

Constitution (Amendment)

No.

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By Authority L. V. North, Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 9 November 1994

(Brought in by Mr Kennett and Mr McNamara)

A BILL

to amend the **Constitution Act 1975**, the **Interpretation of Legislation Act 1984** and **The Constitution Act Amendment Act 1958** and for other purposes.

Constitution (Amendment) Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

5 The purpose of this Act is to make certain amendments to the **Constitution Act 1975**, the **Interpretation of Legislation Act 1984** and **The Constitution Act Amendment Act 1958**.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 11 is deemed to have come into operation immediately after the commencement of the Australia Act 1986 of the Commonwealth.¹

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No. 8750.
Reprinted t
No. 70/1992
and
subsequently
amended by
N s 18/1994,
43/1994 and
50/1994.

3. Principal Act

In this Act, the **Constitution Act 1975** is called the Principal Act.

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PART 2—AMENDMENT OF THE CONSTITUTION ACT 1975

4. New sections 6–6D inserted in Part I

For section 6 of the Principal Act **substitute—**

“6. The Governor

- (1) There shall be a Governor of the State of Victoria.
- (2) The appointment of a person as 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 as 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.

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6A. Lieutenant-Governor and Administrator

(1) There shall be—

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

(b) an Administrator of the State.

(2) The appointment of a person as 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 is—

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

(b) if—

(i) the Chief Justice of the Supreme Court is the Lieutenant-Governor; or

(ii) there is a vacancy in the office of Chief Justice of the Supreme Court or the Chief Justice is absent from the State or unable or unwilling to act as Administrator—

the most senior judge of the Supreme Court who is present in the State and able and willing to act as Administrator—

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.

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- (5) Sub-section (3) does not apply if—
 - (a) there is an Administrator appointed under sub-section (4); and
 - (b) that Administrator is present in the State and able and willing to act. 5

- (6) The Lieutenant-Governor or Administrator must not assume the administration of the government of the State or act as the Governor’s deputy 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. 10
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6B. Administration by Lieutenant-Governor or Administrator

- (1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State if— 20
 - (a) there is a vacancy in the office of Governor; or
 - (b) the Governor has assumed the administration of the government of the Commonwealth; or 25
 - (c) the Governor—
 - (i) is absent from the State; or
 - (ii) is unable or unwilling to act— 30

and there is not a subsisting appointment of a deputy under section 6C.

- (2) The Administrator shall not assume the administration of the government of the State unless— 35

(a) there is a vacancy in the office of Lieutenant-Governor; or

(b) the Lieutenant-Governor—

(i) is absent from the State; or

(ii) is unable or unwilling to act.

(3) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify the Premier or, in the absence of the Premier, the Acting Premier.

(4) 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.

(5) 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; or

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

(c) the Governor is no longer absent from the State or no longer unable or unwilling to act—

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

(6) 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

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- Lieutenant-Governor and has taken the required oaths or affirmations; or
- (b) the Governor ceases to administer the government of the Commonwealth; or 5
- (c) the Governor or Lieutenant-Governor is no longer absent from the State or no longer unable or unwilling to act—
- as the case requires, and the Administrator has been notified accordingly. 10
- (7) A request in writing by the Premier (or, in the absence of the Premier, the Acting Premier) that the Lieutenant-Governor or the Administrator assume the administration of the State is sufficient authority for the Lieutenant-Governor or Administrator to do so. 15
- 6c. *Deputy for Governor during short illness or absence*** 20
- (1) If—
- (a) the Governor is to be absent from the State or absent from Melbourne but not the State or is suffering from illness; and 25
- (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— 30
- (c) to be the Governor's deputy during that absence or illness; and
- (d) in that capacity, to exercise and perform on behalf of the Governor such of the powers and functions of 35

the Governor as are specified or described in the instrument—

during the period specified or described in the instrument.

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- (2) The Administrator shall not be appointed as deputy under this section unless—
- (a) there is a vacancy in the office of Lieutenant-Governor; or
- (b) the Lieutenant-Governor—
- 10 (i) is absent from the State; or
- (ii) is unable or unwilling to act; or
- (c) the Lieutenant-Governor has assumed the administration of the government of the State.
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- (3) The Governor shall not appoint a deputy under this section except with the concurrence of the Premier or, in the absence of the Premier, the Acting Premier.
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- (4) The appointment of a person as deputy under this section may be revoked by the Governor at any time.
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- (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.

6D. Oath or Affirmation

For the purposes of this Part—

- 30 (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
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- (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.”. 5
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5. New sections 87A–87E inserted in Part IV

In Part IV of the Principal Act, before section 88 insert—

“87A. Executive Council

There shall be an Executive Council of the State of Victoria. 15

87B. Members of Executive Council

- (1) The Executive Council consists of—
 - (a) the persons who, immediately before the commencement of section 5 of the **Constitution (Amendment) Act 1994**, are members of the Executive Council; and 20
 - (b) persons who may, at any time, be members of the Executive Council in accordance with any Act; and 25
 - (c) such other persons as the Governor, from time to time in the name and on behalf of Her Majesty and subject to any Act, appoints under the Public Seal of the State to be members of the Executive Council— 30

until resignation or removal from membership by the Governor.

- (2) A member of the Executive Council may attend a meeting of the Executive Council or exercise the powers of such a member only if he or she is a Minister.

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87C. Meetings of Executive Council

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

- (2) If the Governor is absent from a meeting of the Executive Council and—

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(a) the Lieutenant-Governor or Administrator has assumed the administration of the Government of the State under section 6B; or

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(b) the meeting is held while there is a subsisting appointment of the Lieutenant-Governor or Administrator as deputy under section 6C—

the Lieutenant-Governor or Administrator (as the case requires) shall preside.

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

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- (4) The Executive Council shall not proceed to dispatch of business unless it has been duly summoned by authority of the Governor.

87D. Rules of Executive Council

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The Governor in Council may, by instrument, make rules in respect of the practices and procedures of the Executive Council.

87E. Advice to Governor

Where the Governor is bound by law or established constitutional convention to act in accordance with advice—

- (a) the Executive Council shall advise the Governor on the occasions when the Governor is permitted or required by any statute or other instrument to act in Council; and 5
- (b) the Premier (or, in the absence of the Premier, the Acting Premier) shall tender advice to the Governor in relation to the exercise of the other powers and functions of Governor.”. 10

6. Miscellaneous amendments 15

- (1) In the Principal Act—
 - (a) in section 1, sub-section (3) is **repealed**;
 - (b) section 12A is **repealed**;
 - (c) in section 69—
 - (i) **omit** “(1)”; and 20
 - (ii) sub-section (2) is **repealed**.
- (2) For the Second Schedule to the Principal Act **substitute**—

Section 2

“SECOND SCHEDULE***Oath*** 25

I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty and Her Majesty’s heirs and successors according to law.

Affirmation

I do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty and Her Majesty’s heirs and successors according to law. 30

[If circumstances so require, His Majesty is to be substituted for Her Majesty.]

NOTE: For forms of administering oaths, see Evidence Act 1958, section 100.”. 35

PART 3—TRANSITIONAL PROVISIONS

7. *Letters Patent and Instructions cease to have effect*

- 5 (1) The Letters Patent dated 29 October 1900, as amended, and the Letters Patent dated 14 February 1986, relating to the office of Governor of the State and all Instructions to the Governor cease to have effect on the commencement of this section.
- 10 (2) Despite sub-section (1), anything done or purporting to have been done before the commencement of this section pursuant to the terms of the Letters Patent or Instructions is, and continues to be, as valid and effective as if, at all relevant times, the Letters Patent and Instructions were valid and effective in all respects.

15 **8. *Continuation of existing Commissions, appointments etc.***

- 20 (1) Any existing Commission or appointment given or made pursuant to Letters Patent or pursuant to Instructions referred to in section 7 continues in force until revoked or terminated.
- 25 (2) A person who holds office under any such Commission or appointment as—
(a) the Governor;
(b) the Lieutenant-Governor;
(c) the Administrator;
(d) a Minister;
(e) a member of the Executive Council—
is deemed, on the commencement of this section, to have been appointed to that office under the Principal Act.
- 30 (3) This Act does not affect anything done under any such Commission or appointment.
- (4) A person holding office under any such Commission or appointment is deemed to have taken the Oaths or

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Affirmations required by law before acting in that office.

- (5) Any oath or affirmation taken, or deemed to have been taken, before the commencement of this section for the purposes of any such Commission or appointment is deemed to have been taken pursuant to the Principal Act. 5
- (6) Sub-section (1) does not continue in force a provision of any such Commission or appointment that is inconsistent with any law. 10

9. Transitional

Anything done or purporting to have been done after the Australia Act 1986 of the Commonwealth came into operation and before the commencement of Part 2 of this Act is valid to the extent that— 15

- (a) it was valid when done or purported to be done; or
- (b) it would have been valid if, when done or purported to be done, the Principal Act had been in operation as amended by Part 2 of this Act. 20

PART 4—AMENDMENT OF OTHER ACTS

10. Amendment of Interpretation of Legislation Act 1984

In the Interpretation of Legislation Act 1984—

- (a) in section 11 (1), for paragraph (b) substitute— 25
 - “(b) where no day is so fixed for it to come into operation, at the beginning of the 28th day after the day on which it receives the Royal Assent, unless the contrary intention appears in the Act.”.
- (b) in section 11 (3), omit all words after “Royal Assent”. 30

11. New section 58 inserted in Interpretation of Legislation Act 1984

After section 57 of the **Interpretation of Legislation Act 1984** insert—

5 **“58. Declaration of validity of certain laws**

(1) Each provision of an Act or subordinate instrument enacted or made, or purporting to have been enacted or made, before the commencement of the Australia Acts—

10 (a) has the same effect as it would have had; and

(b) is as valid as it would have been—

15 if the Australia Acts had been in operation at the time of its enactment or making, or purported enactment or making.

(2) In this section, “Australia Acts” means—

20 (a) the Australia Act 1986 of the Commonwealth; and

(b) the Australia Act 1986 of the United Kingdom.”.

12. Amendment of The Constitution Act Amendment Act 1958

25 In **The Constitution Act Amendment Act 1958**, in the Fifth Schedule and Sixth Schedule, for “of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith” substitute “Queen of Australia and Her other Realms and Territories, Head of the Commonwealth”.

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NOTE

1. The Australia Act 1986 of the Commonwealth came into operation at 0500 Greenwich Mean Time on 3 March 1986.