CONSTITUTIONAL ALTERATION (DISQUALIFICATION OF MEMBERS AND CANDIDATES) BILL 1985

Date Introduced: 28 March 1985
House: Senate
Presented by: Senator Colin Mason

(Private Senator's Bill)

Short Digest of Bill

Purpose

To amend the Constitution to allow persons holding an office of profit under the Crown to stand for Parliament.

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 present Bill aims to complete the first of these requirements.

Section 44(iv) of the Constitution provides that persons who hold an office of profit under the Crown are incapable of being chosen for, or sitting as, a member of either House of Parliament. 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 more recent times the exclusion has been seen as necessary to prevent the mixing of the Executive and Parliamentary arms of Government and the possible position of a Member of Parliament offering Departmental advice to a Minister from another party.

Identical bills were introduced in 1978 and 1981, both titled Constitution Alteration (Holders of Offices of Profit) Bill, to deal with this area but neither was successful. These bills prompted the Senate Standing Committee on Constitutional and Legal Affairs to examine section 44(iv) of the Constitution in its report titled, "The Constitutional Qualifications of Members of Parliament".[1] The Committee concluded that as the Constitution presently stands 'Commonwealth and State public servants do not have equal rights with other citizens to seek election to the Commonwealth Parliament'[2] as they must resign their positions or take leave without pay before
they can nominate as a candidate for election to either House of Parliament. The Committee also noted the difficulties in determining whether a person was the holder of an office under the Crown, particularly as regards those employed by Statutory Authorities. The Committee recommended[3] that persons who hold an office of profit under the Crown be able to stand for election and, that if successful, their previous employment will cease upon the receipt of a Parliamentary allowance. This view will allow public servants and other such office holders to stand for election while maintaining their job security and income, as well as preventing any possible clash of interests. The present Bill aims to put this recommendation of the Committee into effect.

Main Provisions

Clause 2 omits the present paragraph 44(iv) and its proviso from the Constitution.

Clause 3 inserts a new section 45A in the Constitution. Sub-clause (1) states that if a Commonwealth or State public servant, a full-time member of the defence forces or a person employed by a State or Commonwealth authority (other than a prescribed authority where the person receives no renumeration except reasonable expenses) becomes eligible for a Parliamentary allowance as a Member, they shall be deemed to have resigned from that employment immediately before the allowance becomes payable. The clause also states that if a current Member of Parliament becomes a person described above, his or her place in Parliament will become vacant (sub-clause (2)). Sub-clause (3) allows the Parliament to declare authorities as prescribed authorities for the purpose of sub-clause (1). This will allow Members of Parliament to be appointed to authorities when Parliament deems it desirable.

For further information, if required, contact:

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References

2. ibid, p.42.
3. ibid, p.60.