



New South Wales

Constitution Amendment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Constitution Act 1902* provides in section 13A (e) that the seat of a Member of Parliament becomes vacant if the Member is convicted of “an infamous crime, or of an offence punishable by imprisonment for life or for a term of 5 years or more”. The object of this Bill is to amend section 13A so as to provide that, in such a case, the Member’s seat does not become vacant until the conviction is final, that is, the Member retains his or her seat if the conviction is quashed on appeal.

Under the proposed amendments to section 13A, the seat of a Member of Parliament convicted of a disqualifying offence will become vacant if the Member does not appeal against the conviction, or an appeal (or succession of appeals) is unsuccessful, or an appeal is lodged but withdrawn, or an appeal lapses.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Constitution Act 1902* set out in Schedule 1.

Clause 4 provides that the proposed amendments apply to a conviction pronounced after the commencement of the amendments for a disqualifying offence committed whether before or after that commencement.

Schedule 1 sets out the amendments described in the Overview above.

First print



New South Wales

Constitution Amendment Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Constitution Act 1902 No 32	2
4 Transitional	2
Schedule 1 Amendments	3



New South Wales

Constitution Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Constitution Act 1902* in relation to the vacation of seats of Members of Parliament following conviction for certain offences.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Constitution Amendment Act 2000</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Constitution Act 1902 No 32	6
The <i>Constitution Act 1902</i> is amended as set out in Schedule 1.	7
4 Transitional	8
Section 13A of the <i>Constitution Act 1902</i> , as amended by this Act, applies in relation to convictions pronounced after the commencement of this Act for infamous crimes or offences committed whether before or after that commencement.	9 10 11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 13A Further disqualifications	3
	Insert “and is the subject of the operation of subsection (2),” after “more,” in section 13A (e).	4 5
[2]	Section 13A (2)–(5)	6
	Insert at the end of section 13A:	7
	(2) For the purposes of subsection (1) (e), a Member is the subject of the operation of this subsection if:	8 9
	(a) the Member has not lodged an appeal against the conviction within the prescribed period, or	10 11
	(b) the conviction has not been quashed on the determination of an appeal or appeals lodged within the prescribed period, or	12 13 14
	(c) such an appeal has been lodged within the prescribed period but has been withdrawn, or has lapsed, without being determined, and no other appeal lodged within the prescribed period is pending.	15 16 17 18
	(3) Nothing in this section affects any power that a House has to expel a Member of the House.	19 20
	(4) An appeal is taken to have lapsed when a court makes a declaration to that effect or relevant rules of court treat the appeal as having lapsed.	21 22 23
	(5) In this section:	24
	<i>appeal</i> includes a notice of appeal and an application for leave to appeal, and any appeal lodged pursuant to such a notice or pursuant to leave granted on such an application.	25 26 27
	<i>prescribed period</i> , in relation to an appeal, means the period within which the appeal may be lodged, but does not include any extension of a period which a court may grant.	28 29 30

Constitution Amendment Bill 2000

Schedule 1 Amendments

quash a conviction means quash or otherwise set aside the conviction.

1
2