

# RESEARCH NOTE

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## The Double Dissolution Process: Questions and References

### Constitution – section 57

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which House will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives

The members present at a joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

This Research Note provides brief answers to a few commonly-asked questions about the double dissolution process.<sup>1</sup>

### What is the double dissolution process?

A Bill must fail twice in the Senate to become a 'trigger' for a possible double dissolution election. It may be re-introduced at any time within a Parliamentary term, but there must be a minimum interval of 3 months between the first failure in the Senate and the passage of the Bill in the House of Representatives the second time.<sup>2</sup>

It is worth noting that there is some doubt about the constitutional words 'fails to pass' or passed with 'amendments to which the House of Representatives will not agree'.<sup>3</sup>

### Joint sitting

Following a double dissolution election, if the Bill is re-introduced and fails in the Senate for a third time, there is provision for a joint sitting of the Senate and the House of Representatives where the Bill is voted on by the House of Representatives and Senate as one group. The Bill must pass with an absolute majority, which is over half of the total number of Members and Senators. There has only been one such joint sitting, in 1974.

### When can a double dissolution be held?

The Prime Minister can advise the Governor-General to dissolve both Houses of Parliament and call a double dissolution election at any time after a Bill fails twice in the Senate.<sup>4</sup> The only limitation is that the double dissolution cannot be

granted within 6 months of the expiry of the House of Representatives. Currently, this means that a double dissolution could not be granted after 11 August 2004 and an election held no later than 16 October 2004.<sup>5</sup>

### Are there any rules about triggers?

The process of a Government collecting multiple bills that satisfy the conditions of section 57 is sometimes known as the 'stockpiling of triggers'.

Any Bill that has met section 57 conditions and originates in the House of Representatives can be a trigger.

There need only be one trigger for the Prime Minister to advise a double dissolution and there are no rules limiting the number of triggers.

There are no requirements for the trigger to be important.<sup>6</sup> The disagreement need not be current at the time of the dissolution.<sup>7</sup>

### Does a reintroduced Bill need to be identical?

A Bill re-introduced into the House of Representatives for the second time, or following a double dissolution election, can only differ insofar as it contains amendments that have been made, suggested or agreed to by the Senate.

### Could the Governor-General refuse the advice?

This has not yet happened and would be most unlikely.<sup>8</sup> It may be a possibility in cases where the criteria of section 57 have clearly not been met.<sup>9</sup> By convention, the

advice to the Governor-General is made public.<sup>10</sup>

## What happens to the Senate?

A double dissolution election requires that the entire Senate is dissolved and re-elected. This is different from a usual half-Senate election. In order to re-establish the staggered Senate election pattern following a double dissolution, it is practice for the first 6 Senators elected in each state to be given 6-year terms and the last 6 to be given 3-year terms.

Detailed discussion of relevant political processes are included in the Parliamentary Library Research Paper, '[Deadlock? What Deadlock?](#)'.<sup>11</sup>

A recent [statement](#) from the Prime Minister recognises the possibility that such an election might not have as good an outcome for the Government as the normal half-Senate election.<sup>12</sup>

## How could a double dissolution affect the electoral cycle?

Following a double dissolution election, Senators' terms are backdated to the previous 1 July.<sup>13</sup> The House of Representatives term begins when it first meets after the election.

If a double dissolution election was held on 1 May, for example, those terms would be backdated to the previous 1 July. Senators with 3-year terms would thus become due for re-election about a year earlier than the full term of the House of Representatives.

In order to avoid holding costly separate half-Senate and House of Representatives elections, it is likely that an election for the House of Representatives would be held at the same time as the half-Senate election. This was the case following the double dissolution of 1983, where Prime Minister Hawke called the next normal election in 1984.

This Research Note has focused on the mechanics of section 57.

Of course, the decision of whether to call a double dissolution is ultimately a political judgement.

1. Note also S. Sen, 'The Double Dissolution Process' *Audio Brief* (forthcoming). For summaries of the process, see *House of Representatives Infosheet* No. 18, and *Senate Brief* No. 7. For history and detail of double dissolutions see Chapter 3, *Odgers Senate Practice*, ed. H. Evans, 2001 and Chapter 13, *House of Representatives Practice*, ed. I. Harris, 2001. For discussion of the 1890s Convention debates and review of proposed options for reform of section 57, see J. Richardson, '[Resolving Deadlocks in the Australian Parliament](#)', *Research Paper*, No. 9, 2000–01, 31 October 2000.
2. In the first commentary on the Constitution, Quick and Garran state that 'the interval is required to give time for consideration and conciliation...'. *The Annotated Constitution of the Australian Commonwealth*, 1901, p. 685.
3. For discussion of 'fail to pass', see P. O'Keefe, 'Double Dissolution Bills and Elections' *The House Magazine*, 21 June 1995, p. 3. Debate over passage with unacceptable amendments emerged in relation to the Native Title Amendment Bill 1997. See G. Williams, '[The Road to a Double Dissolution](#)', *Research Note* 29, 1997–98, 3 March 1998, and H. Evans, 'Constitution, section 57: Comments on article by George Williams', *Constitutional Law and Policy Review*, Vol. 1, No. 2, August 1998, p. 39.
4. On 26 June 2003, 6 triggers existed: [Family and Community Services Legislation Amendment \(Disability Reform\) Bill \(No. 2\) 2002 \[No. 2\]](#), [Workplace Relations Amendment \(Secret Ballots for Protected Action\) Bill 2002 \[No.2\]](#), [Workplace Relations Amendment \(Fair Dismissal\) Bill 2002 \[No.2\]](#), [Trade Practices Amendment \(Small Business Protection\) Bill 2002 \[No.2\]](#), [National Health Amendment \(Pharmaceutical Benefits – Budget Measures\) Bill 2002 \[No.2\]](#), [Migration Legislation Amendment \(Further Border Protection Measures\) Bill 2002 \[No.2\]](#)
5. The current House of Representatives expires on 11 February 2005. For further information, see R. Lundie, '[Timetable for the Next Commonwealth Election](#)', *Research Note*, No. 37, 2001–02, 14 May 2002.
6. Quick and Garran, op. cit., state that 'There is no limit to or qualification of the class of measures which may become the subject of the deadlock procedure', p. 685.
7. CJ Mason, *Western Australia v Commonwealth* (1975) 134 CLR 201 at 265.
8. The previous double dissolution elections were in 1914, 1951, 1974, 1975, 1983 and 1987.
9. Williams, op. cit. Whether the Governor-General has a discretion not to grant is unclear. See Republic Advisory Committee Report, *An Australian Republic – the Options*, Vol. 2, p. 271.
10. Copies of these advices are in Richardson, op. cit.
11. M. Healy, '[Deadlock? What Deadlock? Section 57 at the Centenary of Federation](#)', *Research Paper*, No. 2, 2000–01, 27 July 2000.
12. The Hon John Howard MP, [Closing Address to the Liberal Party National Convention](#), 8 June 2003. The quota for election to the Senate is halved, thereby increasing the possibility of the election of independent and minor party candidates.
13. [Australian Constitution](#), section 13. Senate terms commence on 1 July following a normal election.

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