Date Introduced: 12 May 1983
House: Senate
Presented by: Senator Evans

Short Digest of Bill

Purpose

To amend the Constitution to confer on the High Court an advisory jurisdiction.

Background

It was agreed at the Constitutional Convention in Adelaide in April 1983 that a referendum (which is required for Constitutional amendment) should be held to insert in the Constitution a new provision enabling the High Court to give advisory opinions. The jurisdiction of the High Court will be broadened by the amendment because it will not be necessary to wait for a dispute to arise in order to test constitutional validity. Once this Bill has passed through Parliament, a referendum will be held on the subject. If the majorities required by s.128 of the Constitution are achieved, the Constitution will be amended as proposed in the Bill.

Main Provisions

The Bill provides that the Governor-General in Council may refer to the High Court for its opinion, questions on the validity of Commonwealth enactments and proposed laws (new 77A(1)(a)); questions on the interpretation and application of various constitutional provisions dealing with double dissolutions, the establishment of new States and Constitutional amendments (new 77A(1)(b)); questions on disqualification from becoming a Member of Parliament (with the consent of either House of Parliament) (new 77A(1)(c)); questions arising in relation to treaties (new 77A(1)(d)).

States and Territories can also seek from the High Court an advisory opinion on the validity of their Acts or
proposed laws (new 77A(2)(a)), or an opinion on the manner and form required to pass a law (new 77A(2)(b)).

Matters referred under the proposed section 77A must be heard by at least five Justices (new 77A(5)). Matters referred can specify facts of circumstances to be assumed for the purpose of resolving the issue (new 77A(3)).

The matters referred are to be heard in open court with the help of argument including that presented by relevant Attorneys-General. Each Justice must make public his opinion (new 77A(4)).

For further information, if required, contact:

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19 May 1983