

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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(Presented and read a first time)

(*Mr Mack*)

## A BILL

FOR

**An Act to provide methods of altering the Constitution on  
the initiative of the electors**

The Parliament of Australia, with the approval of the electors,  
as required by the Constitution, enacts:

### **Short title**

1. This Act may be cited as the *Constitution Alteration  
(Alterations of the Constitution on the Initiative of the Electors)*  
1993.

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**Mode of altering the Constitution**

2. The Constitution is altered by omitting from section 128 "except in the following manner" and substituting "except as provided in this section or in section 129 or 130".

3. The Constitution is altered by inserting in Part VIII, after section 128, the following sections: 5

**Alteration of Constitution on electors' initiative where electors approve the text of the alteration.**

"129. (1) A group of 20 persons, each of whom is qualified to vote for the election of members of the House of Representatives for a State or Territory may deliver to the Clerk of the Senate or the Clerk of the House of Representatives a petition, signed by each of those persons and addressed to the Governor-General, requesting the Governor-General to cause to be put to the people by way of referendum the proposed alteration of the Constitution endorsed on, or attached to, the petition. 10 15

"(2) A petition proposing an alteration of the Constitution of a kind described in subsection (1):

- (a) shall contain an alteration, or alterations, necessary to achieve a single purpose only; 20
- (b) shall not refer in the proposed alteration or alterations to any person by his or her name;
- (c) shall be entitled 'A Petition for a Referendum to alter the Constitution to *(here set out the purpose of the proposed alteration)*'; 25
- (d) shall set out the terms of the question concerning the proposed alteration that the proponents wish to have put to electors at the referendum, being a question that specifies the purpose of the proposed alteration in the terms in which that purpose is specified in the title to the petition; and 30
- (e) shall state the address to which documents may be forwarded to the proponents.

"(3) The Clerk of the Senate or the Clerk of the House of Representatives shall:

- (a) as soon as practicable after a petition is delivered to him or her, lay a copy of the petition before the relevant House; and
- (b) on the day on which the copy is so laid before the relevant House, arrange for public notice of the petition, stating the places where copies of the petition may be obtained, to be given in the manner prescribed by the Parliament.

"(4) The relevant House may, in pursuance of a motion of which notice has been given within 5 sitting days after the petition was laid before that House, pass all or any of the following resolutions:

- (a) that the question set out in the petition should, in its opinion, be altered as set out in the resolution on the ground that it is likely to mislead or confuse electors in a material particular;
- (b) that the title to the petition, and the question set out in the petition should, in its opinion, each be altered as respectively set out in the resolution on the ground that the title is likely to mislead or confuse electors in a material particular;
- (c) that the proposed alteration of the Constitution endorsed on or attached to the petition should, in its opinion, be altered as set out in a resolution on the ground that the alteration is necessary in order that the proposed alteration of the Constitution will be effective to achieve its purpose.

"(5) If before the expiration of 10 sitting days after a notice of a motion referred to in subsection (4) has been given in the relevant House in relation to a petition:

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the succeeding subsections of this section shall have effect as if the

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relevant House had passed a resolution in accordance with that notice, and references to a resolution of that House shall be read accordingly.

"(6) Where the relevant House passes a resolution of a kind referred to in paragraph (4) (a), (b) or (c):

- (a) the Clerk shall forthwith notify the proponents of the passing of the resolution; 5
- (b) the Clerk shall, as soon as practicable after the passing of the resolution, cause public notice of the resolution to be given in the manner prescribed by the Parliament; and 10
- (c) the Clerk shall, in the notice referred to in paragraph (b), specify a date, being a date 14 days after the date, or last date, on which the notice is given, on or before which application may be made under subsection (7) 15  
for an order of the Federal Court of Australia.

"(7) On or before the date referred to in paragraph (6)(c), the Attorney-General or any elector may make application to the Federal Court of Australia for an order that the alteration set out in the resolution, or some other alteration, be made and, if the Court is satisfied: 20

- (a) that the ground set out in the resolution has been established; or
- (b) that some other alteration is necessary in order that:
  - (i) the proposed question will not mislead or confuse electors; 25
  - (ii) the title to the petition and the proposed question will not mislead or confuse electors; or
  - (iii) the proposed alteration of the Constitution will be effective to achieve its purpose; 30  
as the case requires;

the Court may order accordingly.

"(8) Where:

- (a) the Federal Court of Australia makes an order referred to in subsection (7); or 35
- (b) after:

- (i) an application for an order under subsection (7) has been rejected by the Federal Court of Australia; or
- (ii) the time within which such an application might have been made has expired and no such application has been made;

not less that 15 of the proponents have agreed to the alteration set out in a resolution of a kind described in paragraph (4) (a), (b) or (c) passed by the relevant House;

the question, title or proposed alteration, as the case requires, shall be deemed to have been altered as provided by the order of that Court or as set out in the resolution passed by the relevant House, as the case may be.

"(9) Where an application is made to the Federal Court of Australia for an order referred to in subsection (7):

- (a) the application shall be heard and determined by that Court constituted as a Full Court;
- (b) the proponents of the petition shall be named as respondents to the application;
- (c) the decision of the Court shall be final; and
- (d) each party to the application shall bear his or her own costs unless the Court awards costs to a party on the ground that another party has irresponsibly increased the costs of the application.

"(10) Within 14 days after:

- (a) the title to a petition, the question set out in a petition or the proposed alteration of the Constitution endorsed on or attached to a petition has been altered as provided in subsection (8);
- (b) the time within which a notice of motion referred to in subsection (4) might have been given has expired and no such notice has been given;
- (c) the relevant House has rejected a resolution of a kind referred to in paragraph 4 (a), (b) or (c);
- (d) an application for an order under subsection (7) has been rejected by the Federal Court of Australia; or
- (e) the time within which application might have been

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made to the Federal Court of Australia for an order under subsection (7) has expired and no application has been made;

whichever first occurs, the Clerk of the relevant House:

- (f) shall cause to be printed copies of the petition, or of the petition as amended, as the case requires, and forms for signature by electors who wish to sign the petition and shall furnish the copies and forms to the proponents concerned at the address stated in the petition;
- (g) shall cause public notice of the petition to be given in the manner prescribed by the Parliament; and
- (h) shall cause copies of the petition to be made reasonably available for acquisition by members of the public.

"(11) During the period of 6 months commencing upon the expiration of 7 days after the copies and forms referred to in paragraph (10) (f) were furnished to the proponents, the petition may be signed by any elector in a State or Territory who was qualified to vote for a member of the House of Representatives at the general election that last preceded the commencement of that period of 6 months.

"(12) Where no application was made under subsection (7) to alter the proposed alteration of the Constitution as endorsed on, or attached to, the petition concerned, at any time within the first 28 days of that period of 6 months, the Attorney-General, or any person eligible to vote in a State or Territory for a member of the House of Representatives, may make application to the Federal Court of Australia for a declaration that the proposed alteration of the Constitution would not, if it were made, alter the Constitution in a manner that is practicable or legally effective.

"(13) An application under subsection (12) shall be heard by the Federal Court of Australia constituted as a Full Court and the decision of the Court shall be final.

"(14) Where an application is made to the Federal Court of

Australia for a declaration under subsection (12):

(a) the proponents of the petition shall be named as respondents to the application; and

(b) each party to the application shall bear his or her own costs unless the Court awards costs to a party on the ground that another party has irresponsibly increased the costs of the application.

"(15) If the Federal Court of Australia makes the declaration sought by an application under subsection (12) the petition concerned has no force or effect and any signatures to the petition shall be disregarded.

"(16) Where, at or before the expiration of the period of 6 months referred to in subsection (11), the proponents are satisfied that the signatures to the petition satisfy subsections (17) and (18), the proponents may deliver the copies of the petition and the forms containing the signatures to the Clerk of the relevant House.

"(17) The signatures to a petition satisfy this subsection if the petition has been duly signed by electors who were qualified to vote at the general election that last preceded the commencement of the period of 6 months referred to in subsection (11) to a number not less than 3 per centum of the number of electors who were qualified to vote at that general election.

"(18) The signatures to a petition satisfy this subsection if, in respect of each of 4 States, the petition has been duly signed by electors who were qualified to vote for members of the House of Representatives for that State at the general election that last preceded the commencement of the period of 6 months referred to in subsection (11) to a number not less than 3 per centum of the number of electors who were qualified to vote at that general election for members of the House of Representatives for that State.

"(19) Where copies of a petition and forms containing signatures are delivered to the Clerk, he or she shall:

(a) cause the signatures to the petition to be checked by

random sampling in such manner as the Parliament prescribes; and

- (b) lay before the relevant House the copies of the petition and forms containing the signatures and a report of the results of the random sampling on the first sitting day of that House after the report is received by the Clerk but not later than the first sitting day of that House after the expiration of 90 days after the copies were delivered to the Clerk.

"(20) If:

- (a) the relevant House resolves that it is satisfied that the signatures to the petition satisfy subsections (17) and (18); or
- (b) the relevant House does not resolve, within 10 sitting days after the copies, forms and report were laid before it, upon notice given within 5 sitting days after they were laid before it, that it is not satisfied that the signatures to the petition satisfy subsections (17) and (18);

the Presiding Officer of the relevant House shall present the petition to the Governor-General.

"(21) If, before the expiration of 5 sitting days after:

- (a) a copy of a petition has been laid before the relevant House in accordance with subsection (3); or
- (b) the report of the results of the random sampling has been laid before the relevant House in accordance with subsection (19);

the House of Representatives is dissolved or expires or the Parliament is prorogued and at the time of the dissolution, expiry or prorogation, as the case may be, no notice of motion has been given for the purposes of subsection (4) or (20), as the case requires, in the relevant House, the Clerk shall lay a copy of the petition or report, as the case requires, before the relevant House on the first sitting day of that House after the dissolution, expiry or prorogation, and subsection (4) or (20), as the case requires, applies as if it had been laid before that House for the first time.



"(22) If, before the expiration of 10 sitting days after a notice of motion for the purposes of subsection (4), or 5 sitting days after a notice of motion for the purposes of subsection (20), has been given in the relevant House:

- 5       (a) the House of Representatives is dissolved or expires or is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation, as the case may be:
  - 10       (i) the notice has not been withdrawn and the motion has not been called on; or
  - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

15       the Clerk shall lay a copy of the petition or report of the results of the random sampling, as the case requires, before the relevant House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be, and subsection (4) or (20), as the case requires, applies as if it had been so laid before that House for the first time.

20       "(23) The Governor-General shall, at the next general election of the House of Representatives, submit the proposed alteration of the Constitution endorsed on, or attached to, the petition to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

25       "(24) Subject to the subsection (25), paragraphs 3, 4, 5 and 6 of section 128 apply to the proposed alteration of the Constitution as if those alterations were a proposed law for the alteration of the Constitution that had been agreed to by both Houses of the Parliament.

30       "(25) If the proposed alteration of the Constitution is approved as provided in paragraphs 5 and 6 of section 128, the alteration shall be deemed to have been presented to the Governor-General for the Queen's assent and, upon that assent being given, the alteration shall have effect according to its tenor as if contained  
35       in a proposed law assented to by the Governor-General.

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"(26) The Parliament may make laws with respect to matters incidental to the alteration of the Constitution as provided by this section.

"(27) In this section:

**'Clerk'** means:

- (a) in relation to a House, being the Senate, the Clerk of the Senate; or
- (b) in relation to a House, being the House of Representatives, the Clerk of the House of Representatives;

**'petition'** means a petition of a kind described in subsection (1);

**'Presiding Officer'** means:

- (a) in relation to a House, being the Senate, the President; or
- (b) in relation to a House, being the House of Representatives, the Speaker;

**'proponents'**, in relation to a petition, means the persons constituting the group of persons who signed the petition for the purposes of subsection (1);

**'relevant House'**, in relation to a petition, means:

- (a) if the petition was delivered to the Clerk of the Senate – the Senate; or
- (b) if the petition was delivered to the Clerk of the House of Representatives – the House of Representatives.

**Alteration of the Constitution on electors' initiative where electors approve the nature of the alteration**

"130. (1) A group of 20 persons each of whom is qualified to vote for the election of members of the House of Representatives for a State or Territory may deliver to the Clerk of the Senate or the Clerk of the House of Representatives a petition, signed by each of these persons and addressed to the Governor-General, requesting the Governor-General to cause to be put to the people by way of referendum the proposal that the Constitution be altered to the extent necessary to achieve the purpose endorsed on or attached to the petition.

"(2) A petition proposing an alteration of the Constitution of a kind described in subsection (1):

- (a) shall propose the alteration of the Constitution necessary to achieve a single purpose only;
- 5 (b) shall not refer in the purpose endorsed on or attached to the petition to any person by his or her name;
- (c) shall be entitled 'A Petition for a referendum to alter the Constitution to *(here set out a brief statement describing the purpose of the proposed alteration)*';
- 10 (d) shall set out the terms of the question concerning the proposed alteration that the proponents wish to have put to the electors at the referendum, being a question that specifies the purpose of the alteration in the terms in which that purpose is specified in the title to the
- 15 petition; and
- (e) shall state the address to which documents may be forwarded to the proponents.

"(3) Subject to the modifications in subsection (4) of this section, subsections 129 (3) to (24) (inclusive) apply to and in  
20 relation to a petition under subsection (1) of this section in like manner as they apply to and in relation to a petition under subsection 129(1).

"(4) The modifications referred to in subsection (3) are:

- 25 (a) the omission of paragraph 129 (4)(c) and the substitution of the following paragraph:  
'(c) that the purpose to be achieved by the proposed alteration, as endorsed on or attached to the petition, should, in its opinion, be altered as set out in the resolution on the ground that:
- 30 (i) no practicable or legally effective alteration of the Constitution can be made to achieve that purpose; or
- (ii) the purpose is so uncertain that the alteration of the Constitution necessary to achieve it cannot reasonably be determined.;
- 35 (b) the omission of subparagraph 129(7)(b)(iii) and the substitution of the following subparagraph:

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'(iii) the purpose endorsed on or attached to the petition:

(A) will be capable of being achieved by making an alteration of the Constitution that will be practicable and legally effective; or

(B) will indicate clearly the alteration of the Constitution that will be necessary to achieve that purpose;';

(c) the omission from paragraph 129(10)(a) of 'the proposed alteration of the Constitution' and substitution of 'the purpose'; and

(d) the omission of subsection 129(12) and the substitution of the following subsection:

"(12) Where no application was made under subsection (7) to alter the purpose to be achieved by the proposed alteration, as endorsed on or attached to the petition, at any time within the first 28 days of that period, the Attorney-General, or any person eligible to vote in a State or Territory for a member of the House of Representatives, may make application to the Federal Court of Australia for a declaration that:

(i) that purpose is not capable of being achieved by making an alteration of the Constitution that will be practicable and legally effective; or

(ii) that purpose is so uncertain that the alteration of the Constitution necessary to achieve it cannot reasonably be determined."

"(5) If the alteration of the Constitution to achieve the purpose endorsed on or attached to the petition is approved as provided in paragraphs 5 and 6 of section 128:

(a) the Attorney-General shall cause to be drafted the alteration necessary to achieve that purpose; and

(b) the Attorney-General shall, as soon as practicable after the alteration has been drafted, cause:

(i) a copy of the alteration to be forwarded to the proponents; and

(ii) public notice to be given, in the manner prescribed by the Parliament, stating that the alteration has been drafted, the places where copies may be obtained and the date, being a date 28 days after the

date or last date on which the notice is given, on or before which application may be made to the Federal Court of Australia for an order under subsection (6).

5       "(6) On or before the date specified in the notice referred to in paragraph (5)(b), the proponents or any elector may make application to the Federal Court of Australia for a declaration that the alteration drafted for the Attorney-General does not adequately and properly achieve the purpose endorsed on or attached to the  
10      petition.

      "(7) An application under subsection (6) shall be heard and determined by the Federal Court of Australia constituted as a Full Court and the decision of the Court shall be final.

15       "(8) If the Federal Court of Australia makes the declaration sought by the application, it shall indicate the changes that should be made to the alteration as so drafted in order that the alteration will achieve the purpose endorsed on or attached to the petition and the Attorney-General shall then cause those changes to be made to the alteration of the Constitution.

20       "(9) On an application under subsection (6), each party shall bear his or her own costs unless the Court awards costs to a party on the ground that another party has irresponsibly increased the costs of the application.

      "(10) As soon as practicable after:  
25      (a) the time within which an application may be made to the Federal Court of Australia under subsection (6) has expired and no such application has been made;  
      (b) an application made to the Federal Court of Australia has been dismissed by that Court; or  
30      (c) an application made to the Federal Court of Australia has been granted and the alteration of the Constitution has been changed in the manner indicated by that Court;

whichever is applicable in the circumstances, the Attorney-General

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shall present the alteration, or the alteration as so changed, to the Governor-General for the Queen's assent and, upon that assent being given, the alteration shall have effect according to its tenor as if contained in a proposed law assented to by the Governor-General.

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"(11) The Parliament may make laws with respect to matters incidental to the alteration of the Constitution as provided by this section.

"(12) In this section:

- (a) 'Clerk', 'Presiding Officer' and 'relevant House' have the same respective meanings as they have in section 129; 10
- (b) 'petition' means a petition of a kind described in subsection (1); and
- (c) 'proponents', in relation to a petition, means the persons constituting the group of persons who signed the petition for the purposes of subsection (1)". 15

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