Constitution Alteration (Electors' Initiative) Bill 1989
(Private Senator's Bill)

Date Introduced: 12 April 1989
House: Senate
Presented by: Senator Michael Macklin

Digest of Bill

Purpose
To allow electors to propose laws to change the Constitution that will be subject to a referendum.

Background
Elector's initiative is a procedure that allows a prescribed number of voters to compel the holding of a binding poll on whether a proposed law of their own choosing should be adopted, or whether a particular law already in force should be repealed. Initiatives are of two kinds, constitutional and legislative.1

A constitutional initiative gives a prescribed number of voters the power to petition for the holding of a ballot on a proposed amendment to the constitution. This form of initiative exist in Switzerland and in 14 of the American states. In Switzerland the process can be started either by 100 000 voters or by eight of the canton governments.

Legislative initiative exists in Austria, in Italy, in the Swiss cantons and in 23 American states. There are two kinds of legislative initiative, direct and indirect. Under direct initiative, a petition of a prescribed number of voters causes a proposed measure to be placed on a ballot paper for submission to the electorate without any action by the Parliament. Indirect initiative gives the parliament a prescribed period of time in which to enact the measure proposed by the initiative. If parliament refuses or fails to act, the measure is then put to the voters for their decision. This version exists in Italy and in seven American states.2

Arguments advanced for elector's initiative include: that it would reduce voter apathy and alienation from the political process by giving electors a direct role in determining the shape of constitutional and legislative change; that it would play a useful educative role; and, in relation to constitutional initiative's, that it would lead to more acceptance of constitutional change and a wider range of alterations being proposed.3
Arguments advanced against elector's initiative include: that it would undermine the existing form of government; that direct legislation is costly and inconvenient; moneyed interests and the media would wield undue influence; and that initiative measures would be badly drafted and inflexible.  

Main Provisions

Clause 3 will insert a new section 129 into the Constitution. Basically, the proposed section will allow a proposed law to change the Constitution, that has the support of 5% of the number of electors who voted at the last general election (as shown by people signing a petition), to be put to a referendum at the next general election.

The initiator's of a proposal will have to be qualified to vote at a House of Representative's (Lower House) election and be registered by the Australian Electoral Commission (AEC) as initiator's. The AEC is to print copies of the petition signature forms for distribution by initiator's. Only persons qualified to vote at a Lower House election may sign a petition. The AEC is to verify the validity of petition signatures by the random sampling of signatures. A proposed law is to contain constitutional amendments necessary to achieve one purpose only.

At any time during the signature collection period the Attorney-General or any other person qualified to vote at a Lower House election may apply to the Federal Court for a declaration that the proposed law is not in the appropriate form or does not seek to change the Constitution in a way that is practicable or legally effective. If the Court make such a declaration the petition will have no force or effect.

References

2. Ibid., p. 12.

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

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