



RESEARCH NOTE

No. 35, 14 May 2002

Senate Casual Vacancies

Introduction

In April 2002 various proposals to increase the term of the House of Representatives from three years to four years were aired. Any change in the term of the House of Representatives may have consequences for the term of the Senate: either an increase to eight years or a reduction to four years.

In discussion about the various Senate options no consideration seems to have been given to the effect of an increase in Senate terms on Senate casual vacancies. Since the 1977 Referendum on Senate casual vacancies there has been a dramatic increase in Senate casual vacancies. Any increase in Senate terms could lead to a further increase in Senate casual vacancies.

This Research Note looks at the increase in Senate casual vacancies since the 1977 Referendum.

1977 Referendum—Casual Vacancies

Under Section 15 of the Constitution Senate positions becoming vacant before the expiration of the term for which the holder was elected (or chosen) are filled by Senators chosen by the Parliament (or appointed by the Governor with the advice of the Executive Council) of the respective State. Senators chosen under this provision hold office for the remainder of the term of the previous occupant.

Following the political controversy surrounding the appointment of Senators CE Bunton and AP Field to fill casual Senate vacancies in

1975, the Constitutional provisions for filling casual Senate vacancies were changed by an amendment in 1977.

The amendment was an attempt to entrench in the Constitution the practice that Senators chosen to fill casual vacancies should be from the same political party as the departing Senator. It was the perceived flouting of this practice that led to the requirement for the constitutional alteration.

1977 Referendum—Casual Vacancy Elections

As well as attempting to ensure that Senators chosen to fill casual vacancies represented the same political party as the departing Senator, the 1977 constitutional alteration dispensed with the requirement that the Senator chosen to fill the vacancy be elected at the next available House of Representatives or Senate election. The original Section 15 stated that:

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The consequence of the original Section 15 was that at general elections before 1977 there were often elections held to fill Senate casual vacancies (see table 1). In the period 1949 to 1977 there were separate House of Representatives elections held on five occasions. On four of those occasions (1963, 1966,

1969 and 1972) elections to fill Senate casual vacancies were required in at least one State. Of the seven Senate elections held in the same period, (excluding the three simultaneous dissolution elections of 1951, 1974 and 1975), elections to fill casual Senate vacancies were required on four occasions (1953, 1958, 1961 and 1970).

Table 1 Elections to Fill Senate Casual Vacancies, 1949 to 1976

| Date | Election | States |
|------|----------|----------------------------|
| 1953 | Senate | WA, Tas |
| 1958 | Senate | NSW, Vic |
| 1961 | Senate | SA |
| 1963 | House | Qld |
| 1966 | House | NSW, Vic(2), Qld, WA(2) |
| 1969 | House | Vic, SA |
| 1970 | Senate | NSW, Vic |
| 1972 | House | Qld |

The requirement that Senators chosen under the original provisions of Section 15 face the people at the next election might well have deterred some Senators from resigning. Of the 17 elections held to fill casual vacancies in the period 1949 to 1976, the party of the chosen Senator lost the position at the subsequent election on seven occasions. By way of comparison, in House of Representatives by-elections over the same period the party of the departing Member lost the seat in only 5 of the 43 elections.

The effect of the 1977 amendment has been to greatly increase the number of Senators resigning from the Senate before the completion of their term, by guaranteeing that Senators resigning from the Senate will be replaced by a Senator from their own party, and by removing

any possibility of losing the position in an election to fill the vacancy. Political parties may indeed be taking advantage of this increased certainty to introduce 'new blood' into the Senate before an election.

Impact of the 1977 Amendment

Since the passage of the amendment in 1977, there has been a significant increase in the number of Senators chosen under Section 15 (see table 2). In the 102 years (inclusive to the end of April 2002) of the Commonwealth Parliament, 117 Senators (excluding Senator J Ferris, who was chosen to

Table 2 Senators Chosen Under Section 15

| Period | Number | Per cent | Average per year |
|-----------|--------|----------|------------------|
| 1901–49 | 38 | 32.5 | 0.8 |
| 1950–76 | 28 | 23.9 | 1.0 |
| 1977–89 | 15 | 12.8 | 1.2 |
| 1990– | | | |
| 2002 (a) | 36 | 30.8 | 2.4 |
| Total (a) | 117 | 100.0 | 1.1 |

(a) Excludes Senator J Ferris. fill her own vacancy) have been chosen to fill casual vacancies. In the 76 years (1901 to 1976) prior to the passage of the Referendum some 66 Senators were chosen, an average of less than one Senator per year (0.9). In the 26 years (1977 to 2002) since the Referendum, 52 Senators have been chosen, an average of two per year. However, in the last thirteen years, 36 Senators have been chosen an average of 2.4 per year. Thirty per

cent of all Senators chosen under Section 15 have been chosen in the last thirteen years.

The increasing number of Senators chosen under Section 15 since 1977 can be illustrated by the changing proportion of the Senate that was composed of non-elected (i.e. chosen or appointed) Senators at the end of each Senate term (see table 3).

Since 1977 there has been a steady increase in the number and proportion of Senators who were non-elected. At 30 June 1999 there were 14 non-elected Senators (18.4 per cent), the highest ever number of Senators chosen or appointed in the Senate at the one time.

Reasons for Casual Vacancies Since 1977

Since the passage of the 1977 amendment 51 Senate vacancies have been filled under the provisions of Section 15. An additional vacancy occurred (Senator D Grimes) but was not filled before the 1987 simultaneous dissolution.

Although the reasons for Senate casual vacancies are not always clear, Table 4 provides some useful insights. Of note is the low number of vacancies caused by health (17.3 per cent), government appointment (13.5 per cent), or to contest a House of Representatives election (19.2 per cent) and the large number (50 per cent) attributed to 'other

reasons'. Some frequently quoted reasons include: desire to spend time with family, pursue outside interests and disillusionment with policies or the political party.

Table 4 Reasons for Casual Vacancies 1977 to 2002

| Reason | Number | Per cent |
|---|--------|----------|
| Death | 4 | 7.7 |
| Ill health | 5 | 9.6 |
| Contest House of Representatives election | 10 | 19.2 |
| Government appointment | 7 | 13.5 |
| Other | 26 | 50.0 |
| Total (a) | 52 | 100.0 |

(a) Excludes Senator J Ferris.

Conclusion

Various methods can be used to fill casual vacancies in proportional representation electoral systems. Two methods have been used for the Senate while the Hare-Clark system used in Tasmania and the Australian Capital Territory uses a re-count provision. The re-count method almost invariably results in the election of a candidate from the same party as the retiring member. It is worth noting that in the last five Tasmanian Parliaments an average of 10 per cent of members have been replaced per term.

It would appear that under proportional representation systems the number of casual vacancies is proportional to the certainty of replacing like with like.

Table 3 Composition of Senate, 1977 to 2002

| Date | Elected Senators | | Non-elected Senators | | Total Senate |
|-------------------|------------------|------|----------------------|------|--------------|
| | No | % | No | % | |
| 30 June 1978 | 62 | 96.9 | 2 | 3.1 | 64 |
| 30 June 1981 | 58 | 90.6 | 6 | 9.4 | 64 |
| 4 Feb 1983 (a) | 63 | 98.4 | 1 | 1.6 | 64 |
| 30 June 1985 | 75 | 98.7 | 1 | 1.3 | 76 |
| 5 June 1987 (a) | 71 | 93.4 | 5 | 6.6 | 76 |
| 30 June 1990 | 69 | 90.8 | 7 | 9.2 | 76 |
| 30 June 1993 | 67 | 88.2 | 9 | 11.8 | 76 |
| 30 June 1996 | 65 | 85.5 | 11 | 14.5 | 76 |
| 30 June 1999 (b) | 62 | 81.6 | 14 | 18.4 | 76 |
| 30 April 2002 (b) | 66 | 86.8 | 10 | 13.2 | 76 |

(a) Date of dissolution of Senate

(b) Excludes Senator J Ferris.

Gerard Newman Statistics Group Information and Research Services

Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Information and Research Services and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvass all of the key issues. Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

© Commonwealth of Australia
ISSN 1328-8016