

CONSTITUTION (AMENDMENT) ACT 1987 No. 64

NEW SOUTH WALES



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CONSTITUTION (AMENDMENT) ACT 1987 No. 64

NEW SOUTH WALES



Act No. 64, 1987

An Act to amend the Constitution Act 1902 with respect to the office of Governor; and for other purposes. [Assented to 3 June 1987]

Constitution (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Constitution (Amendment) Act 1987".

Amendment of Act No. 32, 1902

2. The Constitution Act 1902 is amended in the manner set forth in Schedule 1.

Repeal of certain Imperial Acts

3. The enactments of the Parliament of the United Kingdom set out in Schedule 2 are repealed in so far as they apply in New South Wales.
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SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE CONSTITUTION ACT 1902

- (1) Section 8 (**Crown lands**), section 9 (**Shipping dues**)—

Omit the sections.

- (2) Section 8A—

After section 7B, insert:

Assent to Bills

8A. (1) Except as otherwise provided by this Act, every Bill—

- (a) shall be presented to the Governor for Her Majesty's assent after its passage through the Legislative Council and the Legislative Assembly; and
- (b) shall become an Act of the Legislature when it is assented to by the Governor in the name and on behalf of Her Majesty.

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SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(2) Nothing in subsection (1) (b) precludes Her Majesty from assenting to a Bill while Her Majesty is personally present in the State.

(3) Part IIA—

After Part II, insert:

PART IIA

THE GOVERNOR

Appointment of Governor

9A. (1) There shall continue to be a Governor of the State.

(2) The appointment of a person to the office of Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.

(3) Before assuming office, a person appointed to be Governor shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Judge of the Supreme Court.

Appointment of Lieutenant-Governor and Administrator

9B. (1) There shall continue to be—

(a) a Lieutenant-Governor of the State; and

(b) an Administrator of the State.

(2) The appointment of a person to the office of Lieutenant-Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.

(3) The Administrator shall be—

(a) the Chief Justice of the Supreme Court; or

SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

- (b) if the Chief Justice is the Lieutenant-Governor or in the event of a vacancy in the office of Chief Justice or the absence from the State or the incapacity of the Chief Justice—the next most senior Judge of the Supreme Court who is for the time being not absent from the State or incapacitated,

and shall be deemed to have been appointed as Administrator during Her Majesty's pleasure.

(4) A person may be appointed as Administrator during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State and, where such an Administrator has been appointed and is not absent from the State or incapacitated, subsection (3) does not apply.

(5) The Lieutenant-Governor or Administrator shall not assume the administration of the government of the State or act as deputy to the Governor unless the Lieutenant-Governor or Administrator, as the case may be, has taken on that occasion, or has previously taken, the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Judge of the Supreme Court.

Administration of government by Lieutenant-Governor or Administrator

9C. (1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State in the event of—

- (a) a vacancy in the office of Governor;
- (b) the assumption by the Governor of the administration of the government of the Commonwealth;
- (c) the absence from the State of the Governor; or
- (d) the incapacity of the Governor.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(2) The Governor shall not, for the purposes of this section, be regarded as being absent from the State or incapacitated at any time when there is a subsisting appointment of a deputy under section 9D.

(3) The Administrator shall not assume the administration of the government of the State except in the event of a vacancy in the office of Lieutenant-Governor or the absence from the State or the incapacity of the Lieutenant-Governor.

(4) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify—

(a) the Premier; or

(b) in the event that the Premier is not available to be notified—the next most senior Minister of the Crown who is available to be notified.

(5) The powers and functions of the Governor vest in the Lieutenant-Governor or Administrator during the administration of the government of the State by the Lieutenant-Governor or Administrator, as the case may be.

(6) The Lieutenant-Governor shall cease to administer the government of the State when—

(a) a person is appointed to fill the vacancy in the office of Governor and has taken the required oaths or affirmations;

(b) the Governor ceases to administer the government of the Commonwealth; or

(c) the absence from the State or the incapacity of the Governor has ceased,

as the case requires, and the Lieutenant-Governor has been notified accordingly.

SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(7) The Administrator shall cease to administer the government of the State when—

- (a) a person is appointed to fill the vacancy in the office of Governor or Lieutenant-Governor and has taken the required oaths or affirmations;
- (b) the Governor ceases to administer the government of the Commonwealth; or
- (c) the absence from the State or the incapacity of the Governor or Lieutenant-Governor has ceased,

as the case requires, and the Administrator has been notified accordingly.

Deputy for Governor during short illness or absence

9D. (1) In the event that—

- (a) the Governor is to be absent from the State or absent from Sydney but not the State or is suffering from illness; and
- (b) the Governor has reason to believe that the duration of the absence or illness will not exceed 4 weeks,

the Governor may, by instrument in writing, appoint the Lieutenant-Governor or Administrator to be the Governor's deputy during that absence or illness and in that capacity to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified or described in the instrument during the period specified or described in the instrument.

(2) The Administrator shall not be appointed as deputy under this section except in the event of a vacancy in the office of Lieutenant-Governor or the absence from the State or the incapacity of the Lieutenant-Governor.

(3) The Governor shall not appoint a deputy under this section except with the concurrence of—

- (a) the Premier; or

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SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(b) in the event that the Premier is not available to give that concurrence—the next most senior Minister of the Crown who is available to give that concurrence.

(4) The appointment of a person as deputy under this section may be revoked by the Governor at any time.

(5) The powers and functions of the Governor shall not be abridged, altered or in any way affected by the appointment of a person as deputy under this section.

Oaths or Affirmations of Allegiance and of Office

9E. For the purposes of this Part—

(a) a reference to the Oath or Affirmation of Allegiance is a reference to an Oath or Affirmation swearing or affirming to be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law; and

(b) a reference to the Oath or Affirmation of Office is a reference to an Oath or Affirmation swearing or affirming well and truly to serve Her Majesty and Her Majesty's heirs and successors in the particular office and to do right to all manner of people after the laws and usages of the State, without fear or favour, affection or ill-will.

Letters Patent and Instructions cease to have effect

9F. The Letters Patent dated 29 October 1900, as amended, relating to the office of Governor of the State and all Instructions to the Governor cease to have effect on the commencement of the Constitution (Amendment) Act 1987.

Continuation of existing Commissions, appointments, etc.

9G. (1) Any existing Commission or appointment given or made pursuant to Letters Patent or pursuant to Instructions referred to in section 9F shall continue in force until revoked or terminated.

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SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(2) A person who holds office under any such Commission or appointment as—

- (a) the Governor;
- (b) the Lieutenant-Governor;
- (c) a Minister of the Crown;
- (d) a member of the Executive Council; or
- (e) the Vice-President of the Executive Council,

shall, on the commencement of the Constitution (Amendment) Act 1987, be deemed to have been appointed to that office under this Act.

(3) The Constitution (Amendment) Act 1987 does not affect anything done in pursuance of any such Commission or appointment.

(4) Any oath or affirmation taken before the commencement of the Constitution (Amendment) Act 1987 for the purposes of any such Commission or appointment shall be deemed to have been taken pursuant to this Act.

(5) Subsection (1) does not continue in force—

- (a) a provision of any such Commission or appointment that is inconsistent with any law; or
- (b) the dormant Commission appointing an Administrator of the government of the State dated 16 October 1933.

Public Seal of the State

9H. (1) The Governor shall provide, keep and use the Public Seal of the State.

(2) The seal which, immediately before the commencement of the Constitution (Amendment) Act 1987, was used as the Public Seal of the State shall continue to be so used until a new seal is provided by the Governor.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(4) Section 13B (**Office of profit or pension from Crown**)—

(a) Section 13B (3) (a) (i)—

Omit the subparagraph, insert instead:

- (i) who holds or accepts the office of Minister of the Crown or any office of profit under the Crown created by an Act as an office of the Executive Government;

(b) Section 13B (3) (b)—

Omit “of the Legislative Council”, insert instead “of either House of Parliament”.

(5) Section 23 (**Convocation of Assembly**)—

Omit “in the name of His Majesty, by instrument under the Great Seal”, insert instead “by proclamation or otherwise”.

(6) Part IV, heading—

Omit the heading, insert instead:

PART IV

THE EXECUTIVE

(7) Part IV, Divisions 1–4—

Omit section 35, insert instead:

DIVISION 1—*Preliminary*

Interpretation

35. In this Part—

“functions” includes powers, authorities and duties;

“unavailable”, in relation to a Minister of the Crown, means unavailable by reason of the Minister’s absence or disability or for any other reason.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

Preservation of certain conventions, etc., relating to advice to Governor

35A. The enactment of the Constitution (Amendment) Act 1987 does not affect any law or established constitutional convention relating to the exercise or performance of the functions of the Governor otherwise than on the advice of the Executive Council.

DIVISION 2—The Executive Council

Continuation of Executive Council

35B. There shall continue to be an Executive Council to advise the Governor in the government of the State.

Members of the Executive Council

35C. (1) The Executive Council shall consist of such persons as may be appointed by the Governor, from time to time, as members of the Executive Council.

(2) The members of the Executive Council shall hold office during the Governor's pleasure.

(3) The Governor may appoint one of the members of the Executive Council as Vice-President of the Executive Council.

Meetings of the Executive Council

35D. (1) The Governor shall preside at meetings of the Executive Council.

(2) The Vice-President of the Executive Council or, in the absence of the Vice-President, the senior member present shall preside at any meeting of the Executive Council from which the Governor is absent.

(3) The quorum for a meeting of the Executive Council is 2 members.

(4) For the purposes of this section, the seniority of members of the Executive Council shall be determined according to the order of their respective appointments as members of the Executive Council.

*Constitution (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*DIVISION 3—*Appointment of Ministers of the Crown***Appointment of Ministers**

35E. (1) The Premier and other Ministers of the Crown for the State shall be appointed by the Governor from among the members of the Executive Council.

(2) The Premier and other Ministers of the Crown shall hold office during the Governor's pleasure.

Maximum number of Ministers

35F. The number of persons who may hold office as Ministers of the Crown shall not exceed 20 at any one time.

DIVISION 4—*Functions of Ministers of the Crown*

(8) Sections 36, 37, 37A, 38, 38A—

(a) Sections 36 (1), (2), 37A (1), (2), (3), 38 (1)—

Omit "an Executive Councillor" wherever occurring, insert instead "a Minister of the Crown".

(b) Sections 36 (1), (2), 37, 37A (2), (3)—

Omit "another Executive Councillor" wherever occurring, insert instead "another Minister of the Crown".

(c) Section 36 (2)—

Omit "Executive Councillor" where thirdly, fourthly and fifthly occurring, insert instead "Minister".

(d) Sections 36 (4), 37—

Omit "An Executive Councillor" wherever occurring, insert instead "A Minister of the Crown".

(e) Section 36 (4)—

Omit "as Executive Councillor", insert instead "as Minister of the Crown".

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SCHEDULE 1—*continued*AMENDMENTS TO THE CONSTITUTION ACT 1902—*continued*

(f) Section 37—

Omit “Executive Councillor” where thirdly, fourthly and fifthly occurring, insert instead “Minister”.

(g) Section 37—

Omit “Executive Councillor” where sixthly occurring, insert instead “Minister of the Crown”.

(h) Section 37A (2)—

Omit “Executive Councillor” where thirdly occurring, insert instead “Minister”.

(i) Section 38A—

Omit “Executive Councillor” wherever occurring, insert instead “Minister of the Crown”.

(9) Section 46 (**Money Bills to be recommended by Governor**)—

Section 46 (2)—

At the end of section 46, insert:

(2) A Governor’s message is not required under this section or under the Standing Rules and Orders of the Legislative Assembly for a Bill introduced by, or a vote or resolution proposed by, a Minister of the Crown.

(10) Section 48 (**Absent officers**)—

Section 48 (1), definition of “officer”—

Omit “an Executive Councillor (as defined in section 35)”, insert instead “the Governor, the Lieutenant-Governor or other officer administering the government of the State, a member of the Executive Council, a Minister of the Crown”.

(11) Second Schedule—

Omit the Schedule.

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SCHEDULE 2

(Sec. 3)

REPEALS

Australian Constitutions Act 1842—Sections 30–33 and 40

Australian Constitutions Act 1850—Section 6

New South Wales Constitution Act 1855—Section 3

Australian States Constitution Act 1907—Section 1