

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

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(Presented pursuant to leave granted and read 1<sup>o</sup>, 12 May 1983)

(THE ATTORNEY-GENERAL, SENATOR GARETH EVANS)

No 28

**A BILL**

FOR

**An Act to alter the Constitution so as to confer an advisory  
jurisdiction on the High Court**

BE IT ENACTED by the Parliament of the Commonwealth of Australia,  
with the approval of the electors, as required by the Constitution, as follows:

**Short title**

1. This Act may be cited as the *Constitution Alteration (Advisory  
Jurisdiction of High Court) 1983*.

2. The Constitution is altered by inserting after section 77 the following  
section:

**Advisory Jurisdiction**

“77A. (1) The Governor-General in Council may refer to the High Court  
for its opinion—

- (a) any question of law as to the validity of an enactment of the  
Parliament of the Commonwealth, or as to the validity, if enacted, of a  
proposed enactment of that Parliament;
- (b) any question of law concerning the interpretation or application of  
section 57, 121, 122, 123, 124 or 128 of this Constitution, being a  
question that, by reason of circumstances existing at the time of the  
reference, the Governor-General in Council is of opinion has arisen or  
is reasonably likely to arise;

- (c) at the request or with the consent of either House of the Parliament, any question of law concerning the interpretation or application of section 44 or 45 of this Constitution, being a question that, by reason of circumstances existing at the time of the reference, the Governor-General in Council is of opinion has arisen or is reasonably likely to arise in relation to that House; or 5
- (d) any question of law arising under or with respect to any treaty, including any question of law relating to the implementation of any treaty, being a question that, by reason of circumstances existing at the time of the reference, the Governor-General in Council is of opinion has arisen or is reasonably likely to arise. 10

“(2) The Governor of a State, acting with the advice of the Executive Council of the State, or the Administrator of a Territory, acting with the advice of the Executive Council of the Territory, may refer to the High Court for its opinion any question of law as to— 15

- (a) the validity of an enactment of the Parliament of the State or Territory, as the case may be, or the validity, if enacted, of a proposed enactment of that Parliament; or
- (b) the manner and form required for the passing of a proposed enactment of that Parliament. 20

“(3) A reference under this section may specify facts or circumstances that are to be assumed by the High Court in dealing with the question.

“(4) Where a question is referred to the High Court in accordance with this section—

- (a) the Court shall hear argument on the question in public, including any argument presented by or on behalf of— 25
- (i) the Attorney-General of the Commonwealth;
  - (ii) the Attorney-General of any State;
  - (iii) in the case of a question referred by the Administrator of a Territory—the Attorney-General of that Territory; or 30
  - (iv) in the case of a question concerning the interpretation or application of section 121 or 122 of this Constitution—the Attorney-General of any Territory,

and each Justice present at the hearing shall give his opinion; and

- (b) the opinion of each Justice, and the opinion of the Court, shall be announced in open Court, and each Justice shall make public his reasons. 35

“(5) On a reference under this section, the Court shall be constituted by not less than 5 Justices.

“(6) A reference under this section may be amended at any time before the completion of the hearing. 40

“(7) In this section—

‘Administrator’, in relation to a Territory, includes any person for the time being acting in the office of Administrator of the Territory;

‘Governor’, in relation to a State, includes any person for the time being administering the government of the State;

‘Parliament’, in relation to a Territory, means the authority for the time being having power to make laws for the peace, order and good government of the Territory;

‘proposed enactment’ means a proposed enactment in the form in which it is before the Parliament concerned at the time of the reference;

‘Territory’ means a territory referred to in section 122 of this Constitution;

‘treaty’ means any international agreement between nation states, including an agreement not yet in force or not yet in force in relation to Australia, that is governed by international law, whether embodied in a single instrument or 2 or more related instruments.”.

