

## Constitution Amendment (Pledge of Loyalty) Bill 2004

### Explanatory note

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

#### Overview of Bill

The objects of this Bill are:

(a) to replace the oath of allegiance to the Queen and her successors taken by Members of Parliament with a pledge of loyalty to Australia and to the people of New South Wales, and

(b) to replace the oath of allegiance, the oath of service to the Queen and the special Executive Councillor's oath taken by Members of Parliament when they become Ministers and members of the Executive Council with the pledge of loyalty and a single Executive Councillor's oath.

#### 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 that gives effect to the amendments to the *Constitution Act 1902* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Oaths Act 1900* set out in Schedule 2.

### Schedule 1 Amendment of Constitution Act 1902

#### Members of Parliament

Section 12 of the *Constitution Act 1902* provides that a Member of the Legislative Council or the Legislative Assembly is not permitted to sit or vote until the Member has taken an oath or affirmation of allegiance to the Queen and her successors in the form prescribed by the *Oaths Act 1900*. **Schedule 1 [1]** substitutes section 12 to provide instead that a Member will be required to take a pledge of loyalty to Australia and to the people of New South Wales. A similar change was made in 1993 when the oath of allegiance for new Australian citizens was changed to a pledge of commitment under Commonwealth law. Proposed section 12 also sets out the form of the pledge of loyalty. As with the pledge of commitment for new citizens, the form of pledge permits a person to make the pledge "Under God" or without using those words. The new requirement is only to apply to Members elected after the commencement of the proposed Act. Procedures with respect to the taking of the pledge can be set out in the standing orders, rules and resolutions of each House.

#### Ministers and Executive Councillors

Section 10 of the *Oaths Act 1900* requires Executive Councillors (that is, all Ministers of the Crown) to take three oaths (or affirmations): an oath of allegiance to the Queen, an oath of service to the Queen, and an Executive Councillor's oath to give counsel and advice to the Governor and to maintain the confidentiality of matters debated in the Executive Council. **Schedule 1 [2]** moves the oath requirements for members of the Executive Council from the *Oaths Act 1900* to the *Constitution Act 1902*, and alters the oaths to be taken. The amendment:

(a) replaces the oath of allegiance to the Queen with a pledge of loyalty to Australia and to the people of New South Wales, and

(b) replaces the oath of service to the Queen and the Executive Councillor's oath with a single oath that combines a promise to perform the functions and duties of an Executive Councillor faithfully and to the best of the person's ability with the traditional Executive Councillor's oath to give

advice and counsel to the Governor and to maintain the confidentiality of matters debated in the Council.

The amendment preserves the right of an Executive Councillor to make an affirmation instead of taking an oath.

**Schedule 2 Consequential amendments to Oaths Act 1900**

**Schedule 2 [1]–[3]** make amendments to the *Oaths Act 1900* consequential on the amendments made by Schedule 1.