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COMMONWEALTH OF AUSTRALIA

DOCUMENTS RELATING TO THE  
SIMULTANEOUS DISSOLUTION  
OF THE SENATE AND THE  
HOUSE OF REPRESENTATIVES  
BY HIS EXCELLENCY THE  
GOVERNOR-GENERAL ON 19<sup>TH</sup>  
MARCH, 1951.

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**FOREWORD BY THE PRIME MINISTER (RT. HON. R. G. MENZIES, C.H., Q.C., M.P.) ON THE EVENTS PRECEDING THE TENDERING TO HIS EXCELLENCY THE GOVERNOR-GENERAL ON 16th MARCH, 1951, OF ADVICE TO DISSOLVE SIMULTANEOUSLY BOTH HOUSES OF THE COMMONWEALTH PARLIAMENT.**

The relevant provision of the Commonwealth Constitution in relation to double dissolutions is section 57, which reads as follows:

“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 the House of Representatives 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.”

In order that the circumstances leading up to the double dissolution of 1951 may be clearly understood, I now set out, in brief form, a narrative of the relevant events, to which I attach the documents passing between the then Governor-General and myself.

1. On Saturday morning, March 10th, 1951, I had a brief consultation with Sir Garfield Barwick, Q.C. (then Mr. Barwick) about the parliamentary developments in respect of the Commonwealth Bank Bill. No conclusions were reached. I contented myself by informing Counsel of the nature of the problem and indicating that I would in due course be glad if he could come to Canberra and have a consultation there. In the next few days, the Solicitor-General sent to Mr. Barwick a record of the parliamentary history of the bill. Mr. Barwick, in fact, came to Canberra in the late afternoon of Thursday, March 15th.

2. On the morning of Thursday, March 15th, I sought and obtained an interview with the Governor-General. I told him that I would be making a submission to him about a double dissolution, but that I thought it would be useful if I were to set out in writing the principal arguments which I desired to advance to him. We then had a general conversation on the matter, in the course of which he told

me that he had been following the parliamentary proceedings on the Commonwealth Bank Bill very closely, and that, as one familiar with parliamentary procedure, he thought he had appreciated the significance of the steps that had been taken. I told him that I realized this, but that, as in my opinion it was necessary that I should clearly establish certain basic matters of fact, it would be proper if I were to set out the various matters that had occurred, accompanying my statement with an argument about the interpretation and application of section 57. His Excellency agreed that this would be a proper course, and I left him with the promise that I would have my letter delivered to him on the following day.

In the course of our discussion, I had made it clear to His Excellency that, in my view, he was not bound to follow my advice in respect of the existence of the conditions of fact set out in section 57, but that he had to be himself satisfied that those conditions of fact were established.

His Excellency indicated that he thought section 57 spoke for itself, but that he would naturally want to satisfy his own mind about the performance of the conditions.

3. Meanwhile, the Attorney-General and the Solicitor-General had been preparing written advices on the problem. I received those advices in a not finally revised form on the evening of March 15th, the final documents being delivered to me on the morning of Friday, March 16th. There was no change in the substance between the preliminary and final advices.

4. On the evening of March 15th, I also saw Mr. Barwick who had, by that time, stated his opinion to the Attorney-General and the Solicitor-General after a complete examination of the records. When Mr. Barwick saw me, I showed him the draft letter to the Governor-General which I had, during the afternoon, prepared. Having perused this, he advised orally that, in his opinion, the submission I was making was completely justified on the facts, and in the terms of the Constitution.

5. Later still on the evening of March 15th, I met the members of the Cabinet, read my draft letter to them, and obtained their approval of it.

6. On Friday, March 16th, I forwarded my letter with its annexures to the Governor-General for his consideration.

7. On the morning of Saturday, March 17th, I interviewed the Governor-General who then handed to me his letter adopting my advice and agreeing to a simultaneous dissolution of the Senate and the House of Representatives.

Annexed are copies of my letter to the Governor-General, the opinion of the Attorney-General, the opinion of the Solicitor-General, and the Governor-General's reply.

Canberra.

24th May, 1956.

**DOCUMENT No. 1.**  
**ADVICE TENDERED TO HIS EXCELLENCY THE GOVERNOR-GENERAL BY THE RIGHT HONOURABLE THE PRIME MINISTER ON 16th MARCH, 1951.**

Your Excellency,

16th March, 1951.

This memorandum is supplementary to our oral communications. It is intended to set out in summary form the principal reasons for my recommendation to you. That recommendation is that the conditions set out in section 57 of the Commonwealth Constitution have been complied with in respect of the *Commonwealth Bank Bill 1950*, and that Your Excellency should therefore be pleased to dissolve the Senate and the House of Representatives simultaneously.

The relevant provisions of section 57 of the Constitution are as follows:—

"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 the House of Representatives 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."

The facts which bear upon the application of this section are as follows:—

1. The *Commonwealth Bank Bill 1950*, which contained a series of provisions, including one for the re-establishment of a Board of Directors for the Commonwealth Bank, was introduced in the House of Representatives on March 16th, 1950, in the first period of the first session of the Nineteenth Parliament which commenced on February 22nd, 1950.

This Bill was after considerable debate passed without amendment by the House of Representatives on May 4th, 1950.

The Senate received the Bill on May 10th, 1950. It debated the Second Reading on May 10th, 11th, 17th, 18th, 24th and 25th. No less than 41 Senators spoke. No Senator who wished to speak was refused an opportunity. The Bill was debated in Committee on May 25th and June 21st. It was passed with amendments on June 21st, 1950.

The amendments included the deletion of the provisions for the re-establishment of a Board of Directors for the Commonwealth Bank.

On June 22nd, 1950, the Bill was returned to the House of Representatives with these amendments. On the same day (see Votes and Proceedings of the House of Representatives June 22nd, 1950) that House carried a resolution "that the amendments be disagreed to".

Pursuant to the Standing Orders of the House of Representatives, the reasons for the disagreement of the House of Representatives were drawn up and were on the same day approved by that House.

On the same day the Senate received a message from the House of Representatives intimating that it had disagreed to the amendments made by the Senate. A Government motion "that the Senate do not insist on the amendments made by it" was defeated, and on the motion of the Opposition the Senate adopted a resolution insisting on its amendments and setting out its reasons for such insistence.

On June 23rd, 1950 (see the Votes and Proceedings of the House of Representatives June 22nd and June 23rd, 1950) the Senate's message was received by the House of Representatives, which resolved: "that the House insists on disagreeing to the Amendments insisted on by the Senate".

The Bill was then returned to the Senate.

Pausing at this point I submit that it is perfectly clear that, in the terms of section 57 of the Constitution, the House of Representatives had passed a proposed law and the Senate had passed it with amendments to which the House of Representatives would not agree. That the disagreement of the House of Representatives was twice stated by resolution is, though emphatic, not strictly relevant. In point of fact, the first disagreement was sufficient.

2. The proposed law, the Commonwealth Bank Bill, was, in the same session, on October 4th, 1950 (a date more than three months after the original Bill had been passed by the Senate with amendments to which the House of Representatives had not agreed) once again introduced in the House of Representatives. It was in precisely the same form as that in which it had been previously passed by that House.

The House of Representatives passed the Bill on October 11th, 1950, without amendment and transmitted it to the Senate.

On October 12th, 1950, the Bill was read a first time in the Senate. The Government motion that the Standing and Sessional Orders be suspended to enable the Bill to be passed through all its stages without delay was defeated (see Votes and Proceedings of the Senate October 12th, 1950).

The Second Reading of the Bill in the Senate was moved on October 11th, 1950, the debate upon it being adjourned.

On October 24th, 1950, a Government motion to have the Standing Orders suspended so as to enable Government business, Order of the Day No. 1, the *Commonwealth Bank Bill 1950*, to be called on forthwith, was defeated.

On October 31st a similar Government motion was also defeated.

In short, on these two occasions, the Senate refused to consider the Bill at all.

The debate on the Second Reading of the Bill was resumed on November 1st, 1950, by the Leader of the Opposition in the Senate. The Bill was further debated on November 2nd, 7th and 8th, 1950, and the debate was then adjourned.

No further discussion on the Bill took place before the Senate and the House of Representatives adjourned on December 7th, 1950.

The sittings of the Parliament were resumed on March 7th, 1951.

The second reading of the Bill was further debated in the Senate on March 13th and 14th, 1951, and was carried. After the second reading of the Bill had been carried on March 14th, the Senate passed a resolution put forward by the Opposition in the following terms:

- (a) That the Bill be referred, for consideration and report, to a Select Committee consisting of Senators Amour, Arnold, Benn, Cameron, Critchley, Katz and Murray.
- (b) That such Committee have power to send for persons, papers and records, and to move from place to place.
- (c) That the Committee report to the Senate on this day four weeks.

A reference of a Bill to a Select Committee is normally, under the Standing Orders of the Senate, not moved unless and until the Second Reading has been agreed to.

It will be seen from the foregoing facts that on its second passing by the House of Representatives and its transmission to the Senate the Bill was in terms identical with the measure which had already been elaborately debated in the Senate earlier in 1950, and in respect of which, as a result of its deliberations, the Senate had not sought or appointed a Select Committee, but had put forward amendments to which the House of Representatives had twice disagreed. The measure had therefore been fully discussed, and the political issues involved in it had not only been the subject of specific formulation but of reiterated disagreement.

Since its second presentation to the Senate a total period of slightly over 5 months (that is from October 11th to March 15th) has elapsed. During the whole of that time the issues between the two Houses have remained identical and the views of each House have been repeatedly and clearly expressed by majority vote.

Under these circumstances the decision of the Senate to remit to a Select Committee of some Members of the Senate the consideration of a Bill which has, in precisely its present form, been well known both in substance and in detail to all the Members of the Senate ever since it originally reached them on May 10th, 1950, is clearly nothing more than a delaying procedure.

It is true that in its terms the motion passed by the Senate provides for a report within a month; but the Standing Orders of the Senate, Number 294, enable that House to extend this time at the will of a majority of its Members.

This second aspect of the matter may be put in another way. It may be that in the case of an undefined expression like "fails to pass" a reference should be made not only to the objective record and timetable, but also to the intention of the Senate, in so far as that intention is manifested by its acts.

On this point I would advise that there is clear evidence that the design and intention of the Senate in relation to this Bill has been to seek every opportunity for delay, upon the principle that protracted postponement may be in some political circumstances almost as efficacious, though not so dangerous, as straight-out rejection. Since failure to pass is, in section 57, distinguished from rejection or unacceptable amendment, it must refer, among other things, to such a

delay in passing the Bill or such a delaying intention as would amount to an expression of unwillingness to pass it. Clear evidence emerges from the whole of the history of the legislation in the Senate.

In particular I should emphasise two points of interest:

- (a) When the first Bill was returned to the Senate on June 23rd with a message indicating (as I have set out above) that the House of Representatives had insisted on its disagreement to the Senate's amendments, the Senate, against the vote of the Government, resolved that the message of the House of Representatives be considered in Committee of the whole "during the next sittings of the Parliament". The then sittings were about to end, and therefore the decision of the Senate postponed its further consideration of a decision already twice clearly conveyed to it by the House of Representatives until the later sittings which, in fact, commenced on October 4th, 1950. This step seems to have been taken under the belief or hope that the completion of the first condition of section 57 of the Constitution would be thereby postponed. That the sole purpose was one of delay was subsequently tacitly admitted; for, on October 10th, when the matter came on for consideration, the Senate simply reaffirmed its insistence on its amendments on a Division without debate. That this move was, as I submit, quite irrelevant and inoperative does not deprive it of its evidentiary value as an indication of the real intentions of the Senate.
- (b) When the Bill as a whole was before the Senate for the second time, its Second Reading was moved on October 17th, 1950, and the debate on that reading (notwithstanding that a precisely similar Second Reading debate had occurred months before) continued on the 1st, 2nd, 7th and 8th November.

The Senate could at that time have passed the Second Reading and appointed a Select Committee. Indeed the Leader of the Opposition stated that his party proposed to use its majority to do so. If a Select Committee had then been appointed, clearly its report could have been available a considerable time ago. But the appointment of a Committee was designed solely as an instrument of delay. The Senate therefore took no steps at that time. It waited until March 14th, 1951, before it did so.

There is no room for doubt that ever since the Bill went to the Senate for a second time on October 12th, 1950, no new issues have arisen in relation to it. It is a relatively short Bill. Its contentious provisions are clear, have been canvassed in both Houses of Parliament at great length, and have been the subject, as I have shown, of a long series of votes. The appointment of a Select Committee at this extremely late hour is conclusive evidence of an intention to delay the Bill, and clearly constitutes a failure to pass it.

By reason of all these circumstances it is, I submit to Your Excellency, clear that, again adopting the language of section 57, the House of Representatives has, after an interval of three months and in the same session, again passed the proposed law, and that the Senate has failed to pass it.

This means that both the first and second conditions of section 57 have been fulfilled, and that Your Excellency now has power to dissolve the Senate and the House of Representatives simultaneously. That power I unhesitatingly advise Your Excellency to exercise.

I have invited the law officers of the Crown to assist Your Excellency in this matter with their opinions, which are annexed to this communication.

I am not to be taken as affirming that any circumstances other than those referred to in section 57 are relevant to the granting or refusal of a dissolution of both Houses. But I have not failed to notice, and I know from my discussions with Your Excellency that you also have it in mind, that, on the one former occasion upon which, in 1914, a Double Dissolution was sought and obtained, some importance appears to have been attached to the unworkable condition of the Parliament as a whole. Possibly such considerations were given a weight 37 years ago which they would not now be given, having regard to modern constitutional developments. But if they are material then there can be no doubt that the present position in the Commonwealth Parliament is such that good government, secure administration, and the reasonably speedy enactment of a legislative programme are being made extremely difficult, if not actually impossible. This can be demonstrated by reference to three matters which are entirely apart from the Banking legislation.

Beyond question the major legislative measures (apart from the Commonwealth Bank Bill) put forward by your present Government have been, in their chronological order:

The Bill to extend our Social Services by providing Child Endowment for the first child in a family, namely, the Social Services Consolidation Bill;  
The Communist Party Dissolution Bill; and  
The National Service Bill.

The substance of each of these measures, in a highly summarised form, was expressly included in the Policy upon which your present advisers went to the country at the last general election. At that election the present Government parties secured in the House of Representatives a majority of 74 to 47. Of the 42 seats contested at that time for the Senate the present Government parties secured 23 and the Opposition 19. However, by reason of the fact that of the Sitting Senators who did not retire 15 belonged to the present Opposition Party and 3 only to the present Government parties, the over-all figures in the present Senate show a majority of 34 to 26 against the Government.

The Senate in the case of the Child Endowment legislation used its majority to write in to the legislation amendments which were disagreed to by the House of Representatives, and finally abandoned its amendments only at a date which was later than that stated in the Bill as the date of its commencement.

In the case of the Communist Party Dissolution Bill, a very long conflict between the Houses occurred. That Bill was first introduced into the House of Representatives on April 27th, 1950. It was amended in that House and sent to the Senate. The Senate made important amendments to it which were disagreed to by the House of Representatives and repeatedly insisted upon by the Senate, with the consequence that the Bill was on June 23rd, 1950, laid aside by the House of Representatives. After the lapse of a period of three months the Bill in the form in which it had last left the House of Representatives, was re-introduced. A further conflict occurred, with further amendments and disagreements. In the result, the Bill was finally passed on October 20th, 1950, six months after its original introduction, only by the abandonment on the part of the Senate of the whole of its amendments.

It is true that in the case of this Bill the Act which it produced was recently declared invalid by the High Court. But it is still true

to say that, assuming its validity, the grave problems which it established means to attack were incapable of such attack during a long period of dispute between the Houses and that in consequence the organisations and persons aimed at by it not only enjoyed a protracted period of immunity but were enabled to devise and take measures for their own concealment or protection.

The third measure, the National Service Bill, passed through the House of Representatives on November 30th, 1950, and was sent to the Senate. It was designed to institute national service training (a system to which your advisers attach immense importance in the adequate defence preparation of Australia against grave international dangers), by May 1st, 1951.

The Senate did not pass this Bill before the adjournment of the Houses in December. On the contrary, it three times, on December 6th and 7th, took the necessary steps to postpone debate, finally making it an Order of the Day for the first day of sitting of the Senate in 1951! It then appointed a Select Committee "to consider and report upon the Government's proposals for compulsory national service in the Defence Forces". That Committee has made a report on certain alleged breaches of privilege. But it has made no real report on National Service at all! Notwithstanding this curious fact, the Senate resumed the Second Reading Debate on March 15th, and the Bill has now passed. The Select Committee's only function was delay. The consequence of all this is that the actual commencement of this important defence scheme will be postponed until August 1st, 1951.

There is nothing further from my desire than even to appear to involve Your Excellency in the consideration of issues which may be regarded as those of party-political policy. The point I am making is that in respect of all these matters the Government, with a new mandate from the people, has been in major affairs, constantly delayed and frustrated by the facts that the two Houses are of opposite political complexions and that in consequence the legislative machine, except in respect of relatively minor matters, has been materially slowed down and rendered extremely uncertain in its operation.

Under these circumstances, if the only condition upon which a Double Dissolution could be granted was, broadly expressed, that a serious conflict between the two Houses ought to be ended by the votes of the electors, then I would have no doubt whatever that as Prime Minister I should be more than justified in asking you to take the

necessary steps to have determined by those electors a disagreement which tends so strongly against the giving of prompt expression to the public will.

I am, of course, at Your Excellency's service to discuss with you the matters referred to above and also any other aspects of the problem which seem to Your Excellency to merit examination. But my advice to you is, as I have said, that you should forthwith dissolve the Senate and the House of Representatives simultaneously so that the conflicts which have arisen may be authoritatively resolved.

I have the honour to be,

Your Excellency's obedient servant,

(R. G. MENZIES).

His Excellency,  
The Right Honourable W. J. McKell,  
Governor-General of the Commonwealth,  
Canberra.



## DOCUMENT No. 2.

OPINION DATED 16th MARCH, 1951, BY THE HONOURABLE  
THE ATTORNEY-GENERAL.

No. 1 of 1951.

CONSTITUTION, SECTION 57: COMMONWEALTH BANK  
BILL 1950.

OPINION OF THE ATTORNEY-GENERAL.

On 4 May, 1950, the House of Representatives passed a proposed law intitled the "Commonwealth Bank Bill 1950".

2. On 21 June, 1950, the Senate passed the Bill with amendments. Having regard to the disagreement of the House of Representatives to such amendments they were, when passed, amendments to which, in the language of the section, the House of Representatives "will not agree".

3. In my opinion, therefore, the first condition of section 57 was satisfied by the action of the Senate in passing the Bill with such amendments.

4. Their unacceptable character is shown by the refusal of the House on 22 June, 1950, to agree to them.

5. The matter is emphasised, but not affected, as far as concerns the commencement of the interval of three months mentioned in the section, by the insistence of the House of Representatives upon disagreement on 23 June, 1950.

6. The House of Representatives again passed the proposed law after an interval of three months from the passage by the Senate of the Commonwealth Bank Bill 1950 with unacceptable amendments. The power of the Governor-General to dissolve the Senate and the House of Representatives simultaneously therefore arises if the Senate has rejected, failed to pass, or passed the proposed law with unacceptable amendments after its second passage by the House of Representatives.

7. The section deals with the relationship of the two Houses in respect of laws proposed by the House of Representatives. The words "fail to pass" in the section are designed to preclude the Senate, upon being proffered a Bill with an opportunity to pass it with or without amendments or to reject it, from declining to take either course, and instead deciding to procrastinate.

8. In the present circumstances the Senate has had a second opportunity of choosing whether to pass with or without amendments or to reject the proposed law. It has declined to take either course and, unquestionably, has decided to procrastinate. In my opinion, this completely satisfies the words "fail to pass" as properly understood in the section and, in my opinion, the power of the Governor-General to dissolve both Houses has arisen.

(sgd.) J. A. SPICER

Attorney-General.

16/3/1951.

## DOCUMENT No. 3.

OPINION DATED 16th MARCH, 1951, BY THE  
SOLICITOR-GENERAL.

No. 2 of 1951.

CONSTITUTION, SECTION 57: COMMONWEALTH BANK  
BILLS 1950.

OPINION OF THE SOLICITOR-GENERAL.

In view of the disagreement between the Senate and the House of Representatives which has arisen in relation to the two Commonwealth Bank Bills now before Parliament, advice is sought upon the legal construction of section 57 of the Constitution, as distinct from its application to present circumstances.

2. It may be convenient to set out in full the first paragraph of section 57 (the second and third paragraphs not being for present purposes relevant) :

"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 the House of Representatives 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."

3. The particular questions of interpretation which seem material for present purposes are—

- (i) At what point can it be said that the Senate has, within the meaning of this section, "passed (a proposed law) with amendments to which the House of Representatives will not agree"?

This question in turn involves the two distinct points—

- (a) when is a proposed law "passed" by the Senate?
- (b) at what point and in what manner can it be ascertained that the House of Representatives "will not agree" to amendments made by the Senate?

- (ii) If the Senate has passed a proposed law with amendments to which the House of Representatives will not agree, from what point does the interval of three months, which must elapse before the House of Representatives again passes the proposed law, commence to run? Is it—

- (a) from the date of the first passing of the proposed law by the House of Representatives?
- (b) from the date on which the Senate passes the measure with amendments?
- (c) from the date on which it becomes clear that the House of Representatives "will not agree" with the amendments made by the Senate?

- (iii) In what circumstances can the Senate be said to have "failed to pass" a proposed law?

4. On the interpretation of section 57 generally, I make two preliminary observations. The first observation is that, though it would be clearly an error to interpret the Constitution by reference to the Standing Orders of the House, which in this respect are entirely secondary, subsequent and derivative, the section is directed specifically to situations arising in the course of Parliamentary procedure, and ought to be interpreted generally in the light of Parliamentary usage and practice. The second observation is that the section is designed to prevent deadlocks in the legislative process, by permitting the Governor-General to give the electorate an opportunity to make a fresh choice for every seat in both Houses, when resistance by the Senate to a measure approved by the House of Representatives has been evinced in a certain manner and has proceeded to a certain point.

*"Passes with amendments".*

5. I think that the word "pass" in section 57 has its ordinary meaning in relation to Parliamentary proceedings. In that sense the Senate must, I think, be regarded as having "passed" a Bill—whether with or without amendments—when the Bill is read a third time. In accordance with ordinary practice the Bill is then returned with an appropriate message to the House of Representatives. Whether or not the Senate will have any further opportunity of dealing with a Bill which it has passed with amendments is a matter that lies entirely in the hands of the House of Representatives. But no subsequent proceedings in the Senate could properly be described as "passing" or "re-passing" a Bill, when once it has been "passed" in the ordinary sense.

*"Will not agree".*

6. The next question is as to the point at which it can be said that the House of Representatives "will not agree" to amendments made by the Senate. The Standing Orders of both Houses provide for the consideration of amendments made by the other House. The ordinary procedure requires a decision whether, in the case of a Bill originating in the House of Representatives and amended in the Senate, the House agrees to the Senate's amendments, either with or without further amendments, or disagrees to them, or disposes of them in some other way. The Standing Orders provide, in the event of disagreement with Senate amendments, for messages informing the Senate of the House's disagreement, and desiring the reconsideration of the Bill. The process can be repeated beyond the stages enumerated in the Standing Orders, and indeed as long as it seems useful to do so. But I do not think that the House must reach the point of finally laying a Bill aside before the conclusion can be drawn that the House "will not agree" to the Senate's amendments. The House may, in the hope of prevailing on the Senate to withdraw its amendments, continue the exchange of messages, at each stage inviting reconsideration. But I think that, at the moment when the House first records its disagreement with the Senate's amendments, they must be regarded as "amendments to which the House of Representatives will not agree".

*"After an interval of three months".*

7. If the Senate has passed a proposed law with amendments to which the House of Representatives will not agree, the next question is, from what point does the interval of three months, which must elapse before the House of Representatives again passes the proposed law, commence to run. In my opinion, the relevant date is the passing of the Bill, with amendments, by the Senate. There are, I recognize, substantial considerations to be urged in favour of each of the other alternative dates, viz. the (earlier) date when the House of Representatives first passes the Bill and the (later) date when the House makes clear that it "will not agree" to the Senate's amendments. The general structure of section 57 seems to me to lean strongly against the earlier date. And (as against the later date) the most natural reading of the section is I think that in each of the cases specified (rejection, failure to pass or passage with amendments by the Senate) it is conducted by the Senate from which the interval commences. This reading, moreover, explains the use of the rather unusual future tense, "will not agree". The section looks to the moment at which the Senate passes the Bill with amendments. Only future events will make clear whether or not the House "will agree" to the amendments made by the Senate.

8. The earlier date received the support of one of my predecessors, Sir Robert Garran, in an opinion given in 1930, and still held by him. I am greatly fortified in the contrary view, to which I feel myself constrained, by an opinion, also given in 1930, of Sir Harrison Moore and Mr. W. K. Fullagar. In the view I take on the points discussed in the foregoing paragraphs, however, nothing seems to turn, for present purposes, on this particular question of starting-point.

*"Fails to pass."*

9. The question whether the Senate has "failed to pass" a Bill is a question of fact, to be established in each particular case. What has to be established is, of course, a real disagreement between the two Houses, constituted by the Senate's refusal to accept a legislative proposal of the House of Representatives. This disagreement may be shown in formal fashion either by rejection of a Bill or by passing it with amendments. The addition of the words "fail to pass" is intended to bring the section into operation if the Senate, not approving a Bill, adopts procedures designed to avert the taking of either of these definitive decisions on it. The expression "fails to pass" is clearly not the same as the neutral expression "does not pass", which would perhaps imply mere lapse of time. "Failure to pass" seems to me to involve a suggestion of some breach of duty, some degree of fault, and to import, as a minimum, that the Senate avoids a decision on the Bill.

10. In a recent opinion, Sir Robert Garran enumerated as follows, and in terms which in general I respectfully adopt, the matters to be taken into account in ascertaining the fact of failure or non-failure to pass:—

"Mainly, I think, the ordinary practice and procedure of Parliament in dealing with Bills; including facts arising out of the unwritten law relating to the system of responsible governments: the way in which the Government arranges the order of business and conducts the passage of Government measures through both Houses, and the various ways in which the Opposition seeks to oppose. It will be material to know what opportunities the Government has given for proceeding with the Bill, and what steps the Senate has taken to delay or defer consideration.

There are many ways in which the passage of a Bill may be prevented or delayed: e.g.—

- (i) It may be ordered to be read (say) this day six months.
- (ii) It may be referred to a Select Committee.
- (iii) The debate may be repeatedly adjourned.
- (iv) The Bill may be 'filibustered' by unreasonably long discussion, in House or in Committee.

The first of these would leave no room for doubt. To resolve that a Bill be read this day six months is a time-honoured way of shelving it.

The second would be fair ground for suspicion. But all the circumstances would need to be looked at.

The third, if it became systematically employed against the Government, would lead to a strong inference.

But just at what point of time failure to pass could be established, might be hard to determine . . . .

In the fourth case too, the point at which reasonable discussion is exceeded, and obstruction; as differentiated from honest opposition, begins, would be very hard to determine. But sooner or later, a 'filibuster' can be distinguished from a debate . . . .

11. Section 57 cannot of course be regarded as nullifying the express provision in section 53 that except as provided in that section the Senate should have equal power with the House of Representatives in respect to all proposed laws. But it is equally clear that on the fair construction of section 57 a disagreement between the Houses can be shown just as emphatically by failure to pass a Bill as by its rejection or amendment. Perhaps the principle involved can be expressed by saying that the adoption of Parliamentary procedures for the purpose of avoiding the formal registering of the Senate's clear disagreement with a Bill may constitute a "failure to pass" it within the meaning of the section. The proceedings in the Senate in relation to a Bill must I think be appraised in the light of some such principle. While therefore the preliminary question on which the Governor-General must be satisfied can properly be said to be a question of fact, its ascertainment is a matter rather of political interpretation or elucidation than the mere establishment of acts and events.

(Sgd.) K. H. BAILEY,  
Solicitor-General.  
16/3/1951.

**DOCUMENT No. 4.**

**ACCEPTANCE BY HIS EXCELLENCY THE GOVERNOR-GENERAL  
OF THE ADVICE TENDERED BY THE PRIME MINISTER.**

Government House,  
Canberra.  
17th March, 1951.

~ My dear Prime Minister,

I desire to acknowledge receipt of your memorandum of the 16th instant with which you submitted opinions of the Law Officers of the Crown.

I have given most careful consideration to the documents referred to and have decided to adopt the advice tendered in your memorandum.

Having in mind the oral assurance which you gave me during our discussion of this morning to the effect that adequate provision exists for the carrying on of the Public Service in all its branches for now until the anticipated date of assembly of the new Parliament I am prepared forthwith to dissolve simultaneously the Senate and the House of Representatives under the provisions of section 57 of the Constitution of the Commonwealth.

Yours sincerely,  
(Sgd.) W. McKELL.

The Right Honourable R. G. Menzies, C.H., K.C., M.P.,  
Prime Minister.