CONSTITUTION ALTERATION (DEMOCRATIC ELECTIONS) BILL 1985

(Private Senator's Bill)

Date Introduced: 17 April 1985
House: Senate
Presented by: Senator Macklin

Short Digest of Bill

Purpose

To amend the Constitution to require that electoral divisions for both Federal and State/Territory elections contain, as near as practicable, the same number of electors; establish uniform voter eligibility criteria; extend the High Court's original jurisdiction and to remove redundant provisions.

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.

Bills similar to this have been introduced on two previous occasions. The first occurred in 1973; the Bill being presented by the then Prime Minister, the Hon. E.G. Whitlam. That Bill was essentially similar to the current Bill, with the exception that electoral districts were to be determined by reference to the number of people rather than the number of electors. The Bill was passed by Parliament but the Constitutional alteration was defeated in the 1974 referendum by 407,398 votes, with only New South Wales in favour of the change. A very similar Bill was introduced by Senator Macklin in April 1984 but lapsed with the dissolution of Parliament later in 1984.

There is currently no constitutional requirement that electoral divisions be, as near as practicable, the same size. Section 29 of the Constitution gives Parliament the power to make laws in regard of electoral divisions and, although the current electoral laws aim at equal electorates, there is no legal bar to a gerrymander.
The States are potentially more open for a Government to manipulate the electoral system in order to entrench its power, as there are generally no requirements for a referendum for changes in the States' Constitutions. Such changes can be made with a sufficient majority in Parliament. A good example of the rejection of the one-vote-one-value theory appears in elections for members of Western Australia's Legislative Council. In the 1983 election the district with the highest number of voters enrolled was North-East Metropolitan, with 85,906 voters; while the smallest was Lower North, with 7,199 voters enrolled. As both districts elected one member of the Council, a vote in the Lower North district was equivalent to 11.9 votes in the North-East Metropolitan district. In the 1983 Legislative Council elections, the Australian Labour Party gained 50.6% of first preference votes for 7 members, the Liberal Party gained 41.6% for 9 members and the National Party 3.1% for 1 member.[1]

Main Provisions

If the Bill successfully passes both Houses of Parliament, the following matters are to be put to referendums:

- The repeal of section 25 of the Constitution which allows, in certain conditions, racial discrimination in determining the size of Federal electorates (clause 2).

- An addition to section 29 of the Constitution which will ensure that State electoral divisions for the House of Representatives contain, as nearly as practicable, the same number of voters (clause 3).

- Clause 4 proposes an addition to section 30 of the Constitution to clarify who may vote at Federal elections. The amendment will make it clear that those who satisfy reasonable residence requirements, are 18 years of age (or lower if the Parliament so determines) and are not disqualified by reason of unsound mind or imprisonment are entitled to vote.

- The repeal of section 41 of the Constitution. This section was found to be meaningless in the 1983 High Court decision of Re Pearson, 45 ALR 1 (clause 5).
An amendment to section 75 of the Constitution to grant the High Court's original jurisdiction in the interpretation of electoral provisions of the Constitution (clause 6).

A new section 106A to be inserted in the Constitution (clause 7). The proposed new section will contain the eligibility criteria for voting in State and Territory elections (the same as proposed in additions to section 30) and will stipulate that State/Territory electoral divisions are to contain, as nearly as practicable, the same number of electors.

A new section 122A to be inserted in the Constitution (clause 8). The proposed section deals with the election of Territorial representatives in the Federal Parliament, and will impose the same voter and electoral division size criteria which are to be imposed on elections for Federal parliamentarians in the States by clauses 3 and 4.

For further information, if required, contact:

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Reference

1. Figure from 'Western Australian Elections 1983', Basic Paper No. 5 of 1984, Legislative Research Service.