

MR PRESIDENT,

I MOVE,

THAT THESE BILLS NOW BE READ A SECOND TIME.

MR PRESIDENT,

THE UNDERLYING PURPOSE OF THE CONSTITUTION (AMENDMENT) BILL 1992 AND THE CONSTITUTION (ENTRENCHMENT) AMENDMENT BILL 1992 IS TO IMPLEMENT CERTAIN MATTERS ARISING FROM THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT AND THE INDEPENDENT MEMBERS OF THE LEGISLATIVE ASSEMBLY.

THESE MATTERS ARE AS SET OUT IN THE FOLLOWING BRIEF DESCRIPTION OF THE BILLS.

FIRSTLY, THE CONSTITUTION (AMENDMENT) BILL WILL INSERT A NEW PART INTO THE CONSTITUTION ACT WHICH DEALS WITH THE INDEPENDENCE OF THE JUDICIARY. THIS NEW PART WILL BECOME PART 9. UNDER THE PROPOSED PROVISIONS OF THE NEW PART 9, NO HOLDER OF A JUDICIAL OFFICE (WHICH IS DEFINED TO INCLUDE A MAGISTRATE) CAN BE REMOVED FROM OFFICE EXCEPT BY THE GOVERNOR, ON THE GROUND OF PROVED MISBEHAVIOUR OR INCAPACITY, FOLLOWING AN ADDRESS BY EACH HOUSE OF THE PARLIAMENT.

THE BILL PROVIDES THAT LEGISLATION MAY LAY DOWN ADDITIONAL PROCEDURES AND REQUIREMENTS TO BE COMPLIED WITH BEFORE A JUDICIAL OFFICER MAY BE



REMOVED FROM OFFICE. IN THIS CONTEXT, I SHOULD EXPLAIN TO HONOURABLE MEMBERS THAT IT IS INTENDED THAT THE NEW PROVISIONS IN THE CONSTITUTION (AMENDMENT) BILL WILL OPERATE IN CONJUNCTION WITH THE PROVISIONS OF THE JUDICIAL OFFICERS ACT 1986 WHICH DEAL WITH THE SUSPENSION AND REMOVAL OF JUDICIAL OFFICERS. UNDER THE JUDICIAL OFFICERS ACT, THE GOVERNOR CAN ONLY REMOVE A JUDICIAL OFFICER FROM OFFICE ON THE ADDRESS OF BOTH HOUSES OF THE PARLIAMENT IF A REPORT HAS FIRST BEEN PRESENTED TO THE GOVERNOR BY THE CONDUCT DIVISION OF THE JUDICIAL COMMISSION. THIS REPORT MUST SET OUT THE CONDUCT DIVISION'S OPINION THAT A MATTER COULD JUSTIFY PARLIAMENTARY CONSIDERATION OF THE REMOVAL OF A JUDICIAL OFFICER.

THE NEED FOR SUCH A REPORT FROM THE CONDUCT DIVISION OF THE JUDICIAL COMMISSION BEFORE A JUDGE CAN BE REMOVED WILL REMAIN IN EFFECT. THE CONSTITUTION (AMENDMENT) BILL WILL MAKE SOME AMENDMENTS TO THE JUDICIAL OFFICERS ACT TO PROVIDE FOR CONFORMITY BETWEEN THAT ACT AND THE PROPOSED NEW LEGISLATION, PARTICULARLY WITH REGARD TO THE GROUNDS ON WHICH A JUDICIAL OFFICER CAN BE REMOVED.

THE PROVISIONS OF THE PROPOSED NEW PART OF THE CONSTITUTION ACT WILL NOT PREVENT A CHANGE OF THE AGE AT WHICH JUDICIAL OFFICERS ARE REQUIRED TO RETIRE AT LAW OR PREVENT THE ABOLITION OF A JUDICIAL OFFICE. HOWEVER, A PERSON HOLDING A JUDICIAL OFFICE WHICH IS ABOLISHED IS GIVEN AN ENTITLEMENT TO BE APPOINTED TO ANOTHER JUDICIAL





OFFICE IN THE SAME COURT OR IN A COURT OF AN EQUIVALENT OR HIGHER STATUS.

MR PRESIDENT,

THE MOST SIGNIFICANT INNOVATION THAT IS PROPOSED WITH RESPECT TO JUDICIAL INDEPENDENCE IS CONTAINED IN THE COGNATE CONSTITUTION (ENTRENCHMENT) AMENDMENT BILL 1992. THIS BILL WILL ENTRENCH THE NEW PART 9 OF THE CONSTITUTION ACT, SO THAT IT CAN ONLY BE AMENDED WITH THE APPROVAL OF THE ELECTORS VOTING AT A REFERENDUM.

AS THE CONSTITUTION (ENTRENCHMENT) AMENDMENT BILL 1992 INVOLVES AN AMENDMENT TO SECTION 7B OF THE CONSTITUTION ACT, IT WILL NEED TO BE ITSELF APPROVED BY THE ELECTORS AT A REFERENDUM.

HENCE, IT IS PROPOSED TO SUBMIT THE PROPOSAL TO ENTRENCH THE NEW PROVISIONS RELATING TO JUDICIAL INDEPENDENCE TO A REFERENDUM. IF THE PROPOSAL IS APPROVED, ANY AMENDMENT OR REPEAL OF THESE PROVISIONS WILL REQUIRE A FURTHER REFERENDUM. IF THE PROPOSAL IS NOT APPROVED, THEN THE PROVISIONS RELATING TO JUDICIAL INDEPENDENCE WILL BE LAW BUT WILL NOT BE ENTRENCHED.

IT IS INTENDED TO SUBMIT THE ENTRENCHMENT PROPOSAL TO THE ELECTORS AT A REFERENDUM TO BE HELD IN CONJUNCTION WITH THE NEXT GENERAL ELECTION. AS THERE IS ALREADY TO BE A REFERENDUM HELD AT THE NEXT GENERAL ELECTION TO DEAL WITH THE QUESTION OF FIXED FOUR-YEAR TERM





PARLIAMENTS, THE COST OF AN ADDITIONAL REFERENDUM QUESTION SHOULD NOT BE HIGH.

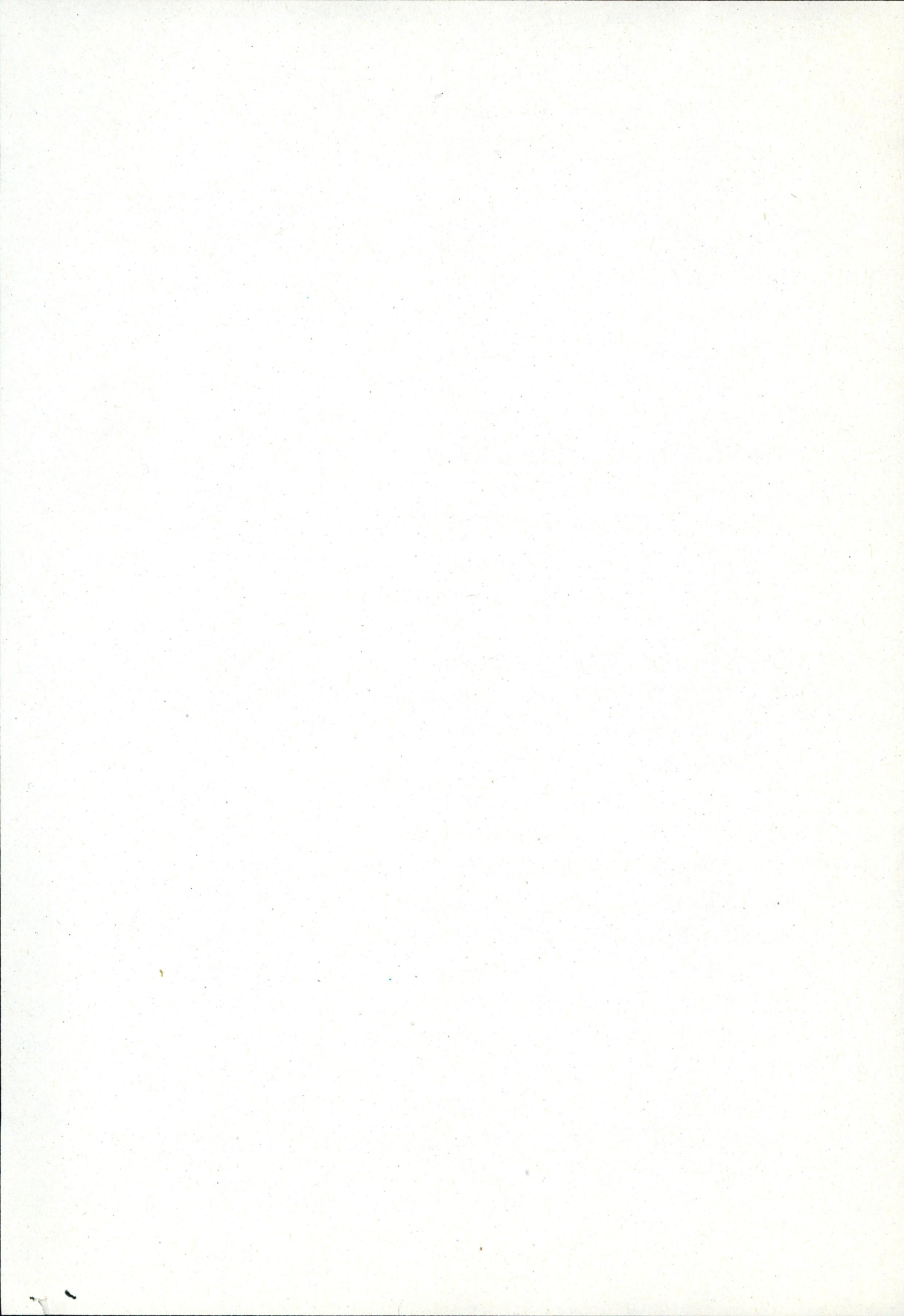
MR PRESIDENT,

THE CONSTITUTION (AMENDMENT) BILL 1992 ALSO DEALS WITH CERTAIN OTHER MATTERS. I WOULD EMPHASISE THAT IT IS NOT PROPOSED TO ENTRENCH THESE PROVISIONS OF THE BILL.

THE BILL WILL GIVE STATUTORY RECOGNITION TO THE PRESIDENT OF THE LEGISLATIVE COUNCIL AND THE SPEAKER OF THE LEGISLATIVE ASSEMBLY AS THE PRESIDING OFFICERS OF THEIR RESPECTIVE HOUSES OF PARLIAMENT AND AS THE INDEPENDENT AND IMPARTIAL REPRESENTATIVES OF THOSE HOUSES.

THE CONSTITUTION (AMENDMENT) BILL WILL ALSO AMEND THE CONSTITUTION ACT TO SPECIFY THE METHOD OF ELECTION OF THE SPEAKER OF THE LEGISLATIVE ASSEMBLY.

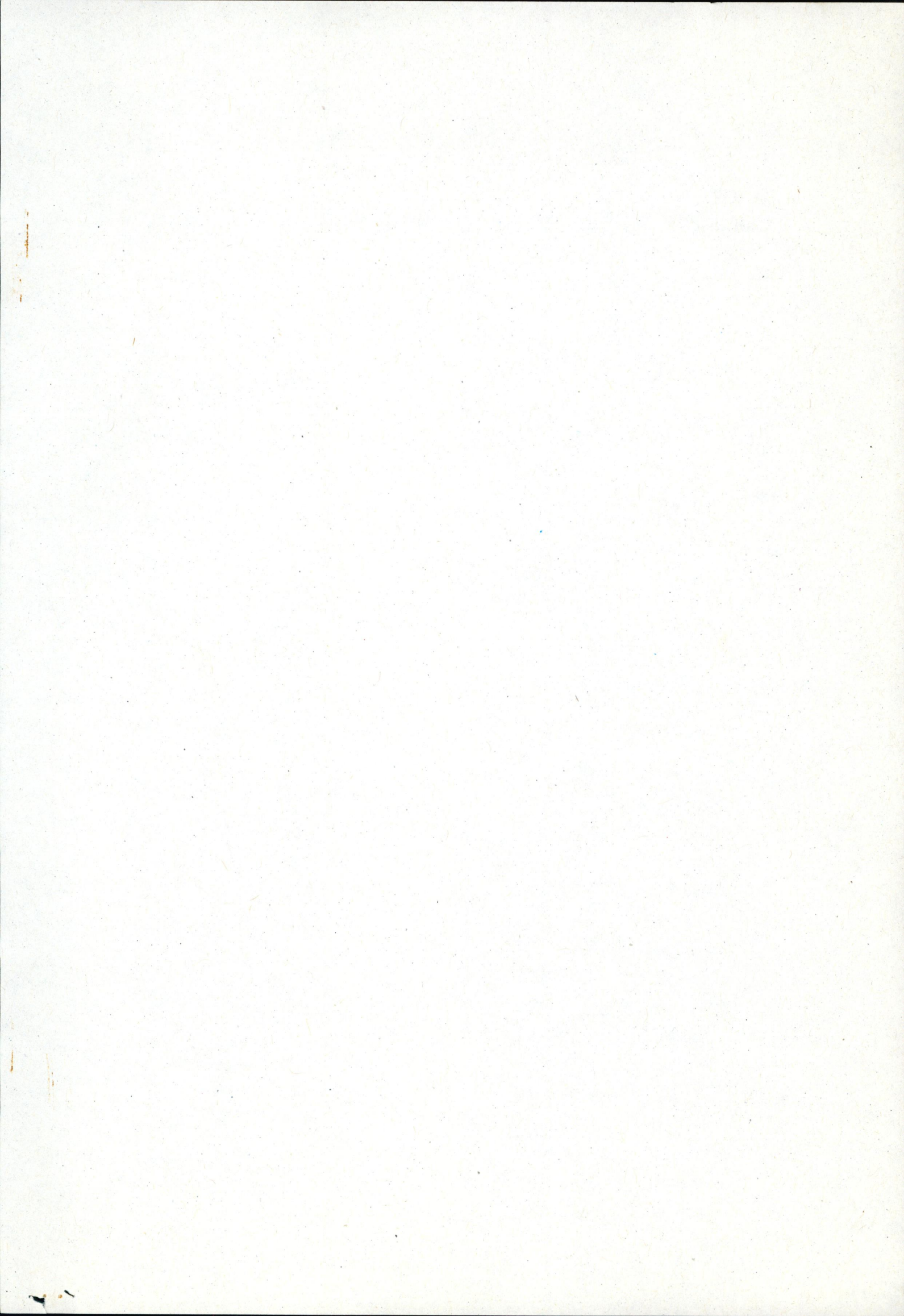
THE BILL PROVIDES THAT THE ELECTION OF THE SPEAKER WILL BE CONDUCTED BY SECRET BALLOT. BALLOTING WILL CONTINUE UNTIL ONE MEMBER WHO HAS BEEN NOMINATED OBTAINS THE VOTES OF AT LEAST TWO - THIRDS OF THE NUMBER OF MEMBERS OF THE ASSEMBLY. HOWEVER, WHERE THE NUMBER OF CANDIDATES IS OR HAS BEEN REDUCED TO TWO, THE SUCCESSFUL CANDIDATE WILL BE ELECTED BY A SIMPLE MAJORITY OF THOSE VOTING. WHERE CANDIDATES RECEIVE AN EQUAL NUMBER OF VOTES IN TWO SUCCESSIVE BALLOTS, THERE IS PROVISION TO RESOLVE THE DEADLOCK BY LOT.





**MR PRESIDENT,**

**I COMMEND THESE BILLS TO THE HOUSE.**





FIRST PRINT

## CONSTITUTION (AMENDMENT) BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The Constitution (Entrenchment) Amendment Bill 1992 is cognate with this Bill.

The objects of this Bill are:

- to secure the independence of the judiciary
- to recognise the offices of President of the Legislative Council and Speaker of the Legislative Assembly
- to provide for the election of the Speaker by secret ballot.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on the date of assent.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Constitution Act 1902.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Judicial Officers Act 1986.

Clause 5 contains transitional provisions that:

- ensure that the amendments do not affect the tenure of office of the person holding the office of President of the Legislative Council at the commencement of the proposed Act
- provide that the person holding the office of Speaker is taken to have been elected to the office in accordance with the new procedures
- provide for any provision of the Standing Rules and Orders of the Legislative Assembly that is inconsistent with the proposed amendments to cease to have effect.

*Constitution (Amendment) 1992*

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**Recognition of the offices of President of the Legislative Council and Speaker of the Legislative Assembly (Schedule 1 (1) and (2))**

Proposed sections 22G (1) and 31 (1) recognise the President of the Legislative Council and Speaker of the Legislative Assembly as the Presiding Officers of their respective Houses of Parliament and as independent and impartial representatives of those Houses.

**Election of Speaker (Schedule 1 (3))**

Proposed section 31B provides for the nomination for election, and election, of the Speaker. The identity of the nominators and seconders is to be confidential. The election is to be by successive secret ballots that are to continue until a candidate is elected by a two-thirds majority or, if the number of candidates is or has been reduced to two, by a simple majority of the Members voting at the ballot. There is provision for deadlocks to be resolved by lot, if candidates receive an equal number of votes in two successive ballots.

**Independence of the Judiciary (Schedule 1 (4) and Schedule 2)**

Proposed Part 9 enhances the independence of judicial officers. Judicial offices are defined in the Part so as (in effect) to include the judicial offices covered by the Judicial Officers Act 1986.

Proposed section 53 ensures that the holder of a judicial office can be removed from office only by the Governor, on the ground of inability or misbehaviour, following an address by each House of Parliament. Proposed section 54 ensures that the holder of a judicial office may be suspended only in accordance with legislation and is entitled to be paid remuneration as a judicial officer during the suspension.

Proposed sections 55 and 56 make it clear that Part 9 will not prevent the fixing or a change of the age at which judicial officers are required to retire at law or prevent the abolition of a judicial office. However, a change in the retiring age does not apply to an existing judicial officer without his or her consent, and provision is made, on the abolition of a judicial office, for the appointment of the former holder to another judicial office of commensurate status and for the preservation of remuneration.

Schedule 2 contains the following amendments to the Judicial Officers Act 1986:

Schedule 2 (1) omits section 4, as the matters covered there are now to be dealt with by proposed section 53 of the Constitution Act 1902 (which provides for and limits the grounds of removal from office of a judicial officer).

Schedule 2 (2) omits section 40 (3), as the matters covered there are now to be dealt with by proposed section 54 (2) of the Constitution Act 1902 (payment during suspension of a judicial officer).

Schedule 2 (3) replaces section 41. Some of the matters covered by the old section are now to be dealt with by proposed section 53 of the Constitution Act 1902 (which provides for removal of a judicial officer by the Governor on the address of both Houses of Parliament). The new section 41 contains an additional requirement, to the effect that a judicial officer cannot be removed from office in the absence of a report of the Conduct Division of the Judicial Commission setting out its opinion that there is justification for parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity. Such an "additional" requirement is contemplated by the proposed section 53 (3) of the Constitution Act 1902.

Schedule 2 (4) omits section 44 (4), so as to remove the power of the Governor to retire a Magistrate between the ages of 60 and 65. This power would be inconsistent with the security of tenure provided by proposed section 53 of the Constitution Act 1902.

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FIRST PRINT

**CONSTITUTION (AMENDMENT) BILL 1992**

NEW SOUTH WALES



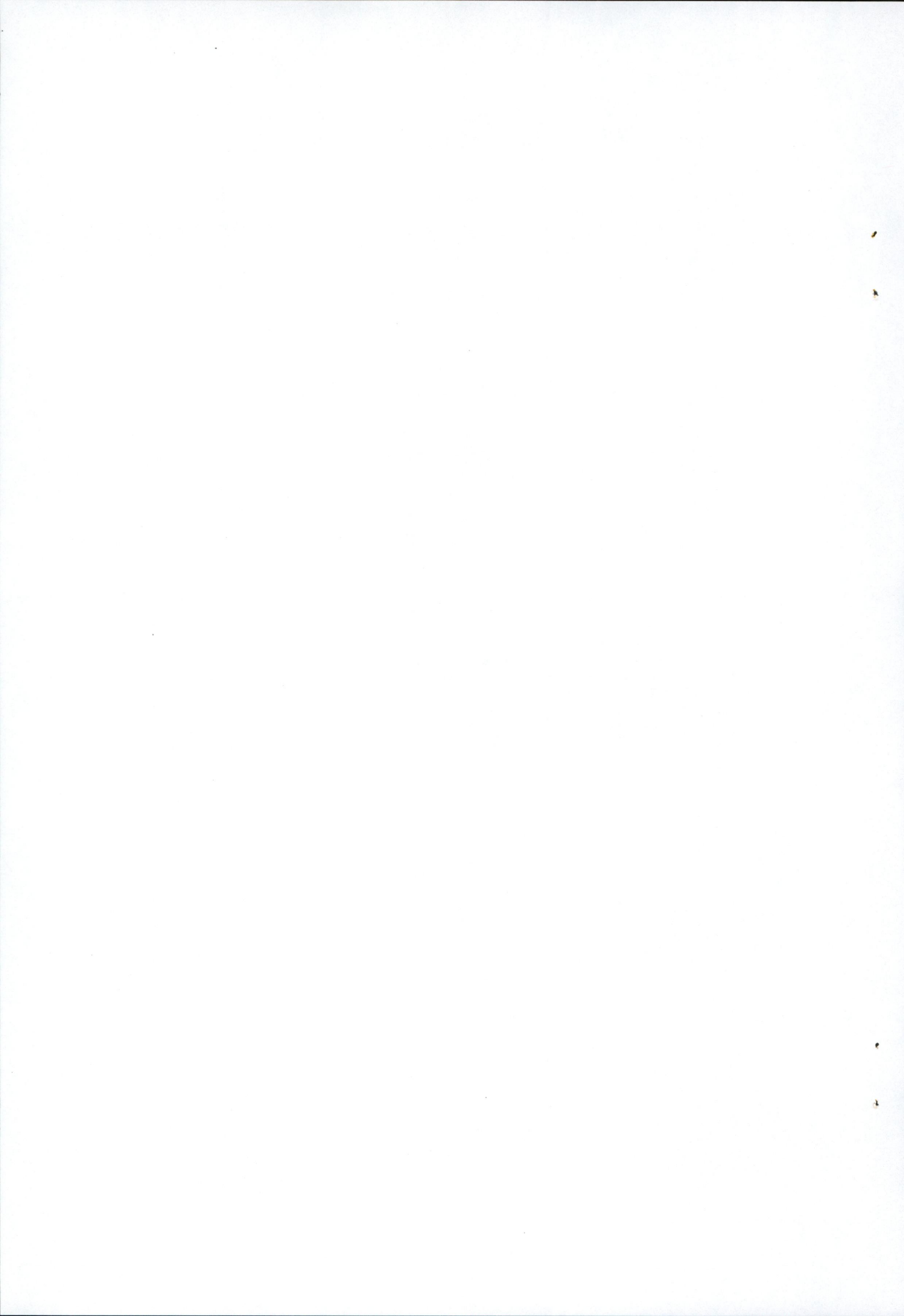
**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Constitution Act 1902 No. 32
4. Consequential amendment of Judicial Officers Act 1986 No. 100
5. Transitional provisions

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902

SCHEDULE 2—AMENDMENT OF JUDICIAL OFFICERS ACT 1986

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**CONSTITUTION (AMENDMENT) BILL 1992**

NEW SOUTH WALES



No. , 1992

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**A BILL FOR**

An Act to amend the Constitution Act 1902 to secure the independence of the judiciary, to give statutory recognition to the offices of President of the Legislative Council and Speaker of the Legislative Assembly and to provide for the election of the Speaker by secret ballot; and for other purposes.

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See also Constitution (Entrenchment) Amendment Bill 1992.

*Constitution (Amendment) 1992*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Constitution (Amendment) Act 1992.

**Commencement**

- 5 2. This Act commences on the date of assent.

**Amendment of Constitution Act 1902 No. 32**

3. The Constitution Act 1902 is amended as set out in Schedule 1.

**Consequential amendment of Judicial Officers Act 1986 No. 100**

4. The Judicial Officers Act 1986 is amended as set out in Schedule 2.

10 **Transitional provisions**

5. (1) Nothing in this Act affects the tenure of office of the person holding office as President of the Legislative Council immediately before the commencement of this Act.

- 15 (2) The person holding office as Speaker of the Legislative Assembly immediately before the commencement of this Act is taken to have been elected as Speaker in accordance with the Constitution Act 1902 as amended by this Act. This subsection does not apply to elections held after the commencement of this Act.

- 20 (3) Any provision of the Standing Rules and Orders of the Legislative Assembly in force at the commencement of this Act ceases to have effect to the extent to which it is inconsistent with any amendment made by this Act.

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**SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902**

(Sec. 3)

- 25 (1) Section 22G (**President**):

(a) At the beginning of section 22G, insert:

(1) There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative.



*Constitution (Amendment) 1992*


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 SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

- (b) Renumber the remaining subsections of section 22G as subsections (2)–(8).
- (c) From section 22G (7) as renumbered, omit “(3)”, insert instead “(5)”. 5
- (2) Section 31 (**Speaker**):
- (a) At the beginning of section 31, insert:
- (1) There shall be a Speaker of the Legislative Assembly, who is the Presiding Officer of the Legislative Assembly and is recognised as its independent and impartial representative. 10
- (b) Renumber the remaining subsections of section 31 as subsections (2) and (3).
- (3) Section 31B:
- After section 31A insert: 15
- Manner of election of Speaker**
- 31B. (1) The election of the Speaker shall be conducted by secret ballot. A ballot is not required if only one candidate is validly nominated, and that candidate shall be declared elected. 20
- (2) Nominations shall be made in writing, and the identity of the nominators and seconders shall not be disclosed by the Clerk of the Legislative Assembly or other person presiding at the election. A nomination is not validly made unless the person nominated accepts nomination, by endorsement on the instrument of nomination. 25
- (3) Nominations shall not be closed until a reasonable opportunity has been given for the Members of the Legislative Assembly desiring to do so to make nominations. Further nominations may not be made between ballots. 30
- (4) The candidates with the smallest number of votes shall be successively withdrawn one by one, and a fresh ballot shall take place after each withdrawal, until one candidate receives the votes of at least two-thirds of the number of Members of the Legislative Assembly for the time being or (if there are only two candidates validly nominated or there are only two candidates left) a majority of the number of Members voting at that ballot. That candidate shall be declared elected. 35

*Constitution (Amendment) 1992*

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

5 (5) If there is an equality of votes among the candidates  
with the smallest number of votes, the ballot shall be taken  
again, and if again there is such an equality of votes, the  
Clerk of the Legislative Assembly or other person presiding  
at the election shall determine, by lot, which of the  
10 candidates with the same number of votes shall be  
withdrawn, as if that candidate had received the smallest  
number of votes.

15 (6) If there are only two candidates validly nominated or  
there are only two candidates left, and if there is an equality  
of votes among the two candidates, the ballot shall be taken  
again, and if again there is an equality of votes, the Clerk of  
the Legislative Assembly or other person presiding at the  
election shall determine, by lot, which of the candidates is  
20 taken to have received the smaller number of votes. The  
other candidate shall be declared elected.

25 (7) The Standing Rules and Orders of the Legislative  
Assembly may make provision, not inconsistent with this  
section, for or with respect to the manner of election of the  
Speaker and associated matters.

30 (8) In the absence of relevant Standing Rules and Orders at  
the time of such an election, the election is to be conducted  
(subject to this section and to any necessary adaptations) in  
accordance with the provisions of the Standing Orders of the  
Senate of the Parliament of the Commonwealth that relate to  
the election of the President of the Senate.

35 (4) Part 9:

After Part 8, insert:

**PART 9—THE JUDICIARY**

**Definition and application**

52. (1) In this Part:

35 “judicial office” means the office of any of the  
following:

- 40 (a) Chief Justice, President of the Court of Appeal,  
Judge of Appeal, Judge or Master of the Supreme  
Court;
- (b) Chief Judge, Deputy Chief Judge or Judge of the  
Industrial Court;



*Constitution (Amendment) 1992*

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

- (c) Chief Judge or Judge of the Land and Environment Court;
- (d) Chief Judge or Judge of the District Court; 5
- (e) Chief Judge or Judge of the Compensation Court;
- (f) Chief Magistrate, Deputy Chief Magistrate or Magistrate of the Local Courts; Senior Children's Magistrate or Children's Magistrate of the Children's Court; Chief Industrial Magistrate or Industrial Magistrate; Chairman, Deputy Chairman or Licensing Magistrate of the Licensing Court. 10
- (2) For the purposes of this Part:
- (a) the Supreme Court, the Industrial Court and the Land and Environment Court are taken to be courts of equivalent status, and are of higher status than the courts referred to in paragraphs (b) and (c); and 15
- (b) the District Court and the Compensation Court are taken to be courts of equivalent status, and are of higher status than the court referred to in paragraph (c); and 20
- (c) the holders of the judicial offices referred to in paragraph (f) of the definition of "judicial office" are taken to constitute one court; and 25
- (d) the relative status of any other court is to be as determined by legislation.
- (3) This Part extends to the removal or suspension of judicial officers after the commencement of this Part because of matters arising before that commencement. 30
- Removal from judicial office**
53. (1) No holder of a judicial office can be removed from the office, except as provided by this Part.
- (2) The holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity. 35
- (3) Legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office. 40

*Constitution (Amendment) 1992*SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

5 (4) This section extends to term appointments to a judicial office, but does not apply to the holder of the office at the expiry of such a term.

(5) This section extends to acting appointments to a judicial office, whether made with or without a specific term.

**Suspension from judicial office**

10 54. (1) No holder of a judicial office can be suspended from the office, except in accordance with legislation.

(2) A suspended judicial officer is entitled to be paid remuneration as a judicial officer during the period of suspension, at the current rate applicable to the office from which he or she is suspended.

**Retirement**

15 55. (1) This Part does not prevent the fixing or a change of age at which all judicial officers, or all judicial officers of a court, are required to retire by legislation.

20 (2) However, such a change does not apply to a judicial officer holding office when the change takes effect, unless the judicial officer consents.

**Abolition of judicial office**

25 56. (1) This Part does not prevent the abolition by legislation of a judicial office.

(2) The person who held an abolished judicial office is entitled (without loss of remuneration) to be appointed to and to hold another judicial office in the same court or in a court of equivalent or higher status, unless already the holder of such an office.

30 (3) That right remains operative for the period during which the person was entitled to hold the abolished office, subject to removal or suspension in accordance with law. The right lapses if the person declines appointment to the other office or resigns from it.

35 (4) This section applies whether the judicial office was abolished directly or whether it was abolished indirectly by the abolition of a court or part of a court.



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**SCHEDULE 2—AMENDMENT OF JUDICIAL OFFICERS  
ACT 1986**

(Sec. 4)

- (1) **Section 4 (Tenure of judicial office):**  
Omit the section. 5
- (2) **Section 40 (Suspension of judicial officers):**  
Omit section 40 (3).
- (3) **Section 41:**  
Omit the section, insert instead:  
**Removal of judicial officers** 10  
41. (1) A judicial officer may not be removed from office in the absence of a report of the Conduct Division to the Governor under this Act that sets out the Division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity. 15  
(2) The provisions of this section are additional to those of section 53 of the Constitution Act 1902.
- (4) **Section 44 (Retirement of judicial officers):**  
Omit section 44 (4). 20
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# CONSTITUTION (AMENDMENT) ACT 1992 No. 106

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Constitution Act 1902 No. 32
4. Consequential amendment of Judicial Officers Act 1986 No. 100
5. Transitional provisions

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902

SCHEDULE 2—AMENDMENT OF JUDICIAL OFFICERS ACT 1986

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# CONSTITUTION (AMENDMENT) ACT 1992 No. 106

## NEW SOUTH WALES



### Act No. 106, 1992

An Act to amend the Constitution Act 1902 to secure the independence of the judiciary, to give statutory recognition to the offices of President of the Legislative Council and Speaker of the Legislative Assembly and to provide for the election of the Speaker by secret ballot; and for other purposes. [Assented to 8 December 1992]

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See also Constitution (Entrenchment) Amendment Bill 1992.

*Constitution (Amendment) Act 1992 No. 106*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Constitution (Amendment) Act 1992.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Constitution Act 1902 No. 32**

3. The Constitution Act 1902 is amended as set out in Schedule 1.

**Consequential amendment of Judicial Officers Act 1986 No. 100**

4. The Judicial Officers Act 1986 is amended as set out in Schedule 2.

**Transitional provisions**

5. (1) Nothing in this Act affects the tenure of office of the person holding office as President of the Legislative Council immediately before the commencement of this Act.

(2) The person holding office as Speaker of the Legislative Assembly immediately before the commencement of this Act is taken to have been elected as Speaker in accordance with the Constitution Act 1902 as amended by this Act. This subsection does not apply to elections held after the commencement of this Act.

(3) Any provision of the Standing Rules and Orders of the Legislative Assembly in force at the commencement of this Act ceases to have effect to the extent to which it is inconsistent with any amendment made by this Act.

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**SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902**

(Sec. 3)

(1) Section 22G (**President**):

(a) At the beginning of section 22G, insert:

(1) There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative.



*Constitution (Amendment) Act 1992 No. 106*

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

- (b) Renumber the remaining subsections of section 22G as subsections (2)–(8).
  - (c) From section 22G (7) as renumbered, omit “(3)”, insert instead “(5)”.
- (2) Section 31 (**Speaker**):
- (a) At the beginning of section 31, insert:
    - (1) There shall be a Speaker of the Legislative Assembly, who is the Presiding Officer of the Legislative Assembly and is recognised as its independent and impartial representative.
  - (b) Renumber the remaining subsections of section 31 as subsections (2) and (3).
- (3) Section 31B:
- After section 31A insert:
- Manner of election of Speaker**
- 31B. (1) The election of the Speaker shall be conducted by secret ballot. A ballot is not required if only one candidate is validly nominated, and that candidate shall be declared elected.
- (2) Nominations shall be made in writing, and the identity of the nominators and seconders shall not be disclosed by the Clerk of the Legislative Assembly or other person presiding at the election. A nomination is not validly made unless the person nominated accepts nomination, by endorsement on the instrument of nomination.
- (3) Nominations shall not be closed until a reasonable opportunity has been given for the Members of the Legislative Assembly desiring to do so to make nominations. Further nominations may not be made between ballots.
- (4) The candidates with the smallest number of votes shall be successively withdrawn one by one, and a fresh ballot shall take place after each withdrawal, until one candidate receives the votes of at least two-thirds of the number of Members of the Legislative Assembly for the time being or (if there are only two candidates validly nominated or there are only two candidates left) a majority of the number of Members voting at that ballot. That candidate shall be declared elected.

*Constitution (Amendment) Act 1992 No. 106*

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

(5) If there is an equality of votes among the candidates with the smallest number of votes, the ballot shall be taken again, and if again there is such an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates with the same number of votes shall be withdrawn, as if that candidate had received the smallest number of votes.

(6) If there are only two candidates validly nominated or there are only two candidates left, and if there is an equality of votes among the two candidates, the ballot shall be taken again, and if again there is an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates is taken to have received the smaller number of votes. The other candidate shall be declared elected.

(7) The Standing Rules and Orders of the Legislative Assembly may make provision, not inconsistent with this section, for or with respect to the manner of election of the Speaker and associated matters.

(8) In the absence of relevant Standing Rules and Orders at the time of such an election, the election is to be conducted (subject to this section and to any necessary adaptations) in accordance with the provisions of the Standing Orders of the Senate of the Parliament of the Commonwealth that relate to the election of the President of the Senate.

(4) Part 9:

After Part 8, insert:

**PART 9—THE JUDICIARY**

**Definition and application**

52. (1) In this Part:

“**judicial office**” means the office of any of the following:

- (a) Chief Justice, President of the Court of Appeal, Judge of Appeal, Judge or Master of the Supreme Court;
- (b) Chief Judge, Deputy Chief Judge or Judge of the Industrial Court;



*Constitution (Amendment) Act 1992 No. 106*

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

- (c) Chief Judge or Judge of the Land and Environment Court;
- (d) Chief Judge or Judge of the District Court;
- (e) Chief Judge or Judge of the Compensation Court;
- (f) Chief Magistrate, Deputy Chief Magistrate or Magistrate of the Local Courts; Senior Children's Magistrate or Children's Magistrate of the Children's Court; Chief Industrial Magistrate or Industrial Magistrate; Chairman, Deputy Chairman or Licensing Magistrate of the Licensing Court.

(2) For the purposes of this Part:

- (a) the Supreme Court, the Industrial Court and the Land and Environment Court are taken to be courts of equivalent status, and are of higher status than the courts referred to in paragraphs (b) and (c); and
- (b) the District Court and the Compensation Court are taken to be courts of equivalent status, and are of higher status than the court referred to in paragraph (c); and
- (c) the holders of the judicial offices referred to in paragraph (f) of the definition of "judicial office" are taken to constitute one court; and
- (d) the relative status of any other court is to be as determined by legislation.

(3) This Part extends to the removal or suspension of judicial officers after the commencement of this Part because of matters arising before that commencement.

**Removal from judicial office**

53. (1) No holder of a judicial office can be removed from the office, except as provided by this Part.

(2) The holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

(3) Legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office.



*Constitution (Amendment) Act 1992 No. 106*

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—  
*continued*

(4) This section extends to term appointments to a judicial office, but does not apply to the holder of the office at the expiry of such a term.

(5) This section extends to acting appointments to a judicial office, whether made with or without a specific term.

**Suspension from judicial office**

54. (1) No holder of a judicial office can be suspended from the office, except in accordance with legislation.

(2) A suspended judicial officer is entitled to be paid remuneration as a judicial officer during the period of suspension, at the current rate applicable to the office from which he or she is suspended.

**Retirement**

55. (1) This Part does not prevent the fixing or a change of age at which all judicial officers, or all judicial officers of a court, are required to retire by legislation.

(2) However, such a change does not apply to a judicial officer holding office when the change takes effect, unless the judicial officer consents.

**Abolition of judicial office**

56. (1) This Part does not prevent the abolition by legislation of a judicial office.

(2) The person who held an abolished judicial office is entitled (without loss of remuneration) to be appointed to and to hold another judicial office in the same court or in a court of equivalent or higher status, unless already the holder of such an office.

(3) That right remains operative for the period during which the person was entitled to hold the abolished office, subject to removal or suspension in accordance with law. The right lapses if the person declines appointment to the other office or resigns from it.

(4) This section applies whether the judicial office was abolished directly or whether it was abolished indirectly by the abolition of a court or part of a court.

*Constitution (Amendment) Act 1992 No. 106*

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**SCHEDULE 2—AMENDMENT OF JUDICIAL OFFICERS  
ACT 1986**

(Sec. 4)

(1) Section 4 (**Tenure of judicial office**):

Omit the section.

(2) Section 40 (**Suspension of judicial officers**):

Omit section 40 (3).

(3) Section 41:

Omit the section, insert instead:

**Removal of judicial officers**

41. (1) A judicial officer may not be removed from office in the absence of a report of the Conduct Division to the Governor under this Act that sets out the Division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity.

(2) The provisions of this section are additional to those of section 53 of the Constitution Act 1902.

(4) Section 44 (**Retirement of judicial officers**):

Omit section 44 (4).

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*[Minister's second reading speech made in—  
Legislative Assembly on 17 November 1992  
Legislative Council on 27 November 1992]*

