

The fact the Victorian Liberals are having to change candidates in three seats draws attention to an issue that should be properly fixed but won't be any time soon – the problem of section 44 of the constitution.

The candidates who've fallen over were to run in seats where the Liberals don't have a chance – Wills, Lalor and Cooper (formerly Batman) - so it's of no particular political importance that they have to be replaced. Another three flag carriers can be rustled up before nominations close.

But we are reminded of how lethal section 44 has been and how, even now, a major party can have trouble ensuring all the relevant checks have been done.

Some 17 members of the last parliament [fell victim](#) to the section - 15 in relation to citizenship, in what was a highly disruptive running crisis. This amounted to 13% of the Senate and 4.6% of the House of Representatives. There were seven byelections.

Section 44 disqualifies anyone from being a candidates if he or she

“(i) is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power: or

(ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

(iii) is an undischarged bankrupt or insolvent: or

(iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

(v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons.”

Of the three Liberal candidates in the news two had citizenship issues and one is an Australia Post employee.

Obviously lessons have been learned and actions taken to avoid the appalling ructions of the last parliament.

The parties are working much harder at checking – although you have to wonder how efficient minor parties like One Nation will be.

Also, as part of the nomination form submitted to the Australian Electoral Commission, candidates must now fill in detailed questions on Section 44 matters. If they have been a citizen of another country they must provide documentation that they have renounced.

A candidate’s details will be published (with provision for redacting some personal details).

But the AEC is not responsible for “vetting” the candidates. Nor should it be. That is not its role. Anyway, it couldn’t be, given the short time frame involved.

A [parliamentary inquiry](#) into the impact of section 44 on Australian democracy, headed by Liberal senator Linda Reynolds (now a cabinet minister) concluded in its report last year that: “Large sections of the Australian community are disqualified from nominating for election [....]

View from The Hill: Section 44 remains a constitutional trip wire that should be addressed

Written by Michelle Grattan, Professorial Fellow, University of Canberra

"Some of those automatically disqualified from nominating under s. 44 may be able to address the reasons for disqualification by quitting their public sector job or successfully renouncing a foreign citizenship before nomination, but many will never be able to.

"With the changing demographic of our nation, s. 44 will increasingly disenfranchise more and more citizens from nominating".

The inquiry also pointed to a somewhat esoteric risk. It said there is "a significant, but previously unexamined, aspect to s. 44 and its interpretation by the High Court. This may lead to an avenue to manipulate an election.

"Any otherwise eligible Senators and Members who are elected on preference flows could have their position challenged, if they relied upon the preferences of an ineligible candidate. This has the serious potential to affect the overall result after the election has concluded, at any point during the term of Parliament."

The inquiry recommended a referendum to repeal the section, or insert the words "until the parliament otherwise provides".

If it passed, the committee said, the government should engage with the community "to determine contemporary expectations of standards in order to address all matters of qualification and disqualification for parliament through legislation".

The committee recommended mitigation in the meantime, while the ground was prepared for a referendum, including full disclosure at nomination, which has been introduced.

It's easy enough to understand why the political parties are reluctant to contemplate going down the referendum path.

Few referendums succeed, not least because they require not just an overall majority, but a win

in a majority of states.

Further, a section 44 referendum would likely involve a divisive debate around whether there should be a change from the Australian-only citizenship qualification for standing for parliament.

And there are other referendum priorities – for example to include in the constitution some form of Indigenous recognition.

On the other hand, mitigation can never adequately deal with section 44 hazards. On citizenship, the section means Australians can be hostage to changes in overseas law. Also, people do not always have access to information to put their status beyond doubt, or it may be a difficult and costly process to do so. This may discourage some potential candidates exercising their democratic right.

If there are not any early parliamentary casualties in the coming term, the parties won't feel any pressure to secure a permanent solution on section 44. Nevertheless it remains a piece of constitutional housekeeping that needs addressing.

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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