COMMONWEALTH ELECTORAL LEGISLATION AMENDMENT 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 amend the Commonwealth Electoral Act 1918, the Commonwealth Electoral Legislation Amendment Act 1983 and the Representation Act 1983 subsequent to the further review of electoral legislation following the substantial amendments made by the Commonwealth Electoral Legislation Amendment Act 1983.

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 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 Committee's 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.

This Bill proposes a number of amendments resulting from a further review of electoral legislation, the majority of which are of a minor or machinery nature.

Main Provisions

Clause 2 provides that the substantive amends to the Commonwealth Electoral Act 1918 contained in Part II of Schedule 1 and the Amendments to the Representation Act 1983 contained in Schedule 4 will be deemed to have come into operation on 21 February 1984. The Minister in his Second Reading Speech on the Bill does not refer to the retrospective operation of these provisions and the Explanatory Memorandum accompanying the Bill does not provide any explanation in respect of this matter. The significance of the date 21 February 1984 would appear to be that this was the date fixed by proclamation for the
Commonwealth Electoral Legislation Amendment Act 1983 and the Representation Act 1983 to come into operation. The amendments contained in Part II of Schedule 1 would appear to merely correct drafting errors in the original Bill and the effect of the retrospective nature of these amendments would seem merely to have the legislation in its desired form from the time it commenced to operate, similar considerations apply to the amendment to Section 5(3) of the Representation Act contained in Schedule 4 of the Bill.

However, in respect of the amendment to Section 5(7) of the Representation Act the amendment is to correct a more serious defect in the legislation. As Section 5(7) of the Act stands if the first meeting of the next Parliament were to occur after 1 July 1985 there would be a problem in identifying those 5 of the 7 Senators chosen at the half-Senate election (which must be held prior to 1 July 1985) who are, as provided in Section 5(5), to begin their terms of service on 1 July 1985. The problem is that the existing Section 5(7) defines a non-sitting Senator as "a Senator who does not, immediately before the day referred to in subsection (1), hold a place in the Senate". Currently if that day does not occur until after the 5 places in each State fall vacant on 1 July 1985 it would not be possible on 1 July 1985 to decide who was "a non-sitting Senator" as defined and there it would not be possible to apply the provisions of Section 5(5).

The proposed amendment to Section 5(7) contained in Schedule 4 of the Bill seeks to rectify this situation by providing that a reference to a non-sitting Senator is a reference to a Senator who does not hold a place in the Senate immediately before 1 July 1985 or, if the next Parliament first meets before that date, the day of that first meeting.

The substantive amendments to the Commonwealth Electoral Act 1918 contained in Part I of Schedule 1 deal largely with electoral machinery and are outlined in the Explanatory Memorandum accompanying the Bill. However, the proposed amendment of Section 135(26) warrants some reference. By the insertion of the word "all" ahead of "the surplus votes" it is intended that the transfer of the surplus votes of an elected candidate will constitute a single, separate transfer of votes. This is of significance where the transfer of an elected candidates' surplus elects two candidates in that the distribution of all of the elected candidates' surplus being regarded as a single transfer the order of election of the two candidates depends on which of them has the larger surplus over quota.
Clause 4(1) provides for formal amendments to the Commonwealth Electoral Act 1918 whilst clause 4(2) provides in Schedule 3 a new form Senate ballot paper in which the requirement of printing letters before the squares on the ballot paper is deleted.

Clause 5 of the Bill provides for the re-numbering and re-lettering of the Commonwealth Electoral Act whilst clause 6 is designed to remedy the disenfranchisement of service personnel on overseas service as at 20 February 1984 which was inadvertently brought about by the insertion of the new Section 39A in the Commonwealth Electoral Act 1918 by Section 24 of the Commonwealth Electoral Legislation Amendment Act 1983.

For further information, if required, contact:

30 May 1984
Law & Government Group
LEGISLATIVE RESEARCH SERVICE