Constitution Alteration (Fair Elections) Bill 1988

Date Introduced: 10 May 1988
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney - General

Digest of Bill

Purpose

To amend the Commonwealth of Australia Constitution Act 1900 (the Constitution) to provide:

(1) for the determination of electoral divisions for elections of the House of Representatives, State Parliaments, and legislatures of the Territories;

(2) for elections for the House of Representatives, State Parliaments, and legislatures of the Territories, based on the principle of one vote, one value;

(3) for a guarantee and conferral, on all Australian citizens over the age of 18, of the right to vote in Commonwealth, State and Territory elections, subject to certain qualifications;

(4) for consequential amendments.

Background

This Bill addresses some of the recommendations made by the Constitutional Commission in its first report, presented on 27 April 1988, regarding democratic, Parliamentary elections.

The Commission concluded that as the right to vote was so fundamental to democracy it should be safeguarded effectively in the Constitution. It discussed the effect of current Constitutional provisions and High Court interpretation in limiting what might otherwise have been read as a voting
guarantee in section 41 of the Constitution. It recommended that the Constitution preserve the power of Parliaments to make laws defining voting entitlements beyond a recommended guaranteed minimum of the attainment of eighteen years of age and the right to vote only once for candidates at each election. It recommended that Parliaments retain power to disqualify those who because of unsoundness of mind, are incapable of understanding the nature and significance of enrolment and voting, or those who are undergoing imprisonment for an offence.

The Commission also recommended that contrary to current Constitutional provisions (sections 24 and 29) as interpreted by the High Court, one vote, one value should be guaranteed. This means that votes cast should bear approximately the same weight by ensuring that those elected represent about the same number of voters. The Commission rejected the argument that differential weighting could be justified on economic or geographic grounds and concluded that one vote, one value was an essential principle of democracy. It recommended that the principle should be entrenched for electoral divisions where members of the House of Representatives or the legislatures of a State or Territory are chosen.

Section 29 of the Constitution now confers power to divide the States into electoral divisions for House of Representatives elections. Under section 29, Federal Parliament is able to determine the divisions, subject to the limitation that a division cannot be formed out of parts of different States. This power to choose the number of members for a division implies a power to create multi-member electorates as well as single member electorates.

The Commonwealth Electoral Act 1918, Part IV, prescribes that only one member can be elected for each electoral division. The quota of electors for a electoral division is determined by a division of the number of electors enrolled in a particular State by the number of members to be chosen for that State at a general election.

The Federal, New South Wales, Victorian and South Australian Parliaments have all passed laws to ensure that electoral divisions contain approximately equal numbers of electors, with an allowable variation of 10% above or below the average. In other States, there are wide differences in the size of electoral divisions. For example, the Electoral Districts Act 1985 (Qld), created four electoral zones each with a different prescribed quota of electors. A 20% tolerance above or below the average from the quota for that particular zone is permitted in three of the electoral zones. Section 14(a) of the N.T. 5Electoral Act 1980, also allows for a 20% tolerance above or below the average for the election of members of the Northern Territory Legislative Assembly.

This Bill proposes that an election held in electoral divisions more than 1 year after the commencement of the amendments will be invalid unless based on a fair redistribution within the previous seven years. Any Federal, State or Territory election held after 12 months following the enactment of the changes will need to be based on a 'fair redistribution' as defined.
Section 30 of the Constitution enables Federal Parliament to determine the qualifications of electors of the House of Representatives, which apply also to Senators through section 16 of the Constitution, subject to possible limitations under section 41 of the Constitution. Current electoral qualifications prescribe that a person who is on the electoral Roll for a division is entitled to vote. Such a person must be 18 years of age and an Australian citizen, and not subject to disqualification. The latter part of section 30 of the Constitution is designed to prevent plural voting.

The Constitutional Commission also recommended the repeal of section 25 of the Constitution which will be effected with the enactment of this Bill. That section was designed to penalise any State, with respect to its Federal representation, which prevented persons of any race from participating in State elections for the Lower House. Section 25 provides that for the purpose of determining the population of that State, the people of the excluded race shall not be counted. Early discriminatory laws, as well as section 127 of the Constitution, have now been repealed. Section 25 of the Constitution currently has no practical operation and if retained, would be inconsistent with the intended new guarantees of a right to vote and one vote, one value.

Main Provisions

Clause 3 provides for the qualification of electors of Senators in each State or Territory to be the same as that prescribed by Federal Parliament as the qualification for electors of Members of the House of Representatives.

Clause 4 omits section 25 of the Constitution.

Clause 5 inserts new sections 29 and 30 for existing sections 29 and 30 of the Constitution.

Proposed sub-section 29(1) provides that the Commonwealth may make laws providing for electoral divisions for the House of Representatives and for fixing the number of members to be chosen for each division.

Proposed sub-section 29(2) provides that the number of Members shall be the same for each electoral division of a State.

Proposed sub-section 29(3) provides that no electoral division may be formed out of different parts of different States.

Proposed sub-section 29(4) provides that an electoral division may be formed out of an area comprising two or more areas, each of which is a Territory or part of a Territory.
Proposed section 30 provides that the Commonwealth may make laws to prescribe the qualification of electors of Members of the House of Representatives in each State or Territory.

Clause 7 inserts a new section 107A in the Constitution.

Proposed sub-section 107A(1) provides that Members of a House of the Parliament of a State are to be chosen by the people of that State.

Proposed sub-section 107A(2) provides that State Parliaments may prescribe the qualifications of electors of Members of a House of the Parliament of a State. Proposed section 107A is subject to the provisions of the Constitution.

Clause 8 inserts a new section 122A in the Constitution.

Proposed sub-section 122A(1) provides that the legislature of a mainland Territory, or a combination of such Territories, shall be composed of Members directly chosen by the people of the Territory or Territories.

Proposed sub-section 122A(2) allows a Territory law, subject to Commonwealth legislation, to prescribe the qualifications of electors of Members of a Territory legislature. Proposed section 122A is subject to the provisions of the Constitution.

Clause 9 inserts a new Chapter VIA, entitled 'Fair Elections', in the Constitution.

Proposed section 124A defines the terms 'election', 'electoral region', and 'fair distribution' used in proposed Chapter VIA.

'Fair redistribution' is defined as a distribution in accordance with proposed section 124B.

Proposed section 124B establishes the requirements for a valid determination of electoral divisions in an electoral region. The required number of electors in each division, in an electoral division, is to be a number not greater than 10% above or below the average number of electors in the divisions in that electoral region, multiplied by the number of Members to be chosen for a particular division.

Proposed section 124C provides that an election held in electoral divisions more than one year after the commencement of this Chapter is invalid unless it is based on a fair redistribution within the previous seven years. A fair redistribution must also occur before any election is held in divisions after the commencement of this Chapter, but within a period of 12 months.
There must be a fair redistribution where more than one-third of the electoral divisions have exceeded the required 10% tolerance level for more than two months.

Proposed section 124F gives every elector the right to challenge a determination of electoral divisions on the ground that the determination was not a fair distribution.

Proposed section 124G confers a right to vote in the House of Representative, State, and Territory elections. By virtue of proposed section 8, this provision also applies to the Senate. The right to vote extends to all Australian citizens who comply with the conditions prescribed by Commonwealth, State, or Territory laws as to residence, enrolment, and age. Exceptions include unsoundness of mind and those undergoing imprisonment for an offence. Proposed sub-section 124G(2) provides for a judicial enforcement of the right to vote.

Proposed section 124H provides that electors, in choosing Senators, Members of the House of Representatives, Members of a House of the Parliament of a State, or Members of the legislature of a Territory, shall vote only once.

References


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

7 July 1988

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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