Date Introduced: 2 April 1984
House: Senate
Presented by: Senator M. Macklin

Purpose

Subject to approval by referendum to amend the Constitution to provide a mandatory requirement that the electoral divisions of a State for both Federal and State elections shall as near as practicable contain the same number of electors in each division.

The proposed law also provides for, the repeal of Section 25 of the Constitution containing provisions as to races disqualified from voting, amendment of Section 30 to allow Parliament to lower the voting age below 18 years should if so determine, and, for addition of a new paragraph to Section 75 conferring original jurisdiction on the High Court in matters arising in relation to the electoral provisions of State or Federal Law.

Background

On 9 November 1973 the then Prime Minister the Hon. E.G. Whitlam introduced a similar Bill into the House of Representatives, with the exception that the criteria for equality in electorates was to be on the basis of the number of people rather than the number of electors. The Bill passed both Houses and the referendum was conducted on 18 May 1974. The referendum was not carried, New South Wales being the only State in which the Yes vote obtained a majority and the overall majority in favour of the No vote was 407,398. The State by State break down of voting was:
In the passage of the Commonwealth Electoral Legislation Amendment Act 1983 there was no suggestion in debate that the Whitlam proposal for division of electorates of the basis of population should be revived and in his Second Reading Speech on this Bill Senator Macklin advises that as a result of this he had varied Mr Whitlam's original Bill so that the numbers ascertained in respect of Divisions shall be, as nearly as practicable, the same in respect of the numbers of electors rather than the numbers of people in each electorate.

Main Provisions

Clause 3 of the Bill seeks to repeal Section 25 of the Constitution. That section provides that if by the law of any State persons of any race are disqualified from voting at elections for the more numerous House of the State, then in reckoning the number of people of the State or of the Commonwealth for the purpose of determining the membership of the House of Representatives in accordance with the provisions of Section 24, persons of that race resident in that State shall not be counted. Mr Whitlam described this provision in 1973 as archaic and objectionable, Senator Macklin reiterates these sentiments in 1984. The section no longer has any practical operation as early discriminatory laws of States have been repealed.

The proposed amendment to Section 29 of the Constitution is contained in clause 4 of the Bill. The paragraph to be added would have the effect that when exercising the power conferred by Section 29 to legislate to divide the States into electoral divisions the Parliament would be required to provide in such legislation that the
number of electors in each division should as nearly as practicable be the same. In the light of the High Court's interpretation of the expression "as near as practicable" in McKellar's Case (1977) 139 CLR 527 it would seem likely that this amendment to the Constitution would render invalid the ten per cent leeway for departure from quotas currently allowed in a redistribution by Section 25S of the Commonwealth Electoral Act 1918. The proposed provision would not operate in respect of a division of a Territory for the purpose of representation under Section 122 of the Constitution.

The addition to Section 30 of the Constitution provided for by clause 5 of the Bill would enshrine in the Constitution the age of 18 years as the upper age limit for voting but would allow Parliament to fix such lower age as it might consider appropriate.

By clause 6 Section 75 of the Constitution would be amended by vesting in the High Court original jurisdiction in matters relating to the electoral provisions of the Commonwealth under Sections 24, 29, 30 and 41 of the Constitution and in matters relating to the electoral provisions of the States under the proposed new Section 106A discussed in the following paragraph.

The proposed new Section 106A of the Constitution would be inserted by clause 7 of the Bill. The effect of this proposed section would be twofold:

(a) to provide that the eligibility criteria in respect of qualification of electors for the purposes of State elections would be the same as or similar to the Commonwealth, and

(b) to require that State legislation in respect of the division of the State into electoral divisions adhere to the principle of equality of electors as nearly as practicable.

For further information, if required, contact:

13 April 1984
Law & Government Group
LEGISLATIVE RESEARCH SERVICE