

DISPUTED ELECTIONS AND QUALIFICATIONS.

No. 10 of 1907.

An Act to amend the Law relating to Parliamentary Elections and to provide for the Settlement of Questions relating to the Qualifications of Members of the Parliament and to Vacancies in either House of the Parliament.

[Assented to 22nd November, 1907.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title.

1. This Act may be cited as the *Disputed Elections and Qualifications Act* 1907, and shall be incorporated and read as one with the Commonwealth Electoral Acts 1902-1905 (in this Act called the Principal Act).

Pending petition.

2.—(1.) Any petition disputing the validity of any choice by the Houses of Parliament of a State of a person to hold the place of a Senator under section fifteen of the Constitution or involving any question respecting the qualification of a Senator or respecting a vacancy in the Senate, which is now in or pending before the Senate, or in respect of which the Senate has resolved that the question involved is proper to be referred to the High Court, is by virtue of this Act and without any order of the Court of Disputed Returns removed into the Court of Disputed Returns.

(2.) Any petition to which this section applies shall be transmitted by the Clerk of the Parliaments to the Principal Registry of the High Court, and thereupon the power of the Senate to deal with the petition shall wholly cease and determine and all the requirements of any Act or Rules relating to the procedure for bringing a petition before the Court of Disputed Returns shall be deemed to have been complied with and the Court of Disputed Returns shall have jurisdiction and shall proceed to hear and determine the petition and the questions raised thereby ; but such jurisdiction shall be exercised by a Full Court of at least three Judges.

(3.) The procedure in the Court of Disputed Returns in relation to any petition to which this section applies shall subject to this section be as directed by that Court or a Justice thereof.

(4.) On the hearing of any petition to which this section applies the Court of Disputed Returns shall have the powers conferred by section one hundred and ninety-seven of the Principal Act so far as they are applicable, and in addition thereto, shall have power to make any declaration or order which the nature of the case may require.

(5.) The provisions of sections one hundred and ninety-nine and two hundred and one of the Principal Act shall apply to the hearing and determination of any petition to which this section applies.

(6.) After the hearing and determination of the petition the Principal Registrar or District Registrar of the High Court shall forthwith forward to the Clerk of the Parliaments a copy of the declaration or order of the Court of Disputed Returns.

(7.) On the hearing of the petition the facts stated and the documents referred to therein shall be taken to be proved or admitted, unless as to any particular fact or document the Court shall otherwise direct.

3. Section two of the Principal Act is amended by adding after the words "Part XVI. Court of Disputed Returns" the words—

Amendment of
sec. 2 of
Principal Act.

DIVISION 1.—DISPUTED ELECTIONS AND RETURNS.

DIVISION 2.—QUALIFICATIONS AND VACANCIES.

4. Part XVI. of the Principal Act is amended by adding before section one hundred and ninety-two the words—

Amendment of
Part XVI. of
Principal Act.

DIVISION 1.—DISPUTED ELECTIONS AND RETURNS.

5. Section one hundred and ninety-two of the Principal Act is amended by adding the following paragraph at the end thereof—

Choice under
sec. 15 of
Constitution to
be an Election.

"The choice of a person to hold the place of a Senator by the Houses of Parliament of a State or the appointment of a person to hold the place of a Senator by the Governor of a State under section fifteen of the Constitution shall be deemed to be an election within the meaning of this section."

6. Part XVI. of the Principal Act is amended by adding at the end thereof the following heading and sections—

Amendment of
Part XVI. of
Principal Act.

DIVISION 2.—QUALIFICATIONS AND VACANCIES.

206AA. Any question respecting the qualification of a Senator or of a Member of the House of Representatives or respecting a vacancy in either House of the Parliament may be referred by resolution to the Court of Disputed Returns by the House in which the question arises and the Court of Disputed Returns shall thereupon have jurisdiction to hear and determine the question.

Reference of
question as to
qualification or
vacancy.

President or
Speaker to state
case.

206BB. When any question is referred to the Court of Disputed Returns under this part of this Act, the President if the question arises in the Senate, or the Speaker if the question arises in the House of Representatives, shall transmit to the Court of Disputed Returns a statement of the question upon which the determination of the Court is desired, together with any proceedings, papers, reports, or documents relating to the question in the possession of the House in which the question arises.

Parties to the
reference.

206CC. The Court of Disputed Returns may allow any person who in the opinion of the Court is interested in the determination of any question referred to it under this part of this Act to be heard on the hearing of the reference, or may direct notice of the reference to be served on any person, and any person so allowed to be heard or so directed to be served shall be deemed to be a party to the reference.

Powers of Court.

206DD. On the hearing of any reference under this part of this Act the Court of Disputed Returns shall sit as an open Court and shall have the powers conferred by section one hundred and ninety-seven of this Act so far as they are applicable, and in addition thereto shall have power—

- (a) to declare that any person was not qualified to be a Senator or a Member of the House of Representatives ;
- (b) to declare that any person was not capable of being chosen or of sitting as a Senator or a Member of the House of Representatives ;
- (c) to declare that there is a vacancy in the Senate or in the House of Representatives.

Order to be sent
to House
affected.

206E. After the hearing and determination of any reference under this part of this Act the Principal Registrar or District Registrar of the High Court shall forthwith forward to the Clerk of the House by which the question has been referred a copy of the order or declaration of the Court of Disputed Returns.

Application of
certain sections.

206F. The provisions of sections one hundred and ninety-nine two hundred and one two hundred and two A two hundred and two B two hundred and four two hundred and five and two hundred and six shall apply so far as applicable to proceedings on a reference to the Court of Disputed Returns under this part of this Act.