

CONSTITUTION (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Constitution Act 1902 as a consequence of the enactment of the Australia Act 1986 of the Commonwealth Parliament and the Australia Act 1986 of the United Kingdom Parliament ("the Australia Acts"). The enactment of the Australia Acts severs the remaining constitutional links with the United Kingdom (other than the Crown). The Bill provides for the inclusion in the Constitution Act 1902 of provisions (at present contained in Letters Patent, Instructions to the Governor and certain Imperial Acts) relating to—

- (a) the appointment of a Governor, Lieutenant-Governor and Administrator;
- (b) the assumption of the administration of the government of the State by the Lieutenant-Governor or Administrator in the absence of the Governor;
- (c) the Lieutenant-Governor or Administrator acting as deputy during short illnesses or absences of the Governor;
- (d) the establishment, appointment of members and procedure of the Executive Council to advise the Governor;
- (e) the appointment of Ministers of the Crown;
- (f) the presentation of Bills to the Governor for Her Majesty's assent; and
- (g) certain other related matters.

Clause 1 specifies the short title of the proposed Act.

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Clause 2 is a formal provision which gives effect to the Schedule of amendments.

Clause 3 and Schedule 2 repeal certain Imperial constitutional legislation applying in New South Wales that is inconsistent with the Australia Acts, superseded by the proposed Act or otherwise obsolete.

SCHEDULE 1—AMENDMENTS TO THE CONSTITUTION ACT 1902

Schedule 1 (1) deletes from the Principal Act section 8 (Legislature may make laws relating to Crown land) and section 9 (Legislature not entitled to enforce shipping dues at variance with English treaties). Section 8 is no longer necessary and section 9 is no longer appropriate as a consequence of the conferring of plenary legislative powers on State Parliaments by the Australia Acts.

Schedule 1 (2) inserts proposed section 8A into the Principal Act which requires Bills passed by the Legislative Council and Legislative Assembly to be presented to the Governor for Her Majesty's assent and declares that any such Bill becomes an Act when it receives Her Majesty's assent. The matter is at present dealt with in Imperial legislation (Australian Constitutions Act 1842, s. 31). The proposed section 8A is subject to other provisions of the Principal Act which enable certain Bills to be assented to without the consent of the Legislative Council (s. 5B) and which prevent certain Bills from being presented to the Governor without the approval of electors at a referendum (ss. 7A, 7B).

Schedule 1 (3) inserts a new Part IIA into the Principal Act which relates to the office of Governor and contains the following proposed sections:

- (a) Proposed section 9A continues the office of Governor. The appointment of a Governor is, as at present, made by the Queen.
- (b) Proposed section 9B continues the offices of Lieutenant-Governor and Administrator. It provides for the appointment of a Lieutenant-Governor by the Queen. In the event of the absence of both the Governor and the Lieutenant-Governor the proposed section continues the existing practice under the present dormant Commission (but without the necessity for such a Commission) that the Administrator is the Chief Justice of the Supreme Court or the next most senior Judge of that Court. The proposed section (subsection (4)) preserves the Queen's power to appoint any other person as Administrator. The proposed section (subsection (5)) requires the Lieutenant-Governor and Administrator to take the usual Oath or Affirmation of Allegiance and Office but removes the present requirement that the Lieutenant-Governor and Administrator take that Oath or Affirmation on each occasion of assuming the administration of the government of the State.
- (c) Proposed section 9C deals with the assumption of the government of the State by the Lieutenant-Governor or, in the absence of the Lieutenant-Governor, by the Administrator. The Lieutenant-Governor or Administrator acts, as at present, only in the event of—
 - (i) a vacancy in the office of the Governor;
 - (ii) the assumption by the Governor of the administration of the government of the Commonwealth; or

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- (iii) the absence from the State or the incapacity of the Governor where there is no subsisting appointment of a deputy under proposed section 9D.
- (d) Proposed section 9D makes provision, as at present, for the appointment of the Lieutenant-Governor or Administrator as deputy during any short illness or absence from the State or Sydney of the Governor. The opportunity has been taken to specify, for the sake of certainty, 4 weeks as the maximum period of absence during which a deputy may be appointed. The Governor may restrict the powers and functions that the deputy may exercise. The opportunity has also been taken to formalise the existing arrangement whereby the concurrence of the Premier is obtained prior to the appointment of a deputy by the Governor.
- (e) Proposed section 9E sets out the form of the Oaths or Affirmations of Allegiance and of Office.
- (f) Proposed section 9F provides that the Letters Patent relating to the office of Governor and the previous Instructions to the Governor cease to have effect.
- (g) Proposed section 9G continues in force existing appointments, including those of Governor, Lieutenant-Governor and Ministers of the Crown.
- (h) Proposed section 9H re-enacts provisions which are at present contained in Letters Patent relating to the Public Seal of the State.

Schedule 1 (4) (a) and (11) are consequential amendments arising from the creation of the office of Minister of the Crown by legislation instead of under Letters Patent. The amendments preserve the existing position that a member of Parliament does not vacate his or her seat by accepting Ministerial office. The limitation on the number of salaried Ministers has been transferred to proposed section 35F which applies that limitation to Ministers, whether salaried or not.

Schedule 1 (4) (b) removes the existing restriction that the Vice-President of the Executive Council, if entitled to salary, must be appointed from among the members of the Legislative Council only.

Schedule 1 (5) is a consequential amendment arising from the inclusion in the Principal Act of provisions relating to the Public Seal of the State. The amendment brings the method of summoning the Legislative Assembly into line with the method of dissolving that Assembly.

Schedule 1 (6) and (7) insert the following sections relating to the Executive Council and Ministers of the Crown into the Principal Act:

- (a) Proposed section 35 re-enacts the existing interpretation provision.
- (b) Proposed section 35A preserves existing laws and established constitutional conventions concerning the question of the Governor acting otherwise than on the advice of the Executive Council.
- (c) Proposed section 35B continues the Executive Council which is at present dealt with in Letters Patent and Instructions to the Governor.
- (d) Proposed section 35C provides for the appointment of members of the Executive Council by the Governor and for the appointment of one of those members as Vice-President of the Executive Council.

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- (e) Proposed section 35D provides, as at present, for the Governor to preside at meetings of the Executive Council or, in the absence of the Governor, the Vice-President of the Executive Council or the next most senior member of the Executive Council. The quorum for a meeting of the Executive Council remains at 2.
- (f) Proposed section 35E provides for the appointment of a Premier and other Ministers of the Crown from among the members of the Executive Council.
- (g) Proposed section 35F limits the number of Ministers to 20, as at present.

Schedule 1 (8) and (10) are consequential amendments arising from the creation of the office of Minister of the Crown by legislation. The amendments substitute that title for the title of Executive Councillor in the existing provisions of the Principal Act relating to the performance of a Minister's functions by another Minister.

Schedule 1 (9) relates to the requirement of the Principal Act and the Standing Rules and Orders of the Legislative Assembly for a message from the Governor recommending any money Bill that appropriates public revenue. The amendment relieves the Governor from the necessity of personally sending a message if the Bill is introduced by a Minister of the Crown.

SCHEDULE 2—REPEALS

Schedule 2 lists the Imperial enactments to be repealed.
