Constitution Alteration (Disqualification of Members and Candidates) Bill 1989
(Private Senator's Bill)

Date Introduced: 10 May 1989
House: Senate
Presented by: Senator Paul McLean

Digest of Bill

Purpose
To allow public employee's to stand for election to the Parliament without having to resign from their jobs.

Background
The Constitution can only be altered under the terms of section 128 of the Constitution which requires an Act of Parliament and a successful referendum. The Bill aims to complete the first of these requirements.

Section 41(iv) of the Constitution provides that a person cannot be chosen or sit as a member of Parliament if they hold any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth. This exclusion has a long history, dating back to early eighteenth century British statutes, and was designed to prevent the use of Crown patronage to win the support of Members of Parliament. In recent times the exclusion has been seen as necessary to prevent the mixing of the Executive and Parliamentary arms of Government. The disqualification does not apply to Commonwealth and State Ministers and defence force personnel.

Section 44(iv) reform proposals date back to 1929, when two members of a Royal Commission on the Constitution supported the right of public servants to stand for Parliament without resigning their position in the public service. They proposed that the resignation of public servants should take effect from the date they are declared elected. In 1978, a Private Senator’s Bill was introduced into the Senate, the purpose of which was to allow public servants to stand for Parliament without risking their jobs. The Bill lapsed in 1980, was re-introduced in 1981, and lapsed again in 1987. These Bills prompted the Senate Standing Committee on Constitutional and Legal Affairs to examine section 44(iv) of the Constitution in its 1981 report titled, The Constitutional Qualification of Members of Parliament. The Committee recommended that persons who hold an office of profit under the Crown should be able to stand for election and, that if successful, their previous employment would cease upon the receipt of a Parliamentary allowance.1
In 1988, the Constitutional Commission re-examined section 44 (iv). The Commission recommended that the Constitution be changed to provide that Commonwealth, State and Territory employee's and office holders who become members of Parliament should be deemed to have ceased to hold their job on the day before they become a member of the Parliament.²

Main Provisions

Sub-section 44 (iv) of the Constitution and its proviso will be repealed by clause 2.

A new section 45A, which will be inserted into the Constitution by clause 3, will provide that any Commonwealth, State or Territory public servant, full-time member of the defence forces, person employed by a Commonwealth, State or Territory authority (other than a prescribed authority), or member of the Parliament of a State or Legislature of a Territory, who is elected, chosen or appointed to be a member of the Parliament will be deemed to have ceased their former employment the day before their Parliamentary salary becomes payable. If a current member of Parliament becomes an employee described above, their place in Parliament will become vacant. The Parliament may make laws declaring authorities to be prescribed authorities or for revoking such laws.

References


For further information, if required, contact the Law and Government Group.

20 July 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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