CONSTITUTION ALTERATION (ELECTORS INITIATIVE) BILL 1982 [1983]
(Private Senator's Bill - Senator Mason)

Date Introduced: 20 May 1982
House: Senate
Presented by: Senator C. Mason

Short Digest of Bill

Purpose

To enable a referendum to be conducted pursuant to Section 128 of the Commonwealth of Australia Constitution Act which if carried would insert new Sections 129 to 134 inclusive allowing for Commonwealth Legislation, including amendments to the Constitution, to be effected by way of referenda initiated by way of petitions signed by not less than 250,000 electors.

Background

The concept of citizen initiated referenda resulting in the introduction of new legislation or the amendment of existing legislation has existed in Switzerland since at least 1892 and in 26 of the constituent States of the United States of America commencing with South Dakota in 1898. However, the United States is one of the few democratic countries that has never had a referendum at the national level.

A Bill in similar terms to the present Bill was introduced into the 31st Parliament on 10 September 1980 but lapsed on the dissolution of that Parliament on 18 September 1980.

This Bill was introduced as a Private Senator's Bill on 20 May 1982 but lapsed with the dissolution of Parliament. It was restored to the Notice Paper by Resolution of the Senate on 22 April 1983[1].

On 13 October 1983 the Second Reading Speech of the Bill was negatived in the Senate and on 18 October 1983 Senator Mason gave notice that he would move on the next day of sitting that the Second Reading of the Bill be restored to the Notice Paper. On 19 October 1983 the motion that the Bill be restored to the Notice Paper and be made an Order of
the Day for the next day of sitting was put and passed.

This proposal for amendment to the Constitution may be submitted to a referendum if either:

(i) the Bill is passed by both Houses of the Parliament by an absolute majority; or

(ii) the Bill is passed in the Senate by an absolute majority, and the House of Representatives rejects or fails to pass it, or passes it with any amendment to which the Senate will not agree, and if after an interval of 3 months the Senate, in the same or the next session, again passes the Bill by an absolute majority (Section 128 Constitution).

Main Provisions

Clause 3 amends Section 1 of the Constitution to provide that legislative power shall be vested in the Federal Parliament subject to the provisions of the new Chapter IX to be inserted providing for elector's initiatives.

Clause 4 amends Section 128 of the Constitution to provide that the machinery set out therein for amendment of the Constitution shall also be subject to the provisions for elector initiated referenda.

By Clause 5, new Chapter IX "Elector's Initiative" consisting of Sections 129 to 134 inclusive is added to the Constitution.

The new Section 129 would confer on qualified electors the power to make laws on any matter with respect to which the Parliament has power to legislate, and also to make laws altering the Constitution - a power not possessed by the Parliament.

The mechanics by which such laws might be made are provided by the new Section 130. The proposed legislation would be initiated by a petition to Parliament bearing a minimum of 250,000 signatures of qualified electors and would be required to be submitted by way of referendum to the electorate not less than two or not more than twelve months after presentation. For laws other than those seeking to amend the Constitution or seeking to effect the representation of a State in the Parliament or the boundaries of a State a simple majority would be sufficient. An amendment of the Constitution could be effected by a majority of electors overall and a majority in a majority of
States OR by a two-thirds majority overall. In respect of a law effecting State representation or State boundaries a majority of electors in the effected State together with an overall majority will be required UNLESS there is a two-thirds majority overall.

The provisions of the proposed new Section 131 are designed to prevent Parliament from repealing or amending any law made by virtue of the new Chapter IX other than by reference to the electorate. An exception is made in respect of elector initiated legislation containing "sunset" clauses.

Should an inconsistency arise between legislation made by the Parliament and legislation resulting from elector initiative the new Section 132 is designed to ensure that the latter shall prevail.

For further information, if required, contact:

Law & Government Group
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LEGISLATIVE RESEARCH SERVICE

References