



LEGISLATIVE COUNCIL FACT SHEETS

FACT SHEET 6: CASUAL VACANCIES IN THE SENATE

Casual vacancies in the Australian Senate are filled in accordance with section 15 of the Commonwealth Constitution, which was inserted in 1977. The main features of that section are:

- The person who is to fill the casual vacancy is to be chosen by the Houses of Parliament for the State for which the senator was chosen, sitting and voting together.
- The person chosen must be a member of the same political party as the senator they replace was at the time the senator was chosen.
- The person chosen to fill the vacancy holds office until the expiration of the term of the senator they are chosen to replace.
- If the State Parliament is not in session when the vacancy is notified to the State Governor, the Governor may, with the advice of the Executive Council of the State concerned, appoint a person to hold the place until the expiration of 14 days from the beginning of the next session of the Parliament of the State, or until the expiration of the term.

The purpose of section 15 is to preserve as far as possible the representation determined by the electors in elections for the Senate.¹ The importance of such a requirement is highlighted by the fact that, before the enactment of section 15 in 1977, there were two occasions on which Senate vacancies in New South Wales were filled by candidates who did not belong to the same party as the senators being replaced.²

To be qualified for election to the Senate, a person must be at least 18 years old, an Australian citizen, and an elector qualified to vote, or qualified to become such an elector.³ Further, under sections 43 and 44 of the Commonwealth Constitution, a person is not capable of 'being chosen' or sitting as a senator if he or she:

- is a citizen or subject of a foreign power
- is attainted of treason, or has been convicted or is under sentence or subject to be sentenced for an offence punishable by Commonwealth or State law by a sentence of 12 months or more
- is an undischarged bankrupt or insolvent
- holds an office of profit under the Crown or pension during the pleasure of the Crown (subject to exceptions)
- has a pecuniary interest in any agreement with the Commonwealth Public Service (except as a member of an incorporated company of more than 25 people)
- is a member of the House of Representatives.

1 Evans, H (ed), *Odgers' Australian Senate Practice*, 11th edn, Department of the Senate, 2004, p 105.

2 In 1931, Patrick Mooney (Lang Labor Party) was elected to fill a vacancy in the seat of Senator Walter Duncan (National Party); in 1975, Cleaver Bunton (Independent) was elected to fill the vacancy in the seat of Senator Lionel Murphy (Australian Labor Party).

3 *Commonwealth Electoral Act 1918* (Cth), s 163.

Procedures for filling Senate vacancies

Where a casual vacancy arises in the Senate, the President of the Senate writes to the Governor advising that a vacancy has occurred.⁴ The Governor then writes to the President of the Council advising of the vacancy, and the President reports the Governor's message to the House when it next meets.

It is usual for the House to resolve to take the Governor's message into consideration on receipt of a message from the Assembly proposing a joint sitting to fill the vacancy. On receipt of such a message, the Council resolves to meet the Assembly at a joint sitting to be held in the Council chamber at a date and time specified in the Council's resolution.

At a joint sitting to fill a Senate vacancy, the first item of business is the election of a member to chair the proceedings. Previous practice has been for the Premier to move that the President of the Council be the President of the joint sitting and that, in the absence of the President, the Speaker act in that capacity. After the election of the chair, the practice has been for the joint sitting to adopt rules for the conduct of proceedings, on the motion of the Premier. The main features of the rules adopted in recent years have been:

- The standing orders of the Council apply to the joint sitting.
- The member proposing any person to fill the Senate vacancy must state that the person is willing to hold the vacant place, and is a member of the same political party as that to which the senator vacating the seat belonged when elected.
- If only one person is proposed and seconded, the Chair must put the question 'That [name of person] be chosen to hold the place in the Senate rendered vacant by the resignation of [Senator]' and, if the question is passed in the affirmative, must declare the person elected.
- If more than one person is proposed, the person to fill the vacant seat must be chosen by open voting.
- In the case of an equality of votes in any division the Chair must give a casting vote.

At the conclusion of the joint sitting, the President resumes the Chair of the House, announces the name of the person elected to fill the casual vacancy in the Senate, and tables the minutes of the joint sitting. The President also notifies the Governor in writing of the person elected.

A list of casual Senate vacancies for New South Wales is attached.

⁴ Section 21 of the Commonwealth Constitution provides that whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

CASUAL VACANCIES FILLED SINCE 1901 (NEW SOUTH WALES)

Outgoing member	Date of vacancy	Cause of vacancy	Party	New member	Date of becoming a member	Party
RE O'Connor	27/09/1903	Resigned	Protectionist	CK Mackellar	8/10/1903	Protectionist
HE Pratten	23/11/1921	Resigned	National	HCM Garling	15/12/1921	National
ED Millen	14/09/1923	Deceased	National	W Massey-Greene	17/10/1923	National
A McDougall	14/10/1924	Deceased	ALP	JM Power	20/11/1924	ALP
JM Power	13/01/1925	Deceased	ALP	WA Gibbs	1/04/1925	ALP
J Grant	19/05/1928	Deceased	ALP	A Gardiner	5/06/1928	ALP
JWL Duncan	1/12/1931	Resigned	National	PF Mooney	23/12/1931	Lang Labor
LT Courtenay	11/7/1935	Deceased	United Australia	JGD Arkins	26/09/1935	United Australia
WP Ashley	27/06/1958	Deceased	ALP	JP Ormonde	30/07/1958	ALP
WW Spooner	14/07/1965	Resigned	Liberal	RC Cotton	4/08/1965	Liberal
GC McKellar	13/04/1970	Resigned	Country	DB Scott	6/08/1970	Country
JP Ormonde	30/11/1970	Deceased	ALP	JR McClelland	16/03/1971	ALP
LK Murphy	10/02/1975	Resigned	ALP	CE Bunton	27/02/1975	Independent
RC Cotton	13/07/1978	Resigned	Liberal	CJG Puplick	26/07/1978	Liberal
JR McClelland	21/7/1978	Resigned	ALP	KW Sibraa	9/08/1978	ALP
D McClelland	23/01/1987	Resigned	ALP	SM West	11/02/1987	ALP
AT Gietzelt	27/02/1989	Resigned	ALP	JP Faulkner	4/04/1989	ALP
P Baume	28/01/1991	Resigned	Liberal	JW Tierney	21/02/1991	Liberal
PA McLean	23/08/1991	Resigned	Australian Democrats	KN Sowada	28/08/1991	Australian Democrats
KW Sibraa	1/02/1994	Resigned	ALP	BJ Neal	8/03/1994	ALP
BK Bishop	24/02/1994	Resigned	Liberal	RL Woods	8/03/1994	Liberal
GF Richardson	25/05/1994	Resigned	ALP	MG Forshaw	10/05/1994	ALP

Outgoing member	Date of vacancy	Cause of vacancy	Party	New member	Date of becoming a member	Party
S Loosley	21/05/1995	Resigned	ALP	TC Wheelwright	24/05/1995	ALP
ME Baume	9/09/1996	Resigned	Liberal	WD Heffernan	18/09/1996	Liberal
RL Woods	7/03/1997	Resigned	Liberal	MA Payne	9/04/1997	Liberal
BK Childs	10/09/1997	Resigned	ALP	G Campbell	17/09/1997	ALP
BJ Neal	3/09/1998	Resigned	ALP	SP Hutchins	14/10/1998	ALP
DGC Brownhill	14/04/2000	Resigned	National	JAL Macdonald	4/05/2000	National
J Tierney	14/04/2005	Resigned	Liberal	CA Fierravanti-Wells	5/05/2005	Liberal