REFERENDUM (MACHINERY PROVISIONS) BILL 1984

Date Introduced: 9 May 1984
House: House of Representatives
Presented by: Hon. M.J. Young, M.P., Special Minister of State

Short Digest of Bill

Purpose

To make machinery provisions for voting at referendums, including voting by electors in the Territories, and to make changes to referendum provisions consequential upon the passage of the Commonwealth Electoral Legislation Amendment 1983, and to incorporate modifications to current referendum procedures.

Background

As part of its electoral platform for the 1983 elections the Australian Labor Party stated that if it were elected to Government it would undertake extensive reforms of Australia's electoral laws. On 4 May 1983 the House of Representatives resolved to appoint a Joint Select Committee on Electoral Reform and the Senate concurred on 11 May 1983. The Committees First Report was tabled on 13 September 1983 and contained some 132 recommendations, the majority of which were adopted by the Government and incorporated in the Commonwealth Electoral Legislation Amendment Act 1983.

The reforms effected by the 1983 legislation were not applied to the voting at referendums and the present Bill aims to achieve this result by repealing the Referendum (Constitution Alteration) Act 1906 and subsequent amending Acts and replacing that legislation with a new Act.

The Bill also provides the necessary mechanisms to enable electors for the Territories to vote at future referendums. By virtue of the approval given by the electors of the States to the Constitution Alteration (Referendum) Act 1977 the electors of the Territories became eligible to vote at referendums for amendment of the Constitution. However, it was not until 1983 that an attempt was made to provide the machinery to implement this decision in the form of the Referendum (Constitutional Alteration) Amendment Bill of that year. That Bill was returned by the Senate to the House of Representatives with
amendments one of which was not agreed to by the House of Representatives, the amendment was insisted upon by the Senate. The Bill remains before the House of Representatives and until formally discharged might possibly be described as one which the Senate has failed to pass within the meaning of Section 57 of the Constitution.

Main Provisions

The provisions giving effect to the 1977 referendum enabling electors for the Territories to vote at future referendums is contained in clause 4 of the Bill which provides that an elector is entitled to vote at a referendum where, if the referendum were an election, he would be entitled to vote at the election.

Clause 11 of the Bill changes the requirements of the Electoral Commissioner in respect of the distribution to the electors of the arguments for and against the proposed law by providing simply that the printed cases be posted to electors not later than 14 days before the voting date for the referendum.

Provisions are also contained in clause 11 that the Electoral Commissioner need not distribute the Yes/No cases if he is informed by the Minister that the referendum is not to be held. In his Second Reading Speech the Minister states that at present the Electoral Commissioner is not under legal duty under the Act to print or distribute the Yes/No pamphlets where the Government postpones or cancels a referendum and that it is highly desirable that it be expressed in the new Act that this is the case. Both the Minister's Second Reading Speech and the Bill as drafted appear to presume that a power exists in the Government to postpone or cancel a referendum although this issue has never been tested. The only instance in which Bills for referendums having passed both Houses were not proceeded with (prior to the present Government's refusal to put to the electorate the 5 proposed laws passed by the House of Representatives on 17 November 1983) occurred in 1915 when following agreement by the States to give a temporary grant of the required powers for the duration of the existing war and 12 months thereafter the Commonwealth enacted the Referendum (Constitution Alteration) Act (No. 2) to enable the Governor-General to direct the withdrawal of the writs. Despite the 1915 action it would seem arguable that the provisions of the second paragraph of Section 128 of the Constitution are mandatory one a proposed law for the alteration of the Constitution has been passed by an absolute majority of each House of the Parliament but this view has yet to be tested.
As far as the machinery provisions in respect of the casting of votes at referendums are concerned the following matters outlined by the Minister in his Second Reading Speech are of interest:

- the obligation of Aboriginals to enrol and vote (by virtue of the operation of Section 42 of the Commonwealth Electoral Act 1918 and clause 45 of the Bill)
- mobile polling booths for referendums (clauses 47-52)
- votes for Antarctic electors (clauses 74-88)
- register of postal voters applicable to voting at referendums (clauses 53-58)
- voting procedures for itinerant electors (clause 39)

For further information, if required, contact:

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