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Joint Standing Committee on Electoral Matters

Inquiry into matters relating to section 44 of the Constitution

Issue date: 17 May 2018

Joint Standing Committee on Electoral Matters releases Section 44 report

The Joint Standing Committee on Electoral Matters has today released its report into matters related to Section 44 of *The Australian Constitution*.

Committee Chair Senator Linda Reynolds said the report found that s. 44 was becoming increasingly undemocratic and that future referrals to the High Court would be inevitable.

“Problems with s. 44 are neither new, nor unforeseen,” Senator Reynolds said.

“20 years of Parliamentary Committee reports and a Constitutional Convention have all predicted that without constitutional reform to parts or all of s. 44, challenges would occur to otherwise qualified and validly elected Members of Parliament.

“Problems with the operation of s. 44 have come to public attention over the past year as a result of the high number of s. 44(i) citizenship matters referred to by the High Court. While public discussion has been on these citizenship cases, two other sub sections of s. 44 were also the subject of High Court consideration.”

Senator Reynolds said in addition to the previously identified problems with s. 44, recent High Court decisions have created new uncertainties and future opportunities to manipulate election results, which are likely to end by being referred to the High Court.

“Recent High Court decisions on the interpretation on s. 44 are clear—to nominate as a candidate, all reasonable steps must be taken prior to nomination to ensure all candidates are not disqualified to be on the ballot paper,” Senator Reynolds said.

“The Committee makes no judgement on the dual citizenship issue itself,” Senator Reynolds said.

“The question of whether or not the application of these rules meets contemporary Australian expectations is a different matter altogether and is one for Australians to ultimately determine.”

“We believe that issue is one for Australians to consider as part of a wider debate on qualities we want in our candidates when they stand for election and for those who are elected to Parliament.”



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Based on the significant and persuasive evidence to the Inquiry, the Committee has recommended that the Australian Government prepare a referendum question to either repeal sections 44 and 45 or insert the words 'Until Parliament so provides...' into both sections.

Senator Reynolds said while the Committee had recommended a referendum to permanently fix the problems with s. 44, the Committee acknowledged the preconditions for a successful referendum do not yet exist and may take time to achieve.

Until such time a referendum is successful in providing Australians or their elected representatives the ability to change disqualifications, the committee has recommended the Federal Government consider implementing a range of mitigation strategies. The first measures should be in place before the conduct of the upcoming by-elections to minimise the chance of those elections being challenged in the high court.

Report recommendations:

- **Recommendation 1**

The Committee recommends that the Australian Government prepare a proposed referendum question to either:

- repeal sections 44 and 45 of the Constitution; or
- insert into sections 44 and 45 the words: 'Until the Parliament otherwise provides...'

- **Recommendation 2**

If the referendum passes, the Committee further recommends that the Australian Government further engages with the Australian community to determine contemporary expectations of standards in order to address all matters of qualification and disqualification for Parliament through legislation under section 34 of the Constitution.

- **Recommendation 3**

In the event that a referendum does not proceed or does not pass, that the Australian Government consider strategies to mitigate the impact of section 44 as outlined in this report.

- **Recommendation 4**

The Committee recommends that the Government consider the implications of this report in the context of the upcoming be-elections, in particular the options outlined in chapter 4.

Further information will be available on the Committee's website www.aph.gov.au/em.

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For background:

Contact the Secretariat (02) 6277 2374 or via e-mail em@aph.gov.au

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