of electors of members of the House of Representatives shall be, in each State or Territory, that which is prescribed by the Parliament.”

Right of electors of States

6. The Constitution is altered by omitting section 41.

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7. The Constitution is altered by inserting after section 107 the following section:

Election of State Parliaments.

“107A. (1) A House of the Parliament of a State shall be composed of members directly chosen by the people of the State.

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“(2) Subject to this Constitution, the qualification of electors of members of a House of the Parliament of the State shall be that which is prescribed by the laws of the State.”

8. The Constitution is altered by inserting after section 122 the following section:

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Election of certain Territory legislatures.

“122A. (1) The legislature of a Territory forming part of Australia or a combination of such Territories shall be composed of members directly chosen by the people of the Territory or Territories.

5 “(2) Subject to this Constitution and to any law made by the Parliament of the Commonwealth, the qualification of electors of members of the legislature shall be that which is prescribed by the laws of the Territory or Territories.”

10 9. The Constitution is altered by inserting after Chapter VI the following Chapter:

**“CHAPTER VIA.
FAIR ELECTIONS.**

Interpretation.

“124A. In this Chapter:

15 ‘election’, means an election for choosing:

- (a) members of the House of Representatives for an electoral region;
- (b) members of a House of the Parliament of a State; or
- 20 (c) members of the legislature of a Territory forming part of Australia or a combination of such Territories;

otherwise than for the purpose of filling casual vacancies;

‘electoral region’ means:

- (a) a State or Territory; or
- 25 (b) an area comprising two or more areas each of which is a Territory or part of a Territory;

‘fair distribution’ means a determination of electoral divisions in accordance with section one hundred and twenty-four B.

Fair distributions of electoral divisions.

30 “124B. (1) Where a law provides for electoral divisions in an electoral region, the divisions shall be determined so that the number of electors in each division does not depart to a greater extent than one-tenth more or one-tenth less from the number calculated under subsection (2).

“(2) For the purposes of subsection (1), a number, in relation to a particular electoral division, shall be calculated by:

- 35 (a) dividing the total number of electors in all the electoral divisions in the electoral region by the total number of members to be chosen in all those divisions; and
- (b) multiplying the result by the number of members to be chosen for that electoral division.

“(3) If, in relation to a determination of electoral divisions:
(a) no proceedings challenging the determination have been instituted as provided by this Chapter; or
(b) any proceedings so instituted have been withdrawn or dismissed;
the determination shall be taken to have been made in accordance with this section. 5

Elections in divisions.

“124C. (1) An election in an electoral region may be held in electoral divisions only if:
(a) the divisions have been determined by a fair distribution made after the commencement of this Chapter and not more than seven years before the election; and 10
(b) subsection (2) does not apply in relation to the electoral divisions.

“(2) Subject to subsection (3), this subsection applies to electoral divisions for an election if, on the last day of each of any two or more successive months since the last fair distribution before that election, the numbers of the electors in more than one-third of the divisions were such that, if the divisions had been determined with those numbers of electors, the determination would not have been a fair distribution. 15

“(3) In ascertaining whether subsection (2) applies in relation to electoral divisions for an election, a particular month shall be disregarded if the last day of that month occurs within twenty-six weeks before the date of expiry, by effluxion of time, of the terms of service of all or any of the members of the House concerned. 20

“(4) This section does not apply to an election held before the end of one year after the commencement of this Chapter. 25

“(5) In this section:

‘House’ means:

- (a) the House of Representatives;
- (b) a House of the Parliament of a State; or 30
- (c) a chamber (by whatever name called) of the legislature of a Territory or combination of Territories;

‘month’ means one of the twelve months of the year.

Elections where electoral region to be one electorate.

“124D. (1) Where an election in an electoral region is not to be held in electoral divisions or, if so held, is or would be contrary to section one hundred and twenty-four C, the region shall be one electorate. 35

“(2) Where a region is to be one electorate, an election in the electorate shall be held:

- (a) if the election is for the purpose of choosing members of the House of Representatives—as the Parliament provides; or 40

- (b) if the election is for the purpose of choosing members of a House of the Parliament of a State or the legislature of a Territory or a combination of Territories—in accordance with the law of the State, Territory or Territories, as the case requires, or, if there is no such law, as the Parliament provides;

but so that the method of choosing those members shall be, as nearly as practicable, the same as the method of choosing senators.

Casual vacancies.

“124E. Nothing in this Constitution prevents the filling of a casual vacancy in the membership of:

- (a) a House of the Parliament of a State; or
(b) the legislature of a Territory forming part of Australia or a combination of such Territories;

in the manner provided by the Parliament of that State or, subject to any law made by the Parliament of the Commonwealth, by that legislature, as the case requires.

Right to challenge determinations of electoral divisions.

“124F. (1) Subject to subsection (2), a determination of electoral divisions may be challenged by an elector in a court of competent jurisdiction on the ground that the determination was not a fair distribution.

“(2) An elector shall not institute proceedings under subsection (1) after the end of forty days after both of the following have been notified to the public, namely:

- (a) the results of the determination; and
(b) all statistics necessary to ascertain whether or not the determination was a fair distribution.

“(3) In this section, ‘elector’, in relation to a determination of electoral divisions, means a person whose name is on a roll of electors qualified to vote at an election in those divisions.

Right to vote.

“124G. (1) Laws prescribing the qualifications of electors for elections shall be such that each Australian citizen who:

- (a) complies with reasonable conditions prescribed by those laws as to residence and enrolment; and
(b) has reached the age of eighteen years;
is entitled to vote, subject to any disqualification prescribed by those laws as to persons who:
(c) because of unsoundness of mind, are incapable of understanding the nature and significance of enrolment and voting; or
(d) are undergoing imprisonment for an offence.

“(2) If:

- (a) a person applies to a court of competent jurisdiction for an order under this subsection; and
- (b) the person would be qualified as an elector as provided by this section but for the fact that the relevant law is inconsistent with this section;

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the court may order that the person shall be enrolled, and is entitled to vote, as if the person were so qualified.

“(3) This section does not apply in relation to an election held before the end of one year after the commencement of this Chapter.

Elector to have only one vote.

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“124H. In the choosing of:

- (a) senators;
- (b) members of the House of Representatives;
- (c) members of a House of the Parliament of a State; or
- (d) members of the legislature of a Territory forming part of Australia or a combination of such Territories;

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each elector shall vote only once.”

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

CONSTITUTION ALTERATION (FAIR ELECTIONS) 1988

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

No. 1 - Page 2, clause 5, proposed subsection 29(2), lines 15 and 16, leave out the proposed subsection.

No. 2 - Page 3, clause 9, after proposed section 124A, insert the following new section:

Votes to have equal value.

"124AA. (1) In:

- (a) an election held in an electoral division; or
- (b) an election held in an electoral region that is one electorate;

the method of voting shall be such that, with respect to the votes of all electors in the division, or in the electorate, as the case may be, votes shall not be weighted according to different classes of electors.

'(2) In this section, "election" includes an election to choose senators."

28-1881

AMENDMENT TO THE PARLIAMENTS ACT 1975

No. 3 - Page 5, clause 9, proposed subsection 124D(2), lines 6 and 7, leave out ", as nearly as practicable, the same as the method of choosing senators", insert "a system of proportional representation".

AMENDMENT TO THE PARLIAMENTS ACT 1975

28-1881

AMENDMENT TO THE PARLIAMENTS ACT 1975

HARRY EVANS

Clerk of the Senate

AMENDMENT TO THE PARLIAMENTS ACT 1975

The Senate,

Canberra, 1 June 1988

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CONSTITUTION ALTERATION (FAIR ELECTIONS) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Hon Lionel Bowen MP)

OUTLINE OF BILL

1. The main purposes of this Bill are to amend the Constitution -

- . to provide for fair elections for the House of Representatives, the State Parliaments and legislatures of the mainland Territories, based on the principle of 'one vote, one value' but subject to permissible limited variations in the numbers of electors in each electorate in each State or Territory; and
- . to confer the right to vote in Commonwealth, State and mainland Territory elections on all Australian citizens over the age of 18, subject to certain qualifications.

2. The Bill inserts in the Constitution a new Chapter VIA entitled 'Fair Elections' -

- . to provide for the fair determination of electoral divisions for elections for the House of Representatives, State Parliaments and legislatures of the mainland Territories;
- . to prohibit multiple voting; and
- . to guarantee to Australian citizens over the age of 18 the right to vote in elections subject to certain qualifications.

3. The Bill makes several related and consequential alterations to the Constitution.

4. The Bill omits sections 25 and 41 of the Constitution.

5. The amendments to the Constitution made by the Bill commence on the day on which the Bill receives the Royal Assent, but the provisions of Chapter VIA concerning fair elections and the right to vote do not apply to an election held within the first year after that commencement.

NOTES ON INDIVIDUAL CLAUSESClause 1: Short titleClause 2: Commencement

6. This clause provides for the provisions of the Bill to commence on the day on which it receives the Royal Assent.

Clause 3: Qualification of electors

7. This clause substitutes a new section 8 for existing section 8 of the Constitution. The existing section provides that the qualification of electors for the Senate in a State shall be that prescribed by the Constitution or by the Commonwealth Parliament as the qualification of electors of members of the House of Representatives. It also provides that each elector may vote only once in a Senate election. The new section 8 extends to electors in Senate elections in Territories as well as States. It provides for the qualification of electors of senators in each State or Territory to be the same as that prescribed by the Commonwealth Parliament as the qualification of electors of members of the House of Representatives.

8. New section 8 is expressed to be subject to the Constitution. It will therefore be subject to new section 124G relating to the right to vote.

9. The provision in the existing section 8 prohibiting plural voting is included in new section 124H.

Clause 4: Provision as to races disqualified from voting

10. This clause omits section 25 of the Constitution. Section 25 provides that where all people of a particular race are excluded from voting in elections for the lower House of

the Parliament of a State, the people of that race in that State are not to be counted for the purpose of determining under section 24 of the Constitution the number of members of the House of Representatives in that State. Section 25 has no practical operation now as all relevant State discriminatory laws have been repealed. Moreover, discriminatory laws of the kind contemplated by section 25 are contrary to Australia's international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

Clause 5: Electoral divisions and Qualification of electors

11. This clause substitutes new sections 29 and 30 for the existing sections 29 and 30 of the Constitution.

12. Existing section 29 provides that, until the Commonwealth Parliament otherwise provides, a State Parliament may determine the electoral divisions in that State for elections for the House of Representatives and the number of members to be elected in each division. To that extent the operation of the section is effectively spent. The section also provides that a division shall not be formed out of parts of different States. It also provides that in the absence of other provision each State shall be one electorate.

13. New subsection 29(1) empowers the Commonwealth Parliament to make laws providing for electoral divisions for the House of Representatives and fixing the number of members to be chosen for each division. The subsection is expressed to be subject to the Constitution. It will therefore be subject to new Chapter VIA relating to fair elections.

14. New subsection 29(2) requires that the same number of members be chosen for each division of a particular State.

15. New subsection 29(3) continues the provision of existing section 29 that a division cannot be formed out of parts of different States.

16. New subsection 29(4) recognises that electoral divisions may be formed out of combinations of Territories, parts of Territories or both.

17. Existing section 30 provides that, until the Commonwealth Parliament otherwise provides, the qualification of electors of members of the House of Representatives in a State shall be the same as for elections for the lower House of the Parliament of that State. It also provides that each elector may vote only once in a House of Representatives election.

18. New section 30 empowers the Commonwealth Parliament to prescribe the qualification of electors of members of the House of Representatives in each State or Territory. The section is expressed to be subject to the Constitution. It will therefore be subject to new section 124G relating to the right to vote.

19. The provision in the existing section 30 prohibiting plural voting is included in new section 124H.

Clause 6: Right of electors of States

20. This clause omits section 41 of the Constitution. Section 41 provides that no adult person who has or acquires a right to vote at an election for a State lower House may, while that right exists, be prevented by any Commonwealth law from voting in a Senate or House of Representatives election. The operation of section 41 is effectively spent. In The Queen v. Pearson; Ex parte Sipka (1983) 152 C.L.R. 254, the High Court held that the right to vote protected by section 41 must have been possessed by a person under a State law in 1902 when the federal franchise was originally established.

Clause 7: Election of State Parliaments

21. This clause inserts a new provision, section 107A, in the Constitution.

22. Subsection 107A(1) states the general rule that members of a House of the Parliament of a State must be chosen directly by popular vote. It therefore precludes a method such as election or nomination by the Parliament or Executive Government of the State or by an electoral college. However, the filling of casual vacancies is governed by new section 124E.

23. Subsection 107A(2) allows State Parliaments to prescribe the qualification of electors of members of a House of the Parliament of a State. The subsection is expressed to be subject to the Constitution. It will therefore be subject to new section 124G relating to the right to vote.

Clause 8: Election of certain Territory legislatures

24. This clause inserts a new provision, section 122A, in the Constitution.

25. Subsection 122A(1) states the general rule that members of a legislature of a mainland Territory, or of a combination of such Territories, must be chosen directly by popular vote. However, the filling of casual vacancies is governed by new section 124E.

26. Subsection 122A(2) allows a Territory law, subject to any law of the Commonwealth Parliament, to prescribe the qualification of electors of members of a Territory legislature. The subsection is expressed to be subject to the Constitution. It will therefore be subject to new section 124G relating to the right to vote.

Clause 9: Chapter VIA - Fair elections

27. This clause inserts a new Chapter VIA - 'FAIR ELECTIONS' - in the Constitution. It comprises new sections 124A - 124H.

Section 124A: Interpretation

28. The terms 'election', 'electoral region' and 'fair distribution', used in Chapter VIA, are defined in this section. Chapter VIA is to apply to elections for the House of Representatives, for each House of a State Parliament, and for the legislatures of mainland Territories and its provisions on plural voting and right to vote apply also to Senate elections. For the purposes of the Chapter an electoral region is a State or Territory, or an area comprising two or more areas each of which is a Territory or part of a Territory. This permits, for instance, the inclusion of the Australian Capital Territory and the Jervis Bay Territory in the one electoral region. A fair distribution is defined as a distribution in accordance with new section 124B.

Section 124B: Fair distributions of electoral divisions

29. This section sets out the requirements that a determination of electoral divisions in an electoral region must satisfy in order to constitute a fair distribution. The number of electors in each division in an electoral region must be a number not more than 10% above or below the average number of electors in the divisions in that electoral region, multiplied by the number of members to be chosen for the division.

30. Subsection 124B(3) deems a redistribution to be a fair distribution if no proceedings challenging it have been instituted within the 40-day period referred to in subsection 124F(2), or if all proceedings so instituted have been withdrawn or dismissed. The purpose of this subsection is to give finality to a redistribution, so that an election may be confidently held on new boundaries if there has been no challenge to the redistribution within the period of 40 days, or if any such challenge has been withdrawn or dismissed.

Section 124C: Elections in divisions

31. The effect of new section 124C is as follows:

- (a) a fair redistribution must take place after the commencement of Chapter VIA before an election in divisions can be held, except in the case of an election held within the first year after that commencement - paragraph 124C(1)(a) and subsection 124C(4);
- (b) an election in divisions cannot be held more than 7 years after the last fair redistribution - paragraph 124C(1)(a); and
- (c) an election in divisions cannot be held if, on the last day of each of 2 successive months since the last fair redistribution in an electoral region, the numbers of electors in more than one-third of the divisions in that region diverge by more than the permissible 10% above or below the number of electors calculated in accordance with subsection 124B(2), unless, broadly speaking, the terms of service of all or any of the members of the relevant legislative chamber are due to expire by effluxion of time within 6 months from the last day of the 2 successive months in question - subsection 124C(3).

An election in divisions held otherwise than in accordance with section 124C would be invalid.

Section 124D: Elections where electoral region to be one electorate

32. This section provides for the case where an election in an electoral region is not to be held in electoral divisions or

where such an election, if held in electoral divisions, is or would be contrary to section 124C. Subsection 124D(1) provides that the electoral region shall then be one electorate. For example, in the case of an election for choosing members of the House of Representatives, the section requires that any State in which the electoral divisions fail to comply with the relevant requirements shall be one electorate. In the case of an election for choosing members of a House of the Parliament of a State the section requires that the State shall be one electorate if the electoral divisions fail to comply with the relevant requirements.

33. Subsection 124D(2) provides for the method of election where an electoral region is to be one electorate. In the case of an election for the House of Representatives, the method is to be such as the Commonwealth Parliament provides. In the case of an election for a State Parliament or Territory legislature, the method is to be such as is determined in accordance with the law of the State or Territory or Territories concerned or, in the absence of such a law, as is provided by the Commonwealth Parliament. In any case, however, the method shall be as nearly as practicable the same as the method of choosing senators. Thus the Senate election system is to apply in a case where a State or Territory is to be treated as a single electorate because of the failure of a redistribution to conform to the requirements of a fair distribution. The direct application of the Senate method of election would cause practical difficulties, so that section 124D enables the Commonwealth or State Parliament or the Territory legislature, as the case may be, to make the necessary modifications. If a State Parliament or Territory legislature fails to do so, then the Commonwealth Parliament may legislate for that State, Territory or Territories. An election at large held otherwise than in accordance with section 124D would be invalid.

Section 124E: Casual vacancies

34. This section allows for the filling of a casual vacancy in a State Parliament or Territory legislature in the manner provided by the State Parliament concerned or, subject to any law made by the Commonwealth Parliament, by the Territory legislature concerned. Casual vacancies in the Senate are filled as provided in section 15 of the Constitution or, in the case of senators for a Territory, as provided by the Commonwealth Parliament. Casual vacancies in the House of Representatives are filled by a by-election in accordance with sections 24 and 33 of the Constitution.

Section 124F: Right to challenge determinations of electoral divisions

35. This section gives an elector the right to challenge a determination of electoral divisions on the ground that the determination was not a fair distribution. Under subsection 124F(2) proceedings challenging a determination may not be instituted after the end of 40 days after public notification of both the results of the determination and all statistics necessary to ascertain whether or not the determination was a fair distribution.

Section 124G: Right to vote

36. This section is a general provision conferring a constitutional right to vote in a House of Representatives, State or Territory election as that term is defined in section 124A. It also applies to Senate elections by virtue of new section 8.

37. The effect of subsection 124G(1) is that, subject only to 2 exceptions, the right to vote extends to each Australian citizen who complies with reasonable conditions prescribed by the applicable Commonwealth, State or Territory laws as to

residence and enrolment and who has reached the age of 18 years. The exceptions are any disqualification prescribed by the applicable laws as to persons who, because of unsoundness of mind, are incapable of understanding the nature and significance of enrolment and voting, and persons who are undergoing imprisonment for an offence. Subsection 124G(1) lays down a minimum requirement. It merely indicates the persons who have a constitutional right to vote; it does not preclude other persons from being permitted to vote.

38. Subsection 124G(2) provides for judicial enforcement of the constitutional right to vote.

39. Subsection 124G(3) provides that section 124G does not apply in relation to an election held within the first year after the commencement of Chapter VIA.

Section 124H: Electors to have only one vote

40. This section prohibits plural voting by electors in the choosing of senators, members of the House of Representatives, members of a House of the Parliament of a State, or members of the legislature of a mainland Territory, or of a combination of such Territories.

1988

CONSTITUTION ALTERATION (FAIR ELECTIONS) BILL 1988

EXPLANATORY STATEMENT

(Circulated by authority of the Attorney-General,
the Hon Lionel Bowen MP)

This statement takes account of amendments
made by the Senate to the Bill as introduced and agreed
to by the House of Representatives.

OUTLINE OF BILL

1. The main purposes of this Bill are to amend the Constitution -

- . to provide for fair elections for the House of Representatives, the State Parliaments and legislatures of the mainland Territories, based on 'one vote, one value' principles but subject to permissible limited variations in the numbers of electors in each electorate in each State or Territory; and
- . to confer the right to vote in Commonwealth, State and mainland Territory elections on all Australian citizens over the age of 18, subject to certain qualifications.

2. The Bill inserts in the Constitution a new Chapter VIA entitled 'Fair Elections' -

- . to provide for the fair determination of electoral divisions for elections for the House of Representatives, State Parliaments and legislatures of the mainland Territories;
- . to prevent votes of electors in an electoral division, or in an electoral region that is one electorate, from being given different weights;
- . to prohibit multiple voting; and
- . to guarantee to Australian citizens over the age of 18 the right to vote in elections subject to certain qualifications.

3. The Bill makes several related and consequential alterations to the Constitution.

4. The Bill omits sections 25 and 41 of the Constitution.

3.

5. The amendments to the Constitution made by the Bill commence on the day on which the Bill receives the Royal Assent, but the provisions of Chapter VIA concerning fair elections and the right to vote do not apply to an election held within the first year after that commencement.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

Clause 2: Commencement

6. This clause provides for the provisions of the Bill to commence on the day on which it receives the Royal Assent.

Clause 3: Qualification of electors

7. This clause substitutes a new section 8 for existing section 8 of the Constitution. The existing section provides that the qualification of electors for the Senate in a State shall be that prescribed by the Constitution or by the Commonwealth Parliament as the qualification of electors of members of the House of Representatives. It also provides that each elector may vote only once in a Senate election. The new section 8 extends to electors in Senate elections in Territories as well as States. It provides for the qualification of electors of senators in each State or Territory to be the same as that prescribed by the Commonwealth Parliament as the qualification of electors of members of the House of Representatives.

8. New section 8 is expressed to be subject to the Constitution. It will therefore be subject to new section 124H relating to the right to vote.

9. The provision in the existing section 8 prohibiting plural voting is included in new section 124J.

Clause 4: Provision as to races disqualified from voting

10. This clause omits section 25 of the Constitution. Section 25 provides that where all people of a particular race

are excluded from voting in elections for the lower House of the Parliament of a State, the people of that race in that State are not to be counted for the purpose of determining under section 24 of the Constitution the number of members of the House of Representatives in that State. Section 25 has no practical operation now as all relevant State discriminatory laws have been repealed. Moreover, discriminatory laws of the kind contemplated by section 25 are contrary to Australia's international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

Clause 5: Electoral divisions and Qualification of electors

11. This clause substitutes new sections 29 and 30 for the existing sections 29 and 30 of the Constitution.

12. Existing section 29 provides that, until the Commonwealth Parliament otherwise provides, a State Parliament may determine the electoral divisions in that State for elections for the House of Representatives and the number of members to be elected in each division. To that extent the operation of the section is effectively spent. The section also provides that a division shall not be formed out of parts of different States. It also provides that in the absence of other provision each State shall be one electorate.

13. New subsection 29(1) empowers the Commonwealth Parliament to make laws providing for electoral divisions for the House of Representatives and fixing the number of members to be chosen for each division. The subsection is expressed to be subject to the Constitution. It will therefore be subject to new Chapter VIA relating to fair elections.

14. New subsection 29(2) continues the provision of existing section 29 that a division cannot be formed out of parts of different States.

15. New subsection 29(3) recognises that electoral divisions may be formed out of combinations of Territories, parts of Territories or both.

16. Existing section 30 provides that, until the Commonwealth Parliament otherwise provides, the qualification of electors of members of the House of Representatives in a State shall be the same as for elections for the lower House of the Parliament of that State. It also provides that each elector may vote only once in a House of Representatives election.

17. New section 30 empowers the Commonwealth Parliament to prescribe the qualification of electors of members of the House of Representatives in each State or Territory. The section is expressed to be subject to the Constitution. It will therefore be subject to new section 124H relating to the right to vote.

18. The provision in the existing section 30 prohibiting plural voting is included in new section 124J.

Clause 6: Right of electors of States

19. This clause omits section 41 of the Constitution. Section 41 provides that no adult person who has or acquires a right to vote at an election for a State lower House may, while that right exists, be prevented by any Commonwealth law from voting in a Senate or House of Representatives election. The operation of section 41 is effectively spent. In The Queen v. Pearson; Ex parte Sipka (1983) 152 C.L.R. 254, the High Court held that the right to vote protected by section 41 must have been possessed by a person under a State law in 1902 when the federal franchise was originally established.

Clause 7: Election of State Parliaments

20. This clause inserts a new provision, section 107A, in the Constitution.

21. Subsection 107A(1) states the general rule that members of a House of the Parliament of a State must be chosen directly by popular vote. It therefore precludes a method such as election or nomination by the Parliament or Executive Government of the State or by an electoral college. However, the filling of casual vacancies is governed by new section 124F.

22. Subsection 107A(2) allows State Parliaments to prescribe the qualification of electors of members of a House of the Parliament of a State. The subsection is expressed to be subject to the Constitution. It will therefore be subject to new section 124H relating to the right to vote.

Clause 8: Election of certain Territory legislatures

23. This clause inserts a new provision, section 122A, in the Constitution.

24. Subsection 122A(1) states the general rule that members of a legislature of a mainland Territory, or of a combination of such Territories, must be chosen directly by popular vote. However, the filling of casual vacancies is governed by new section 124F.

25. Subsection 122A(2) allows a Territory law, subject to any law of the Commonwealth Parliament, to prescribe the qualification of electors of members of a Territory legislature. The subsection is expressed to be subject to the Constitution. It will therefore be subject to new section 124H relating to the right to vote.

Clause 9: Chapter VIA - Fair elections

26. This clause inserts a new Chapter VIA - 'FAIR ELECTIONS' - in the Constitution. It comprises new sections 124A - 124J.

Section 124A: Interpretation

27. The terms 'election', 'electoral region' and 'fair distribution', used in Chapter VIA, are defined in this section. Chapter VIA is to apply to elections for the House of Representatives, for each House of a State Parliament, and for the legislatures of mainland Territories and its provisions on the weighting of votes, plural voting and right to vote apply also to Senate elections. For the purposes of the Chapter an electoral region is a State or Territory, or an area comprising two or more areas each of which is a Territory or part of a Territory. This permits, for instance, the inclusion of the Australian Capital Territory and the Jervis Bay Territory in the one electoral region. A fair distribution is defined as a distribution in accordance with new section 124C.

Section 124B: Votes to have equal value

28. Section 124B provides that the method of voting in an election, whether the election is held in an electoral division or in an electoral region as one electorate, shall be such that the votes of electors in the division or in the electorate, as the case may be, shall not be given different weights according to different classes of electors, such as classes defined by social, economic, demographic or geographic factors. Section 124B applies to elections for the House of Representatives, for each House of a State Parliament, for the legislatures of mainland Territories and to elections for the Senate: see definitions of 'election' in section 124A and subsection 124B(2).

Section 124C: Fair distributions of electoral divisions

29. This section sets out the requirements that a determination of electoral divisions in an electoral region must satisfy in order to constitute a fair distribution. The

number of electors in each division in an electoral region must be a number not more than 10% above or below the average number of electors in the divisions in that electoral region, multiplied by the number of members to be chosen for the division.

30. Subsection 124C(3) deems a redistribution to be a fair distribution if no proceedings challenging it have been instituted within the 40-day period referred to in subsection 124G(2), or if all proceedings so instituted have been withdrawn or dismissed. The purpose of this subsection is to give finality to a redistribution, so that an election may be confidently held on new boundaries if there has been no challenge to the redistribution within the period of 40 days, or if any such challenge has been withdrawn or dismissed.

Section 124D: Elections in divisions

31. The effect of new section 124D is as follows:

- (a) a fair redistribution must take place after the commencement of Chapter VIA before an election in divisions can be held, except in the case of an election held within the first year after that commencement - paragraph 124D(1)(a) and subsection 124D(4);
- (b) an election in divisions cannot be held more than 7 years after the last fair redistribution - paragraph 124D(1)(a); and
- (c) an election in divisions cannot be held if, on the last day of each of 2 successive months since the last fair redistribution in an electoral region, the numbers of electors in more than one-third of the divisions in that region diverge by more than the permissible 10% above or below the number of electors

calculated in accordance with subsection 124C(2), unless, broadly speaking, the terms of service of all or any of the members of the relevant legislative chamber are due to expire by effluxion of time within 6 months from the last day of the 2 successive months in question - subsection 124D(3).

An election in divisions held otherwise than in accordance with section 124D would be invalid.

Section 124E: Elections where electoral region to be one electorate

32. This section provides for the case where an election in an electoral region is not to be held in electoral divisions or where such an election, if held in electoral divisions, is or would be contrary to section 124D. Subsection 124E(1) provides that the electoral region shall then be one electorate. For example, in the case of an election for choosing members of the House of Representatives, the section requires that any State in which the electoral divisions fail to comply with the relevant requirements shall be one electorate. In the case of an election for choosing members of a House of the Parliament of a State the section requires that the State shall be one electorate if the electoral divisions fail to comply with the relevant requirements.

33. Subsection 124E(2) provides for the method of election where an electoral region is to be one electorate. In the case of an election for the House of Representatives, the method is to be such as the Commonwealth Parliament provides. In the case of an election for a State Parliament or Territory legislature, the method is to be such as is determined in accordance with the law of the State or Territory or Territories concerned or, in the absence of such a law, as is provided by the Commonwealth Parliament. One situation where there would be no such law of a Territory is where the

Territory legislature does not have power to make such a law. In any case, however, subsection 124E(2) requires that the method shall be a system of proportional representation.

34. Thus, a system of proportional representation is to apply in a case where a State or Territory is a single electorate, or is to be treated as a single electorate because of the failure of a redistribution to conform to the requirements of a fair distribution. Section 124E enables the Commonwealth or State Parliament or the Territory legislature, as the case may be, to make laws providing for a system of proportional representation. If a State Parliament or Territory legislature fails to do so, then the Commonwealth Parliament may legislate for that State, Territory or Territories. An election at large held otherwise than in accordance with section 124E would be invalid.

Section 124F: Casual vacancies

35. This section allows for the filling of a casual vacancy in a State Parliament or Territory legislature in the manner provided by the State Parliament concerned or, subject to any law made by the Commonwealth Parliament, by the Territory legislature concerned. Casual vacancies in the Senate are filled as provided in section 15 of the Constitution or, in the case of senators for a Territory, as provided by the Commonwealth Parliament. Casual vacancies in the House of Representatives are filled by a by-election in accordance with sections 24 and 33 of the Constitution.

Section 124G: Right to challenge determinations of electoral divisions

36. This section gives an elector the right to challenge a determination of electoral divisions on the ground that the determination was not a fair distribution. Under subsection 124G(2) proceedings challenging a determination may

not be instituted after the end of 40 days after public notification of both the results of the determination and all statistics necessary to ascertain whether or not the determination was a fair distribution.

Section 124H: Right to vote

37. This section is a general provision conferring a constitutional right to vote in a House of Representatives, State or Territory election as that term is defined in section 124A. It also applies to Senate elections by virtue of new section 8.

38. The effect of subsection 124H(1) is that, subject only to 2 exceptions, the right to vote extends to each Australian citizen who complies with reasonable conditions prescribed by the applicable Commonwealth, State or Territory laws as to residence and enrolment and who has reached the age of 18 years. The exceptions are any disqualification prescribed by the applicable laws as to persons who, because of unsoundness of mind, are incapable of understanding the nature and significance of enrolment and voting, and persons who are undergoing imprisonment for an offence. Subsection 124H(1) lays down a minimum requirement. It merely indicates the persons who have a constitutional right to vote; it does not preclude other persons from being permitted to vote.

39. Subsection 124H(2) provides for judicial enforcement of the constitutional right to vote.

40. Subsection 124H(3) provides that section 124H does not apply in relation to an election held within the first year after the commencement of Chapter VIA.

Section 124J: Electors to have only one vote

41. This section prohibits plural voting by electors in the choosing of senators, members of the House of Representatives,

13.

members of a House of the Parliament of a State, or members of the legislature of a mainland Territory, or of a combination of such Territories.

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 10 May 1988

(Attorney-General)

A BILL

FOR

**An Act to alter the Constitution to recognise local
government**

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

5 1. This Act may be cited as the *Constitution Alteration (Local Government) 1988*.

2. The Constitution is altered by inserting after section 119 the following section:

Local Government.

10 "119A. Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State."

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CONSTITUTION ALTERATION (LOCAL GOVERNMENT) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Hon Lionel Bowen MP)

CONSTITUTION ALTERATION (LOCAL GOVERNMENT) BILL 1988

GENERAL OUTLINE

This Bill proposes that the Constitution be amended so as to give recognition in the Constitution to local government in the States.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

Clause 2: Local Government

2. This clause inserts in the Constitution a new section (section 119A) obliging each State to provide for the establishment and continuance of a system of local government, with local government bodies -

- . elected in accordance with the laws of the State; and
- . empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State.

3. The constitutional obligation will be to establish and continue a system of local government. The essential elements of the system will be elected local government bodies empowered to administer and to make by-laws for their respective areas. It will be a matter for State Parliaments to determine the manner of elections, the area to be covered by each local government body, the manner of administration and the manner of exercise and the extent of the power to make by-laws. Section 119A is not intended to preclude a State from providing for particular local government bodies to be amalgamated with other such bodies. Nor is it intended to preclude laws providing for the dismissal of a local council in appropriate circumstances, subject to a new local government body being elected within a reasonable period.

4. Section 119A is not intended to oblige a State to establish local government bodies throughout the whole of the State. A State would be free to determine that, having regard to the nature of a particular region and other relevant circumstances, it would not be appropriate for the region to be administered by a local government body.

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 10 May 1988

(Attorney-General)

A BILL

FOR

**An Act to alter the Constitution to provide for 4-year
maximum terms for members of both Houses of the
Commonwealth Parliament**

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

- 5 **1.** This Act may be cited as the *Constitution Alteration (Parliamentary Terms) 1988*.

The Senate

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

10 **Times and places**

3. Section 9 of the Constitution is altered by omitting the second paragraph.

Issue of writs

4. Section 12 of the Constitution is altered by omitting "In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution" and substituting "The writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof, but so that the polling day shall be the same day as the polling day for the election of members of the House of Representatives". 5

5. The Constitution is altered by omitting sections 13 and 14 and substituting the following section: 10

Terms of service of senators.

"13. (1) The terms of service of senators expire upon the expiry or dissolution of the House of Representatives.

"(2) Subsection (1) applies in relation to the term of service of any senator, including: 15

- (a) a senator holding office at the commencement of this section; and
- (b) a senator chosen or appointed after that commencement in consequence of a vacancy existing at that commencement;

but, in the case of a senator appointed by the Governor of a State, this section does not extend the term of the appointment after the expiration of fourteen days from the beginning of the next session of the Parliament of the State following the making of the appointment." 20

Duration of House of Representatives

6. Section 28 of the Constitution is altered:

- (a) by omitting "three years" and substituting "four years"; and 25
- (b) by adding at the end the following paragraph:

"In relation to a House of Representatives whose first meeting occurred before the commencement of the *Constitution Alteration (Parliamentary Terms) 1988*, the last preceding paragraph has effect as if the reference to four years were a reference to three years." 30

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CONSTITUTION ALTERATION (PARLIAMENTARY
TERMS) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Hon Lionel Bowen MP)

CONSTITUTION ALTERATION (PARLIAMENTARY
TERMS) BILL 1988

GENERAL OUTLINE

This Bill amends the Constitution to provide for 4-year maximum terms for members of both Houses of the Commonwealth Parliament.

2. The bill provides for -

- . an increase in the maximum term for the House of Representatives to four years
- . senators to be chosen for a term equivalent to one House of Representatives term
- . elections for the House of Representatives and the Senate to be held on the same day.

3. The transitional provisions of the Bill provide that the change is not to affect the maximum term of the present members of the House of Representatives, which is to remain 3 years. However, the terms of all current senators will end with the expiry or dissolution of the current House of Representatives.

NOTES ON INDIVIDUAL CLAUSESClause 1: Short titleClause 2: The Senate

4. The provision in section 7 of the Constitution that senators' terms shall be 6 years is deleted. Clause 5 of the Bill inserts a new section 13 which provides that the term of a senator will be the same as one House of Representatives term.

Clause 3: Times and places

5. Section 9 of the Constitution empowers State Parliaments to make laws for the times and places of Senate elections. That provision is not appropriate where all Senate elections are to be held at the same time as elections for the House of Representatives and is repealed by clause 3. The times and places of Senate elections are to be set by the Constitution itself and by laws of the Commonwealth Parliament.

6. New section 12 (see clause 4) provides that elections for senators are to be held on the same day as a general election for the House of Representatives.

Clause 4: Issue of writs

7. Section 12 of the Constitution empowers State Governors to issue writs for Senate elections. It does not specify when writs are to be issued for ordinary elections of senators, but does provide that where there is a dissolution of the Senate, i.e. where there is a double dissolution under section 57, the writs shall be issued within 10 days after the proclamation of the dissolution. That provision is omitted from section 12 and replaced by a provision which requires State Governors to issue writs for a Senate election within 10 days of the expiry or

dissolution of a House of Representatives and for the polling day for the Senate election to be the same as for the House of Representatives. This change is necessary to ensure simultaneous elections.

Clause 5: Terms of service of senators

8. Since the Bill provides for all senators to be elected at each election, there is no need for provision for the rotation of senators. Clause 5 therefore repeals existing sections 13 and 14 of the Constitution which provide for rotation of senators following an election after a dissolution of the Senate or following an increase or decrease in the number of senators.

9. New subsection 13(1) provides that the term of a senator is the same as the term of a member of the House of Representatives (i.e. a maximum of 4 years).

10. The effect of subsection 13(2) is that the term of senators holding office at the date of commencement of the new section 13 will cease when the current House of Representatives comes to an end, either by dissolution or expiry. Any senator filling a casual vacancy existing at that commencement date will likewise cease to hold office when the current House of Representatives comes to an end. Subsection 13(2) does not, however, operate to extend the term of a senator appointed by the Governor of a State to a casual vacancy when a State Parliament is not in session.

Clause 6: Duration of House of Representatives

11. The maximum term of the House of Representatives is extended from 3 to 4 years. However, the term of the present House of Representatives is not affected.

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 10 May 1988

(Attorney-General)

A BILL

FOR

**An Act to alter the Constitution to extend the right to trial
by jury, to extend freedom of religion, and to ensure fair
terms for persons whose property is acquired by any
Government**

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

5 **1.** This Act may be cited as the *Constitution Alteration (Rights and Freedoms) 1988*.

2. The Constitution is altered by omitting section 80 and substituting the following section:

Trial by jury.

10 "80. (1) The trial of a person for an offence, where the accused is liable to imprisonment for more than two years or any form of corporal punishment, shall be by jury except in the case of a trial for contempt of court or a trial of a member of the Defence Force of the Commonwealth before a court-martial under a law relating to the discipline of the Defence
15 Force of the Commonwealth.

“(2) The trial by jury of an offence against a law of the Commonwealth that:

- (a) was not committed in a State or Territory;
- (b) was committed in two or more of the States and Territories; or
- (c) was committed at a place or places unknown;

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shall be held at such place or places as the Parliament prescribes.

“(3) The trial by jury of any other offence against a law of the Commonwealth shall be held in the State or Territory where the offence was committed.

“(4) At any time during a trial referred to in subsection (2) or (3), the court may, on application by the accused or the prosecution, transfer the trial to a court of competent jurisdiction in another State or Territory.

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“(5) Nothing in subsection (1) prevents the making, or affects the operation, of a law to the extent that the law:

- (a) permits waiver by the accused of trial by jury;
- (b) regulates the size or composition of the jury; or
- (c) provides for majority verdicts.”.

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3. The Constitution is altered by inserting after section 115 the following sections:

Acquisition of property under State law.

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“115A. A law of a State may not provide for the acquisition of property from any person except on just terms.

Acquisition of property in Territories.

“115B. A law made under section one hundred and twenty-two or a law of a Territory may not provide for the acquisition of property from any person except on just terms.”.

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4. The Constitution is altered by omitting section 116 and substituting the following section:

No establishment etc. of religion.

“116. The Commonwealth, a State or a Territory shall not establish any religion, impose any religious observance or prohibit the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth, a State or a Territory.”.

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1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CONSTITUTION ALTERATION (RIGHTS AND FREEDOMS) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Hon Lionel Bowen MP)

CONSTITUTION ALTERATION (RIGHTS AND FREEDOMS) BILL 1988

GENERAL OUTLINE

The purpose of this Bill is to amend the Constitution

- (a) To extend the right given by section 80 of the Constitution to trial by jury for offences against laws of the Commonwealth, and to confer a like right to trial by jury for serious offences against the laws of the States and the Territories;
- (b) to ensure that acquisitions of property under State and Territory laws, and acquisitions under Commonwealth law from persons in the Territories, must be on just terms; and
- (c) to extend to the States and the Territories the existing prohibition on Commonwealth interference with religious freedom.

Jury trials

2. Section 80 of the Constitution currently provides that the trial on indictment of any offence against the laws of the Commonwealth shall be by jury.

3. There are a number of deficiencies in the present section 80. In the first place, it gives a right to trial by jury only where the Parliament provides that an offence is to be tried on indictment. If the Parliament provides that an offence, no matter how serious or no matter what penalty the accused might face if convicted, is to be tried summarily, there is no right to trial by jury (*R v. Archdall and Roskrug* (1928) 41 CLR 128). Secondly, the section applies only in relation to offences against laws of the Commonwealth. In its terms, it does not apply to offences against State laws, and it has been

held by the High Court not to apply to trials in the Territories (R v. Bernasconi (1915) 16 CLR 629). Thirdly, where a Commonwealth law provides for trial on indictment, the accused may not waive the right to trial by jury (Brown v. R (1986) 160 CLR 171). Fourthly, while the section deals with the place where a trial may be held in the case of an offence committed within a State (in which case the trial must be held within that State), and also in the case of an offence not committed within any State (in which case the Parliament may prescribe the place where the trial is to take place), section 80 does not deal with the case where the place of commission of the offence is unknown or where the commission of the offence takes place in more than one State.

Acquisition of property

4. The Constitution presently requires that any acquisition of property by the Commonwealth shall be on just terms - s.51(xxxi) - subject to an exception in the case of property in a Territory (Teori Tau v. Commonwealth (1969) 119 CLR 564). There is, however, no constitutional requirement that acquisitions of property by a State shall be on just terms.

Freedom of religion

5. Existing s.116 prohibits the Commonwealth from making any law for establishing any religion, imposing any religious observance or prohibiting the free exercise of any religion. It further forbids the imposition of any religious test as a qualification for any 'office or public trust under the Commonwealth'. It does not in its terms apply in relation to the States, but whether it would apply to laws made under s.122 has not been settled by the High Court (Lamshed v. Lake (1958) 99 CLR 132 at p.143; Teori Tau v. Commonwealth (1969) 119 CLR 564 at p.570; Attorney-General (Victoria) (at the relation of Black) v. Commonwealth (1981) 146 CLR 559 at p.593).

NOTES ON INDIVIDUAL CLAUSESClause 1 : Short titleClause 2 : Trial by jury

6. This clause substitutes a new section 80 in the Constitution guaranteeing a right to trial by jury for certain offences against Commonwealth, State or Territory laws.

7. Under the new section 80, the right to trial by jury does not depend upon the mode of trial. Instead, what determines whether the accused is entitled to a jury trial is the penalty that may be imposed on the accused. If that penalty is imprisonment for more than 2 years or any form of corporal punishment, the entitlement exists. Imposition of the death penalty is a form of corporal punishment. The reference to corporal punishment does not imply any intention that the Constitution should condone any form of corporal punishment, including the death penalty, but the reference is necessary to deal with the case of any law that might provide for such a penalty.

8. The only exceptions permitted to the right to trial by jury under subsection 80(1) are trials for contempt of court and trials of members of the Defence Force by court-martial for offences under a law relating to the discipline of the Defence Force.

9. The proposed section 80 applies to trials of Commonwealth, State and Territory offences. The difficulty that in Tasmania the Criminal Code provides an absolute discretion to sentence a convicted person for up to 21 years imprisonment for any crime was addressed by the Advisory Committee to the Constitutional Commission on the Australian Judicial System (1987). At paragraph 6.14 of its report, the Committee said that the problem could be overcome, consistently with the proposed

guarantee, by limiting to 2 years the maximum sentence that can be imposed after a summary trial. The Bill follows the Committee's draft to give effect to this intention.

10. Under the proposed subsection 80(2) the Commonwealth Parliament is given power to provide for the place of trial by jury for an offence against a law of the Commonwealth where the offence was committed beyond the boundaries of Australia and the Territories (for example, an offence committed on the high seas), or where the offence was committed in two or more States and Territories, or where the place of commission of the offence is not known. In all other cases a jury trial for an offence against Commonwealth law must be held in the State or Territory where the offence was committed - proposed subsection 80(3).

11. However, proposed subsection 80(4) provides for a change of venue to another State or Territory upon the application of either the prosecution or the accused. Under present section 80 there is no provision for change of venue in the case where an offence against the law of the Commonwealth was committed within a State. The trial must be held in that State.

12. By virtue of proposed subsection 80(5), a law may validly provide for an accused to waive the right to trial by jury. Subsection (5) also allows the making of laws, and the continued operation of existing laws, to regulate the size or composition of juries and to provide for majority verdicts. No express limit is placed on the power of a legislature to enact such a law. However, if a law departed so far from the ordinary concept of trial by jury as to negate the basic idea of trial by jury, it would not be authorised by the subsection - see the Report of the Advisory Committee to the Constitutional Commission on the Australian Judicial System (1987), para.6.17.

Clause 3: Acquisition of property

13. This clause inserts new sections 115A and 115B into the Constitution. The purpose of proposed new sections 115A and 115B is to extend the obligation to provide just terms to acquisitions of property under State law, to acquisitions under laws made by the Parliament of the Commonwealth under section 122 and to acquisitions under Territory laws. It should be noted, however, that the proposed section 115B does not require the provision of just terms where the property to be acquired is the property of a Territory as a body politic (contrast the reference to a 'State' in s.51(xxxi) and see the First Report of the Constitutional Commission, April 1988, Volume 11, pages 616-617).

Clause 4: No establishment etc. of religion

14. This clause substitutes a new section 116. Proposed section 116 expressly applies to the Commonwealth, the States and the Territories. The prohibitions contained in the new section against the establishment of religion, the imposition of any religious observance and the prohibition of the free exercise of any religion are not confined to the case where these are done under a law, but extend to any case where these are done by executive action. The prohibition against imposing a religious test as a qualification for any office or public trust is continued. There is, however, no change that would render the decision of the High Court in Attorney-General (Victoria)(at the relation of Black) v. Commonwealth (1981) 146 CLR 559 inapplicable to the new section.

THE SENATE

SESSION 1987-88-89

BILLS

Circuit Layouts Bill 1988 to Copyright Amendment Bill 1988

TITLE	STAGES
Circuit Layouts Bill 1988 (Received Royal Assent in 1989)	Received from House of Representatives Explanatory Memorandum Proposed Amendment by the Minister for Justice (Senator Tate) Supplementary Explanatory Memorandum Schedule of Amendment made by the Senate
Civil Aviation Bill 1988	Received from House of Representatives Explanatory Memorandum Proposed Amendment by the Minister for Justice (Senator Tate) Proposed Amendments by Senator Sanders Schedule of Amendments made by the Senate
Close Corporations (Additional Liquidators' Recovery Trust Fund Contribution) Bill 1988 (Received Royal Assent in 1989)	Received from House of Representatives Explanatory Memorandum (see Close Corporations Bill 1988)
Close Corporations Bill 1988 (Received Royal Assent in 1989)	Received from House of Representatives Explanatory Memorandum Schedule of Amendments made by the House of Representatives Supplementary Explanatory Memorandum
Close Corporations (Fees) Bill 1988 Received Royal Assent in 1989)	Received from House of Representatives Explanatory Memorandum (see Close Corporations Bill 1988)
Close Corporations (Liquidators' Recovery Trust Fund Contribution) Bill 1988 Received Royal Assent in 1989)	Received from House of Representatives Explanatory Memorandum (see Close Corporations Bill 1988)
Commonwealth and Commonwealth Instrumentalities (Application of Laws) Bill 1989	Received from House of Representatives Explanatory Memorandum

TITLE	STAGES
Constitution Alteration (Democratic Elections) Bill 1987 (Private Senator's Bill)	Read 1°
Constitution Alteration (Disqualification of Members and Candidates) Bill 1989 (Private Senator's Bill)	Read 1°
Constitution Alteration (Electors' Initiative) Bill 1987 (Private Senator's Bill)	Read 1°
Constitution Alteration (Electors' Initiative) Bill 1989 (Private Senator's Bill)	Read 1°
Constitution Alteration (Fair Elections) Bill 1988	Received from House of Representatives Explanatory Memorandum Proposed Amendments by Senator Chaney Proposed Amendments by Senator Macklin Schedule of Amendments made by the Senate
Constitution Alteration (Fixed Term Parliaments) Bill 1987 (Private Senator's Bill)	Read 1°
Constitution Alteration (Local Government) Bill 1988	Received from House of Representatives Explanatory Memorandum
Constitution Alteration (Parliament) Bill 1987 (Private Senator's Bill)	Read 1°
Constitution Alteration (Parliamentary Terms) Bill 1988	Received from House of Representatives Explanatory Memorandum Proposed Amendment by Senator Chaney
Constitution Alteration (Rights and Freedoms) Bill 1988	Received from House of Representatives Explanatory Memorandum
Co-operative Scheme Legislation Amendment Bill 1989	Received from House of Representatives Explanatory Memorandum

1988

THE SENATE

CONSTITUTION ALTERATIONS (FAIR ELECTIONS) 1988

(Amendment to be moved by Senator Chaney in
committee of the whole)

Page 1, Title, leave out all words after "Constitution", insert "to provide that generally for parliamentary elections throughout Australia (but not the Senate and House of Representatives) the number of electors in electorates shall not vary by more than 20 per cent, to confer a Constitutional right to vote at all parliamentary elections within Australia, and to provide that each elector shall vote only once at an election".

1988

THE SENATE

CONSTITUTION ALTERATION (FAIR ELECTIONS) 1988

(Amendments to be moved by Senator Macklin in
committee of the whole)

- (1) Page 2, clause 5, proposed subsection 29(2), lines 15 and 16, leave out the proposed subsection.
- (2) Page 3, clause 9, after proposed section 124A, insert the following new section:

Votes to have equal value.

"124AA. (1) In:

- (a) an election held in an electoral division; or
- (b) an election held in an electoral region that is one electorate;

the method of voting shall be such that, with respect to the votes of all electors in the division, or in the electorate, as the case may be, votes shall not be weighted according to different classes of electors.

'(2) In this section, "election" includes an election to choose senators."

- (3) Page 5, clause 9, proposed subsection 124D(2), lines 6 and 7, leave out ", as nearly as practicable, the same as the method of choosing senators", insert "a system of proportional representation".

1988

THE SENATE

CONSTITUTION ALTERATION (PARLIAMENTARY TERMS) 1988

(Amendment to be moved by Senator Chaney in
committee of the whole)

Page 1, Title, leave out all words after "Constitution", insert "to increase the terms of members of the House of Representatives from a maximum of 3 years to a maximum of 4 years, to reduce the terms of Senators from a fixed 6 years to a maximum of 4 years, to require simultaneous elections for both Houses of the Commonwealth Parliament, and to abolish the system whereby half the Senators retire every three years".

THIS Proposed Law originated in the House of Representatives, and on 1 June 1988, finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. In accordance with section 128 of the Constitution, the Proposed Law is required to be submitted to the electors.

Speaker

Clerk of the House of Representatives

1 June 1988



A PROPOSED LAW

To alter the Constitution to provide for 4-year maximum terms for members of both Houses of the Commonwealth Parliament

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

- 5 1. This Act may be cited as the *Constitution Alteration (Parliamentary Terms) 1988*.

The Senate

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

10 **Times and places**

3. Section 9 of the Constitution is altered by omitting the second paragraph.

Issue of writs

4. Section 12 of the Constitution is altered by omitting "In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution" and substituting "The writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof, but so that the polling day shall be the same day as the polling day for the election of members of the House of Representatives". 5

5. The Constitution is altered by omitting sections 13 and 14 and substituting the following section: 10

Terms of service of senators.

"13. (1) The terms of service of senators expire upon the expiry or dissolution of the House of Representatives.

"(2) Subsection (1) applies in relation to the term of service of any senator, including: 15

- (a) a senator holding office at the commencement of this section; and
- (b) a senator chosen or appointed after that commencement in consequence of a vacancy existing at that commencement;

but, in the case of a senator appointed by the Governor of a State, this section does not extend the term of the appointment after the expiration of fourteen days from the beginning of the next session of the Parliament of the State following the making of the appointment." 20

Duration of House of Representatives

6. Section 28 of the Constitution is altered:

- (a) by omitting "three years" and substituting "four years"; and 25
- (b) by adding at the end the following paragraph:

"In relation to a House of Representatives whose first meeting occurred before the commencement of the *Constitution Alteration (Parliamentary Terms) 1988*, the last preceding paragraph has effect as if the reference to four years were a reference to three years." 30

THIS Proposed Law originated in the House of Representatives, and on 3 June 1988, finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. In accordance with section 128 of the Constitution, the Proposed Law is required to be submitted to the electors.

Speaker

Clerk of the House of Representatives
3 June 1988



A PROPOSED LAW

To alter the Constitution to provide for fair and democratic parliamentary elections throughout Australia

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

- 5 1. This Act may be cited as the *Constitution Alteration (Fair Elections) 1988*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

- 10 3. The Constitution is altered by omitting section 8 and substituting the following section:

Qualification of electors.

“8. Subject to this Constitution, the qualification of electors of senators shall be in each State or Territory that which is prescribed by the Parliament as the qualification of electors of members of the House of Representatives.”.

Provision as to races disqualified from voting

4. The Constitution is altered by omitting section 25.

5. The Constitution is altered by omitting sections 29 and 30 and substituting the following sections:

Electoral divisions.

“29. (1) Subject to this Constitution, the Parliament may make laws providing for electoral divisions for which members of the House of Representatives may be chosen and fixing the number of members to be chosen for each division. 5

“(2) A division shall not be formed out of parts of different States. 10

“(3) A division may be formed out of an area comprising two or more areas each of which is a Territory or part of a Territory.

Qualification of electors.

“30. Subject to this Constitution, the qualification of electors of members of the House of Representatives shall be, in each State or Territory, that which is prescribed by the Parliament.”. 15

Right of electors of States

6. The Constitution is altered by omitting section 41.

7. The Constitution is altered by inserting after section 107 the following section: 20

Election of State Parliaments,

“107A. (1) A House of the Parliament of a State shall be composed of members directly chosen by the people of the State.

“(2) Subject to this Constitution, the qualification of electors of members of a House of the Parliament of the State shall be that which is prescribed by the laws of the State.”. 25

8. The Constitution is altered by inserting after section 122 the following section:

Election of certain Territory legislatures.

“122A. (1) The legislature of a Territory forming part of Australia or a combination of such Territories shall be composed of members directly chosen by the people of the Territory or Territories. 30

“(2) Subject to this Constitution and to any law made by the Parliament of the Commonwealth, the qualification of electors of members of the legislature shall be that which is prescribed by the laws of the Territory or Territories.”. 35

9. The Constitution is altered by inserting after Chapter VI the following Chapter:

**“CHAPTER VIA.
FAIR ELECTIONS.**

Interpretation.

“124A. In this Chapter:

5 ‘election’, means an election for choosing:

- (a) members of the House of Representatives for an electoral region;
- (b) members of a House of the Parliament of a State; or
- (c) members of the legislature of a Territory forming part of

10 Australia or a combination of such Territories;
otherwise than for the purpose of filling casual vacancies;

‘electoral region’ means:

- (a) a State or Territory; or
- (b) an area comprising two or more areas each of which is a

15 Territory or part of a Territory;
‘fair distribution’ means a determination of electoral divisions in accordance with section one hundred and twenty-four C.

Votes to have equal value.

“124B. (1) In:

- 20 (a) an election held in an electoral division; or
- (b) an election held in an electoral region that is one electorate;

the method of voting shall be such that, with respect to the votes of all electors in the division, or in the electorate, as the case may be, votes shall not be weighted according to different classes of electors.

25 “(2) In this section, ‘election’ includes an election to choose senators.

Fair distributions of electoral divisions.

30 “124C. (1) Where a law provides for electoral divisions in an electoral region, the divisions shall be determined so that the number of electors in each division does not depart to a greater extent than one-tenth more or one-tenth less from the number calculated under subsection (2).

“ (2) For the purposes of subsection (1), a number, in relation to a particular electoral division, shall be calculated by:

- 35 (a) dividing the total number of electors in all the electoral divisions in the electoral region by the total number of members to be chosen in all those divisions; and
- (b) multiplying the result by the number of members to be chosen for that electoral division.

“ (3) If, in relation to a determination of electoral divisions:

- 40 (a) no proceedings challenging the determination have been instituted as provided by this Chapter; or

(b) any proceedings so instituted have been withdrawn or dismissed; the determination shall be taken to have been made in accordance with this section.

Elections in divisions.

“124D. (1) An election in an electoral region may be held in electoral divisions only if: 5

(a) the divisions have been determined by a fair distribution made after the commencement of this Chapter and not more than seven years before the election; and

(b) subsection (2) does not apply in relation to the electoral divisions. 10

“(2) Subject to subsection (3), this subsection applies to electoral divisions for an election if, on the last day of each of any two or more successive months since the last fair distribution before that election, the numbers of the electors in more than one-third of the divisions were such that, if the divisions had been determined with those numbers of electors, the determination would not have been a fair distribution. 15

“(3) In ascertaining whether subsection (2) applies in relation to electoral divisions for an election, a particular month shall be disregarded if the last day of that month occurs within twenty-six weeks before the date of expiry, by effluxion of time, of the terms of service of all or any of the members of the House concerned. 20

“(4) This section does not apply to an election held before the end of one year after the commencement of this Chapter.

“(5) In this section:

‘House’ means: 25

(a) the House of Representatives;

(b) a House of the Parliament of a State; or

(c) a chamber (by whatever name called) of the legislature of a Territory or combination of Territories;

‘month’ means one of the twelve months of the year. 30

Elections where electoral region to be one electorate.

“124E. (1) Where an election in an electoral region is not to be held in electoral divisions or, if so held, is or would be contrary to section one hundred and twenty-four D, the region shall be one electorate.

“(2) Where a region is to be one electorate, an election in the electorate shall be held: 35

(a) if the election is for the purpose of choosing members of the House of Representatives—as the Parliament provides; or

(b) if the election is for the purpose of choosing members of a House of the Parliament of a State or the legislature of a Territory or a combination of Territories—in accordance with the law of the State, 40

Territory or Territories, as the case requires, or, if there is no such law, as the Parliament provides;

but so that the method of choosing those members shall be a system of proportional representation.

5 **Casual vacancies.**

"124F. Nothing in this Constitution prevents the filling of a casual vacancy in the membership of:

- (a) a House of the Parliament of a State; or
- (b) the legislature of a Territory forming part of Australia or a combination of such Territories;

10 in the manner provided by the Parliament of that State or, subject to any law made by the Parliament of the Commonwealth, by that legislature, as the case requires.

Right to challenge determinations of electoral divisions.

15 "124G. (1) Subject to subsection (2), a determination of electoral divisions may be challenged by an elector in a court of competent jurisdiction on the ground that the determination was not a fair distribution.

20 "(2) An elector shall not institute proceedings under subsection (1) after the end of forty days after both of the following have been notified to the public, namely:

- (a) the results of the determination; and
- (b) all statistics necessary to ascertain whether or not the determination was a fair distribution.

25 "(3) In this section, 'elector', in relation to a determination of electoral divisions, means a person whose name is on a roll of electors qualified to vote at an election in those divisions.

Right to vote,

"124H. (1) Laws prescribing the qualifications of electors for elections shall be such that each Australian citizen who:

- 30 (a) complies with reasonable conditions prescribed by those laws as to residence and enrolment; and
- (b) has reached the age of eighteen years;

is entitled to vote, subject to any disqualification prescribed by those laws as to persons who:

- 35 (c) because of unsoundness of mind, are incapable of understanding the nature and significance of enrolment and voting; or
- (d) are undergoing imprisonment for an offence.

"(2) If:

- 40 (a) a person applies to a court of competent jurisdiction for an order under this subsection; and

- (b) the person would be qualified as an elector as provided by this section but for the fact that the relevant law is inconsistent with this section;

the court may order that the person shall be enrolled, and is entitled to vote, as if the person were so qualified. 5

“(3) This section does not apply in relation to an election held before the end of one year after the commencement of this Chapter.

Electors to have only one vote.

“124J. In the choosing of:

- (a) senators; 10
- (b) members of the House of Representatives;
- (c) members of a House of the Parliament of a State; or
- (d) members of the legislature of a Territory forming part of Australia or a combination of such Territories;

each elector shall vote only once.”. 15

THIS Proposed Law originated in the House of Representatives, and on 1 June 1988, finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. In accordance with section 128 of the Constitution, the Proposed Law is required to be submitted to the electors.

Speaker

Clerk of the House of Representatives

1 June 1988



A PROPOSED LAW

To alter the Constitution to recognise local government

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

5 1. This Act may be cited as the *Constitution Alteration (Local Government) 1988*.

2. The Constitution is altered by inserting after section 119 the following section:

Local Government.

10 "119A. Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State."

THIS Proposed Law originated in the House of Representatives, and on 1 June 1988, finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. In accordance with section 128 of the Constitution, the Proposed Law is required to be submitted to the electors.

Speaker

Clerk of the House of Representatives

1 June 1988



A PROPOSED LAW

To alter the Constitution to extend the right to trial by jury, to extend freedom of religion, and to ensure fair terms for persons whose property is acquired by any Government

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

5 1. This Act may be cited as the *Constitution Alteration (Rights and Freedoms) 1988*.

2. The Constitution is altered by omitting section 80 and substituting the following section:

Trial by jury.

10 "80. (1) The trial of a person for an offence, where the accused is liable to imprisonment for more than two years or any form of corporal punishment, shall be by jury except in the case of a trial for contempt of court or a trial of a member of the Defence Force of the Commonwealth before a court-martial under a law relating to the discipline of the Defence Force of the
15 Commonwealth.