

Constitutional Solutions: Double Dissolutions, Joint Sittings and Reserve Powers

The Australian system of governance is based on agreement and compromise. Most of the time the House of Representatives and the Senate are able to work through disagreements to find solutions acceptable to the majority. However, sometimes agreement is not possible and deadlock follows. The Australian Constitution provides a solution in the form of the seldom-used double dissolution of both houses of parliament and, if this doesn't result in agreement, a joint sitting of parliament. The unwritten powers of the Governor-General – the reserve powers – can also be used in exceptional circumstances to ensure the functions of the federal government can continue in times of crisis.



Governor-General Munro Ferguson uses his 'Governor's Prerogative' to grant a double dissolution. Prime Minister Joseph Cook and Australian Labor Party leader Andrew Fisher may not like the result!

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We are creating in these two chambers ... what you may term an irresistible force on the one side, and what may prove to be an immovable object on the other side, and the problem of what might happen if these two were brought into contact.

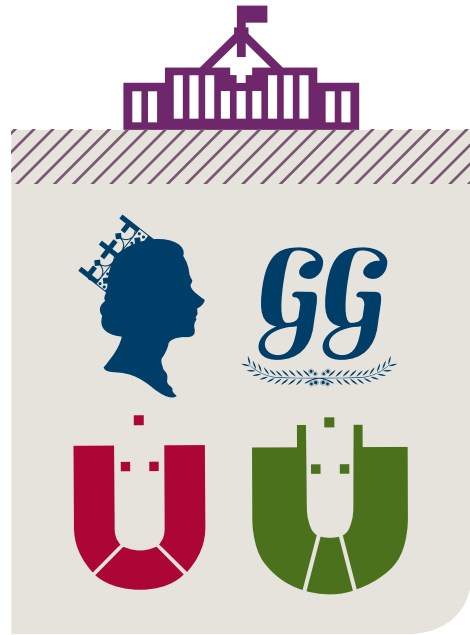
Alfred Deakin, Convention Debates, 15 September 1897

Law-making

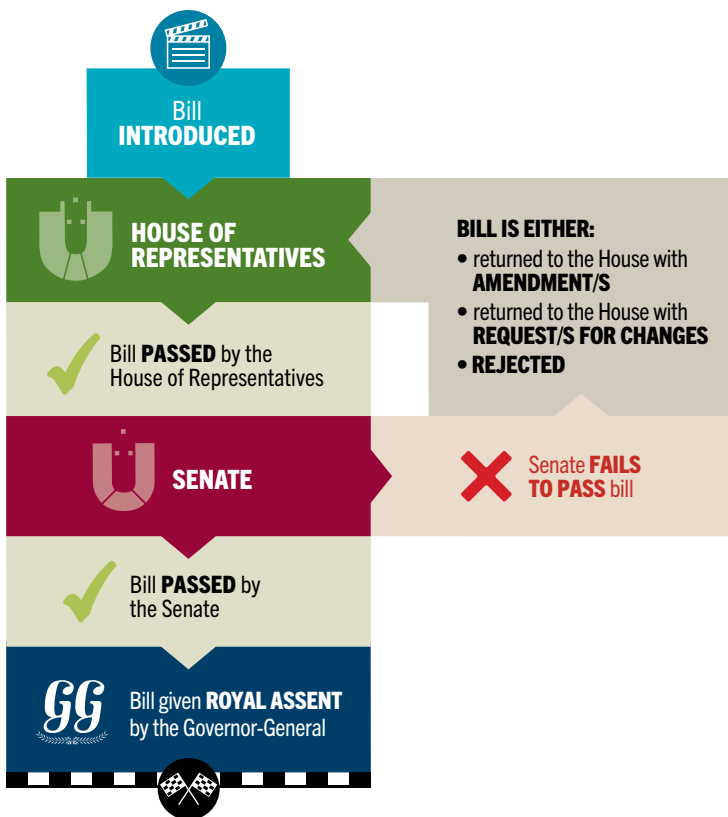
The Australian Constitution gives the power to make laws for Australia to a parliament consisting of the Queen and representatives of the Australian people sitting in two houses: the House of Representatives and the Senate. The Governor-General, the Queen’s representative, does not sit in Parliament but has an important role in giving Royal Assent to proposed laws agreed to by both the House of Representatives and the Senate.

Unusually for a bicameral (two chamber) parliament, the House of Representatives and the Senate have almost the same law-making powers. Bills (proposed laws) can be introduced in either house. Both can propose changes (amendments) to bills or investigate a bill in a committee.

However, the Senate does not have the power to introduce or change money (budget or taxation) bills. The Senate can refuse to agree to a money bill or request the House of Representatives make changes to the bill, which the House does not have to do. The right of the Senate not to agree to a money bill was demonstrated in 1975 (see the reserve powers section).



Normal passage of a Bill through the Australian Parliament



Because the two chambers have almost the same law-making powers and new laws cannot be made without the agreement of both, it is inevitable that on occasion they will disagree. Most deadlocks are resolved by:

- permanently withdrawing the bill (laying the bill aside), resubmitting it later or resubmitting it in a different form;
- either house agreeing to changes made by the other house, allowing the bill to be passed; or
- negotiating a mutually satisfactory resolution which results in the bill passing.

However, if a solution cannot be found, and the House of Representatives insists on the bill in the same form, the Constitution provides a process for breaking the deadlock.

Double Dissolutions

Section 57 of the Australian Constitution provides a procedure if the House of Representatives and the Senate cannot agree on a bill. It states:

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 expiry of the House of Representatives . . .

After the Governor-General dissolves parliament an election for every seat in the House of Representatives and the Senate is held (a double dissolution).

The Governor-General can only grant a double dissolution after the same bill has:

- been agreed to by the House of Representatives
- been sent to the Senate
- failed to pass the Senate
- been introduced into the House of Representatives a second time *three months after the bill failed to pass the Senate*
- been agreed to by the House of Representatives a second time
- been sent to the Senate
- failed to pass the Senate a second time



Commonwealth of Australia Constitution Act, 1900:
Original Public Record Copy (1900)

Parliament House Art Collection, Art Services/Parliament House



Double Dissolutions and the election of Senators

Senators who represent states are elected for six year terms. Unlike Members of the House of Representatives, they are not usually all elected at the same time. Every three years the terms of half of the state senators expire, allowing for a complete rotation of senators every six years.

But what happens after a double dissolution? Do the terms of all the state senators then expire on the same date?

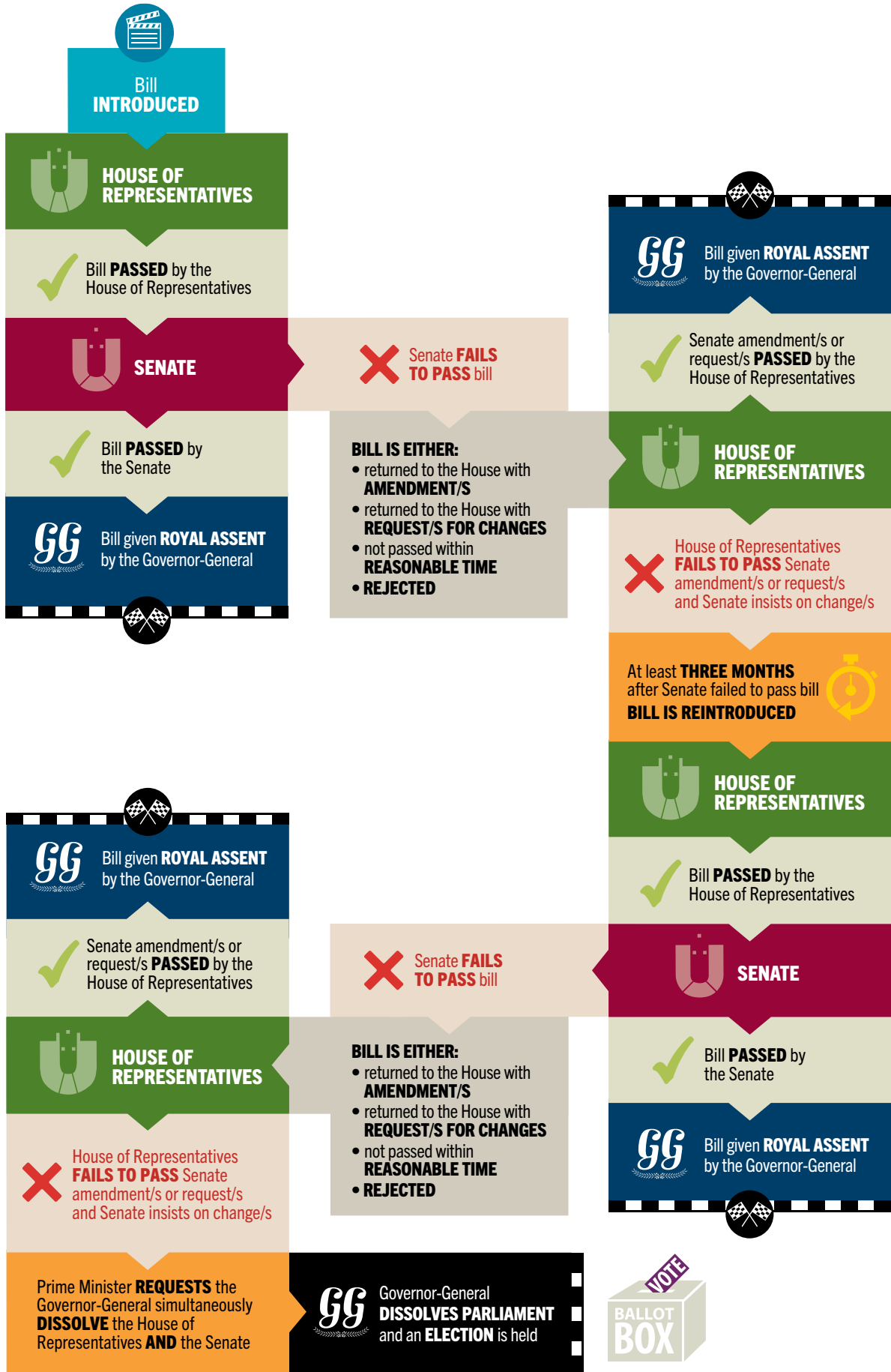
Luckily the drafters of the Australian Constitution realised this problem and included in the Constitution a way to avoid all senators standing for election at the same time. Section 13 states that after a double dissolution state senators are to be divided into two groups; the first group is to have a three year term, while the second group is to have a six year term.

But how does the Senate work out which state senators will have a half term and which senators will have a full term?

The state senators with the highest number of votes in each state are granted a six year term. Three year terms are granted to the state senators with the lowest number of votes in each state. This re-establishes the normal pattern of Senate elections.

Senators representing territories have three year terms which are concurrent with House of Representatives terms.

Requirements for a Double Dissolution of Parliament

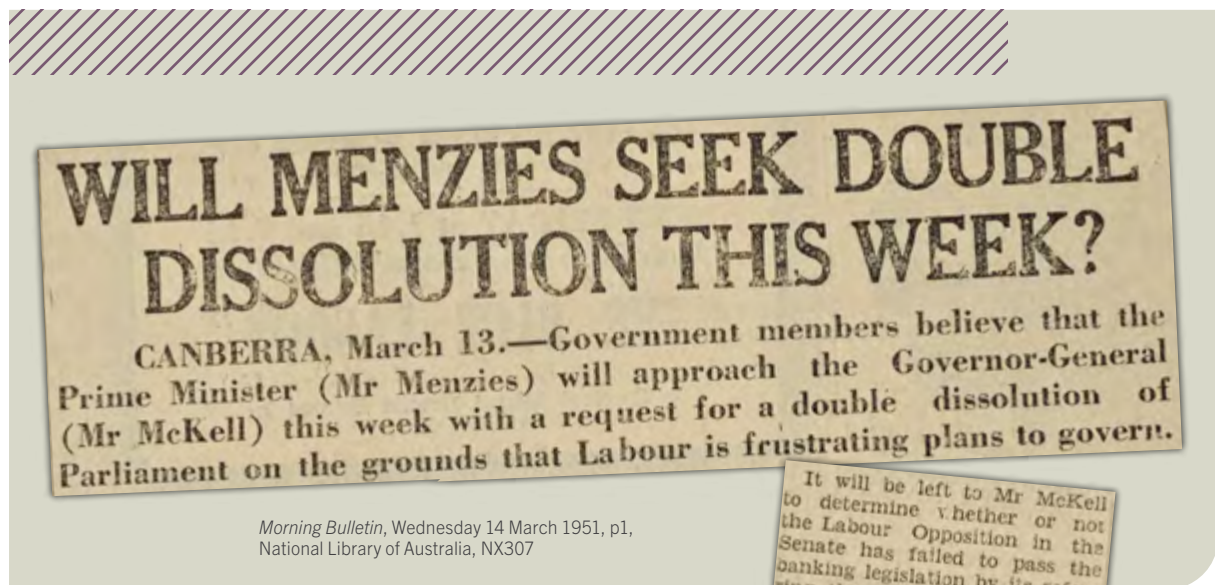


'Fail to pass' means the Senate has voted against the bill or made amendments to the bill with which the House does not agree. It can also mean the Senate has not voted on the bill within a reasonable time. This might be because the Senate has delayed voting on a bill by asking a committee to investigate it ([see 1951 case study](#)); deferred a vote on the bill until the next sitting period; or continued to debate the bill indefinitely.



The Senate has the duty to properly consider all Bills and cannot be said to have failed to pass a Bill because it was not passed at the first available opportunity; a reasonable time must be allowed.

Victoria v. Commonwealth 1975 7 ALR 1, judgment



Options for resolving a deadlock caused by the House of Representatives' failure to pass a bill introduced in the Senate have not been tested.

A double dissolution allows the people to have their say on the deadlocked bill. Although they are not actually asked to vote on the bill, they elect the people they wish to represent them when the bill is voted on again in the new Parliament. Because a double dissolution means all members of parliament are up for election the people have the opportunity to change the composition of the Senate. This can result in a government majority, a government minority, or a continuation of the status quo.

Surely wise men entrusted with the task of framing a constitution ... would provide some constitutional means by which, in the face of inevitable conflict ... legislative deadlock may be ended, and the people themselves may give expression to their opinions.

The Hon J.H. Carruthers, Australasian Federal Convention, Sydney, 1897

Only one bill is required to ‘trigger’ a double dissolution, although the government may ‘stockpile’ bills to strengthen their case that Parliament is unworkable. The 1974 double dissolution was called over six bills which had failed to be passed by the Senate; the 1983 double dissolution was called over 13 bills. It is also not necessary for a prime minister to request a double dissolution immediately after deadlock has been reached on a bill. Most deadlocked bills are put aside, to be called upon later if required by the government. Others are never used as a reason to dissolve Parliament.

The threat of a double dissolution can be a powerful tool. If a government is confident of success at the subsequent election, they could devise the conditions required for the Governor-General to dissolve both houses. However, double dissolutions, and the elections that follow, involve risks as well as potential rewards. In 1914 the government was frustrated by an opposition majority in the Senate. Prime Minister Joseph Cook was confident of securing a Senate majority in an election, so he introduced a bill the opposition would be unlikely to support. It didn’t and, after the requirements for a double dissolution had been met, the Prime Minister advised the Governor-General that Parliament had become unworkable and he should dissolve Parliament. However, the Cook government lost the election. As the Cook government found out, a double dissolution does not guarantee a successful outcome for a government.

It is not only governments which can attempt to force an election in this way. In 1974 the opposition was able to create the requirements for a double dissolution ([see 1974 case study](#)).



National Archives of Australia, AG180, 13/11/75/1

Prime Minister Malcolm Fraser (left) leaves Government House with Governor-General John Kerr (centre) and Deputy Prime Minister Doug Anthony on 11 November 1975. The Governor-General had just sworn in Malcolm Fraser as caretaker Prime Minister and accepted his request for a double dissolution of Parliament.

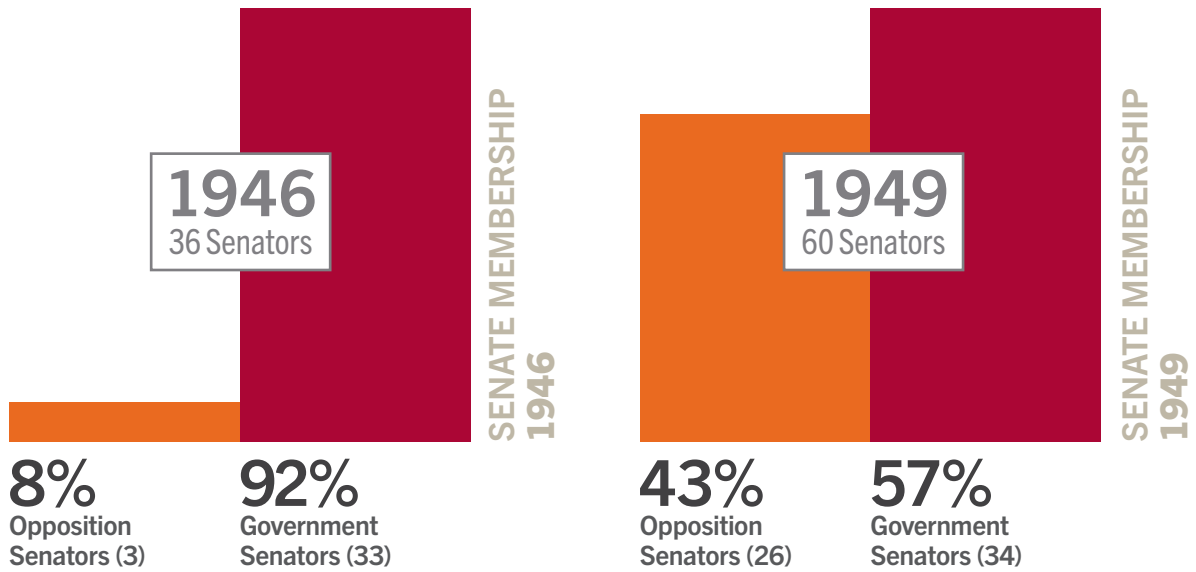
One instance of double rejection suffices but if there be more than one it merely means that there is a multiplicity of grounds for a double dissolution, rather than grounds for a multiplicity of double dissolutions.

Justice Ninian Stephen in *Cormack v. Cope* 1974 131 CLR 432, judgment



National Library of Australia, P188339/42

Governor-General Sir Paul Hasluck opens the 29th Parliament after the 1974 double dissolution election.



There was only one double dissolution in the first 50 years after Federation but five in the second 50 years after Federation. From 1918 to 1949 the voting system for the Senate led to regular government majorities. Following the 1946 election the government's majority was overwhelming; there were only three opposition senators to 33 government senators.

After a new voting system was introduced in 1949, Senate government majorities have been rare. This is one reason why deadlocks between the Senate and House of Representatives have occurred more often in the second half of the twentieth century than in the first half.

[Double dissolution] should ... be regarded as an extraordinary power, to be exercised only in cases in which the Governor-General is personally satisfied, after independent consideration of the case, either that the proposed law as to which the Houses have differed in opinion is one of such public importance that it should be referred to the electors of the Commonwealth for immediate decision by means of a complete renewal of both Houses, or that there exists such a state of practical deadlock in legislation as can only be ended in that way.

Sir Samuel Griffith, Chief Justice of the High Court of Australia, 1914

Date of Double Dissolution	Governor-General	Prime Minister	Bill/s	Outcome
30 July 1914	Sir Ronald Munro Ferguson	Joseph Cook	Government Preference Prohibition Bill 1913	Government defeated at election. Bill was not reintroduced.
19 March 1951	Sir William McKell	Robert Menzies	Commonwealth Bank Bill 1950	Government returned with a majority in both houses. Revised bill introduced and passed by both houses.
11 April 1974	Sir Paul Hasluck	Gough Whitlam	Six bills including Petroleum and Minerals Authority Bill 1973	Government returned but without a majority in the Senate. Senate again rejected the bills when reintroduced. Joint sitting called. All bills passed. The High Court of Australia later ruled the Petroleum and Minerals Authority Bill 1973 was not eligible for double dissolution as the Senate had not had time to 'fail to pass' it.
11 November 1975	Sir John Kerr	Malcolm Fraser (caretaker)	21 bills including health insurance levy bills, a series of electoral bills and the Privy Council Appeals Abolition Bill 1975	Mr Fraser had been appointed caretaker Prime Minister on 11 November 1975 after the Whitlam Government was dismissed by the Governor-General. The Fraser minority government lost a no-confidence motion in the House of Representatives but Sir John Kerr dissolved both the House and the Senate on the request of Mr Fraser. At the election the caretaker government was elected. The bills were not reintroduced.
4 February 1983	Sir Ninian Stephen	Malcolm Fraser	13 bills including Sales Tax Amendments (Nos. 1A to 9A) 1981 and a number of tertiary education bills	When Prime Minister Fraser asked the Governor-General to dissolve both houses of parliament he expected to be facing Leader of the Opposition Bill Hayden at the subsequent election. However, earlier that day Mr Hayden had been replaced by Bob Hawke. The Fraser Government was defeated at the election. The bills were not reintroduced.
5 June 1987	Sir Ninian Stephen	Bob Hawke	Australia Card Bill 1986	Government returned but without a majority in the Senate. Bill reintroduced and passed by the House. Bill reintroduced into the Senate but abandoned.

Joint Sittings

... momentous as the [joint] sitting is, the reasons for it are not a matter for pride. It has come about because of the repeated refusal of the Senate to pass legislation which has been approved by the House of Representatives ... Let it be understood that this Joint Sitting is a last resort, a means provided by the Constitution to enable the popular will – the democratic process – ultimately to prevail over the tactics of blind obstruction.

Prime Minister Gough Whitlam, speaking at the beginning of the joint sitting of Parliament, 6 August 1974

Requirements for a Joint Sitting of the Australian Parliament

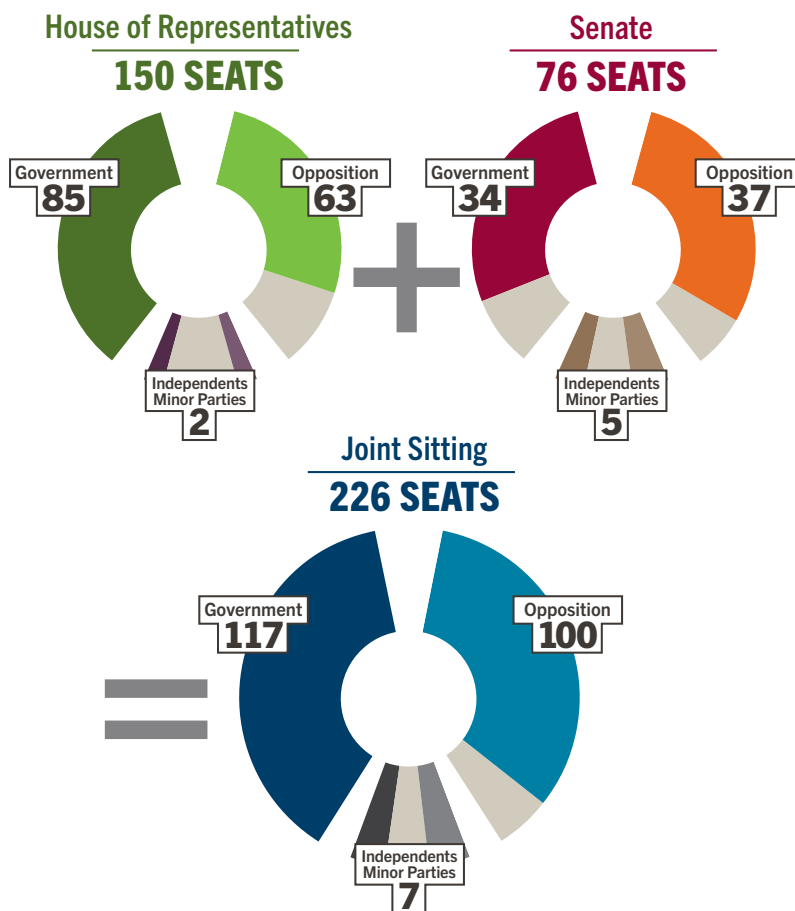


In a joint sitting the bill in the form last agreed by the House of Representatives and all amendments agreed by either house, are voted on by all members of Parliament. The bill will be agreed if an absolute majority (more than 50% of all members) supports it. No new amendments to the bill can be voted on in a joint sitting. Joint sittings cannot be convened to resolve law-making deadlocks on proposed constitutional changes. (The procedure for resolving deadlocks on bills for proposed constitutional changes is contained in section 128 of the Australian Constitution.)

When both houses sit together for other reasons, such as to hear a speech by an international leader, it is often referred to as a ‘joint sitting’ of Parliament. However, because Parliament is not sitting together as a single legislative body (to make laws), these are not joint sittings. Before self-government was introduced in the Australian Capital Territory and Northern Territory, both houses of the federal Parliament met in joint sittings to elect senators to replace territory senators who died or were unable to undertake their duties.

In 1987 the Australia Card Bill 1986 could have triggered a joint sitting of Parliament. The bill had twice been rejected by the Senate and a double dissolution had occurred. After the subsequent election the re-elected government still did not have a majority in the Senate, which had failed to pass the bill a third time. The government was then in a position to request that the Governor-General call a joint sitting. However, the government abandoned the bill. If the bill was passed and became law the Senate would then have to agree to how the Australia Card Bill would be put into effect, which might result in further deadlock.

Example of a Joint Sitting of the Australian Parliament



The opening of the only joint sitting of the Australian Parliament, 6 August 1974.



Governor-General Lord Northcote (front row, centre) poses with the ministers of the second Deakin Government. In July 1905 the Governor-General withdrew George Reid's commission as Prime Minister after he lost the support of the majority of the House of Representatives. Alfred Deakin (front row, second from left) was then commissioned to form a government. The Governor-General had used his reserve powers to remove a government without dissolving Parliament and calling an election.

Stonington Library and Information Service

Reserve Powers

According to the conventions ... there are some powers which the Governor-General may exercise according to his [or her] own discretion, and without the advice, or even contrary to the advice, of the Ministry. These powers ... ensure that the Ministry is responsible to Parliament and that the ultimate supremacy of the electorate will prevail. The reserve powers provide an essential check against abuse of power by the Executive or by Parliament.

Sir Harry Gibbs, Reserve Powers of the Governor-General and the Provisions for Dismissal, 1995

The Australian Constitution gives the Governor-General powers in particular areas, such as command of the defence forces and appointment of judges of the High Court of Australia. In using these powers the Governor-General is guided by the Constitution, the advice of the Prime Minister and ministers, and how these powers have been used in the past (convention).



The Governor-General also has powers which are not outlined in the Constitution, called 'reserve powers'. The only guide in using these powers is convention (unwritten rules of how to act, based on tradition). This means that the exact nature and scope of these powers is arguable. There is debate about what exactly they are, and when and how they should be used. These discretionary or reserve powers are vital to the effective functioning of the Australian governance system in a time of crisis.

The Governor-General's reserve powers are the residual powers of the Crown; that is, they are the power to act without or against the advice of the Prime Minister and ministers. These powers belong to the Governor-General as the Queen's representative.

The Governor-General's reserve powers are generally agreed to include the following:

- The power to appoint a Prime Minister if an election has resulted in no one party or coalition of parties having a majority in the House of Representatives (a 'hung parliament');
- The power to dismiss a Prime Minister when he or she has lost the confidence of the support of the majority of the House of Representatives;
- The power to refuse a request for a double dissolution in cases when the Prime Minister has not formally given advice on the importance of the rejected bill and how the deadlock is affecting the workability of Parliament;
- The power to dismiss a Prime Minister or Minister when he or she is acting unlawfully; and
- The power to refuse to dissolve the House of Representatives and agree to an election, despite a request from the Prime Minister.



Former Prime Minister Gough Whitlam and ACTU President (and future Prime Minister) Bob Hawke realise that reforming the Governor-General's reserve powers will require changing the Australian Constitution.

Stewart McCrae, c1975, National Library of Australia, PIC/3994/87

The use of reserve powers by governors-general is rare. In fact, they have only been used a handful of times. Some examples are:

- **1904** – Governor-General Lord Northcote refused Prime Minister Chris Watson's request for a double dissolution, even though the government did not have a definite majority in the House of Representatives.
- **1909** – Governor-General William Humble Ward refused to dissolve Parliament after the government lost the support of the majority of the House of Representatives. Instead he commissioned Alfred Deakin as Prime Minister and asked him to form a coalition government (the Fusion Government).
- **1975** – Governor-General Sir John Kerr withdrew Gough Whitlam's commission as Prime Minister and granted the double dissolution requested by caretaker Prime Minister Malcolm Fraser.

The last exercise of reserve powers was controversial. The power of the Governor-General to dismiss a Prime Minister due to the Senate's refusal to pass the government's budget bills (even when the government had the support of the majority of the House of Representatives) has been widely debated.

Another interesting example of the exercise of reserve powers occurred after Prime Minister Harold Holt went missing in December 1967. After Mr Holt disappeared at sea, there was no one with the constitutional authority to advise the Governor-General as to what he should do. Using his reserve powers he terminated Mr Holt's position as Prime Minister. He then commissioned John McEwan, the deputy Prime Minister, as Prime Minister. Three weeks later, when Mr Holt's body still had not been found, the government chose John Gorton as their new leader. Mr McEwan then advised the Governor-General to commission Mr Gorton as Prime Minister and resigned as Prime Minister.



Harold Holt chats to Governor-General Lord Casey after his swearing in as Prime Minister, 26 January 1966.

National Archives of Australia, A1200, L53613

More information

PEO resources

Pocket Constitution

www.peo.gov.au/resources/pocket-constitution.html

Closer Look

www.peo.gov.au/learning/closer-look.html

Fact Sheets

www.peo.gov.au/learning/fact-sheets.html

Videos

www.peo.gov.au/multimedia/videos.html

Other resources

The Australian Constitution

www.aph.gov.au/constitution

Odgers' Australian Senate Practice (Chapter 21)

www.aph.gov.au/odgers

Platypus and Parliament: The Australian Senate in Theory and Practice (Chapter 2)

www.aph.gov.au/About_Parliament/Senate/Research_and_Education/platparl

House of Representatives Practice (Chapter 13)

www.tinyurl.com/house-practice

Reserve Powers of the Governor-General

www.tinyurl.com/reserve-powers-GG

Senate Briefs

www.aph.gov.au/Senate/briefs

House of Representatives Infosheets

www.aph.gov.au/infosheets