

Electoral and Referendum Amendment Bill 1988

Date Introduced: 29 April 1988

House: Senate

Presented by: Senator the Hon. Robert Ray, Minister for Home Affairs

Digest of Bill

Purpose

The Bill will continue the implementation of recommendations made following a review of the mechanics of the electoral system. The major changes relate to inclusion of a formula for the calculation of representatives for the Territories and the action to be taken by the returning officer in the event of deadlocked elections. There are also minor amendments to the disclosure rules relating to gifts.

Background

This legislation follows two reports into aspects of the electoral system by the Joint Select Committee on Electoral Reform. The first report, delivered in 1985, dealt with the representation of new States and the Territories. The second report dealt with the effect of previous amendments on the 1984 election and was delivered in December 1986.

This is the third piece of legislation to be introduced as a result of these reports. The *Commonwealth Electoral Amendments Act 1987* introduced reforms that were considered necessary before the 1987 election, while the Referendum (Machinery Provisions) Amendment Bill 1988 is largely consequential on the changes introduced by the 1987 Act. In the second reading speech, the Minister foreshadows further legislation to clarify the provisions involved in the recent High Court case concerning the status of Robert Wood.

The November 1985 report of the Joint Select Committee dealt with the calculation of representatives for the Territories and new States. The report recommended that the A.C.T. and the Northern Territory each be entitled to a minimum of one member and that the general quota be used to determine whether

further representation is justified. Other Territories would have representatives of their own when they reached the quota level. In the Senate, the A.C.T. and the Northern Territory are each to be represented by at least two Senators with any increase being on the basis of one Senator for each two new House of Representatives members. The Committee also recommended that no new State be admitted on terms more favourable than those recommended for the Territories.

A recommendation in the second report dealt with the situation of tied elections. Currently, the Divisional Returning Officer determines which candidate is elected. While the chances of a tied election are small, the situation can arise. For example, in the March 1985 Victorian State election, the votes in the upper House seat of Nunawading, on which the balance of power in that chamber rested, were tied. As a result, the returning officer was left to decide the outcome of the election and determined which candidate would be elected by drawing a name from a hat. (This result was later overturned by the Court of Disputed Returns on the grounds that 36 votes had not been counted.)

While parts of this Bill will alter the procedures surrounding referendums and could come into force before the September referendums, the Minister stated in the second reading speech that 'the amendments relating to the operation of the referendum Act will not be proclaimed until after any possible referendum this year'.

Main Provisions

The representation of Territories in the Senate is dealt with in clause 14 which will amend section 40 of the Principal Act. Where the number of members of the House of Representatives for the ACT or Northern Territory reaches six or more, they will be entitled to be represented by one Senator for every two members (presently they are guaranteed a minimum of two Senators though the A.C.T. currently has only two House of Representatives seats and the Northern Territory one). Other Territories will be entitled to one Senator for each two members.

Proposed sub-section 48(2A) of the Principal Act deals with the representation of the Territories in the House of Representatives. If the population is less than, or equal to, 0.5 of the general quota, there will be no member for that Territory. If the population is greater than 0.5 of a quota and equal to or less than 1.5 of a quota there will be one representative. This pattern continues for further representation. Proposed sub-section 48(2B) provides that the A.C.T. and Northern Territory will have at least one member each (clause 18).

Under amendments contained in clause 32, each Senator will be entitled to five copies of the electoral roll for the State or Territory they represent. Similarly, each member will be entitled to five copies of the roll for the Division they represent.

All prisoners will be entitled to enroll to vote by virtue of clause 35 which will insert a new section 96A into the Principal Act.

Clause 52 will repeal Part XV of the Principal Act and insert new Parts XV and XVA which deal with postal voting and pre-poll voting. The major purpose of the amendments is to clarify the difference between the two types of voting (the major difference being that pre-polling votes are applied for and returned in person while postal votes are sent and returned by post.) Proposed section 183 states that an elector may apply for a postal vote on any of the grounds set out in Schedule 2. These include that the elector will not be in the State or territory for which they are enrolled; is further than eight kilometres from a polling booth for the whole day; or that the elector has a serious illness. Applications may also be made for registration as a general postal voter. These may be made if, amongst other grounds, the person's living place is further than 20 kilometres from the nearest polling booth; the person is in hospital and unable to travel to the polling place; is seriously ill and cannot leave home; or the elector is in custody (proposed section 184A). However, registration will not be sufficient, in general, to guarantee a postal vote (proposed section 185A), with, in most cases, an application only for a postal vote being sent to registered postal voters. The ballot paper is to be sent after the application is returned (proposed section 188). The remainder of the Part deals with procedural matters.

Proposed Part XVA deals with pre-poll voting. Electors may apply for pre-poll votes on the same grounds as they can apply for postal votes. As distinct from postal votes, applications for a pre-poll vote must be made in person (proposed section 200C). In addition, the issuing, witnessing and registration procedures differ from those for postal votes.

Clauses 60, 61, 63 and 64 provide for mobile booths to have greater access to hospitals, prisons and remote areas. Visits to prisons are to be arranged with the relevant prison authorities.

Section 229 of the Principal Act will be amended to remove the requirement that presiding officers at polls ask specific questions to establish identity and address. Instead, they will be required to ask such questions as they consider necessary to establish identity and address (clause 66).

Clause 73 will amend section 245 of the Principal Act to make it clear that a religious belief that it is the person's duty not to vote will be a sufficient reason for not voting.

Section 274 of the Principal Act will be amended to deal with the actions of the returning officer in cases of a tied vote in a House of Representatives division. First, there is to be a new scrutiny of votes. If the election is still tied, the returning officer is to notify the Electoral Commission that the election cannot be decided (clause 81).

Section 306 of the Principal Act will be amended by clause 97 to require parties not to accept gifts of \$1000 or more from unincorporated associations unless the name of the association and the names and addresses of its executive members have been recorded. Similarly, such gifts from trust funds are not to be accepted unless the trust is described accurately and the names and addresses of the trustees recorded.

Clause 98 will amend section 307 of the Principal Act to require a return detailing disclosable gifts to be sent in even if the party has not received such gifts. Similarly, even if no electoral expenditure is incurred, registered parties are to put in a return (clause 102 which will amend section 313 of the Principal Act).

Clause 109 will make it an offence to influence the votes of hospital or nursing home patients.

Clauses 125 to 162 will amend the Referendum (Machinery Provisions) Act 1904. Most of the amendments reflect proposed changes to the Principal Act. For example, clause 133 will require the presiding officer to ask only those questions necessary to determine name and address, while clauses 139, 140, 141 and 143 deal with mobile polling booths and hospitals, prisons and remote places. The Bill also creates new Parts dealing with postal and pre-polling votes, which are substantially the same as those for the Principal Act.

The Bill also makes a number of minor amendments to the Principal Act (clauses 123 and 124).

For further information, if required, contact the Law and Government Group.

30 August 1988

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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