

FIRST PRINT

**CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL
PROVISIONS BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to fix (except in certain circumstances) 25 March 1995 as the date of the next general election; and
- (b) to ensure that a referendum on the proposed Constitution (Fixed Term Parliaments) Amendment Act 1991 (which will apply after the next general election) is held on or before that date; and
- (c) to require a referendum for any future legislation that would repeal or amend the provisions of this Bill.

Presently, a Legislative Assembly continues for 4 years unless it is dissolved by the Governor before that time.

Under the Bill:

- (a) The next general election is to be held on 25 March 1995, unless the current Assembly is sooner dissolved in the special circumstances mentioned below.
- (b) If the current Assembly is so dissolved, the next general election is to be held (as at present) within 40 days after the issue of the writs for the election.
- (c) The existing discretion of the Governor to dissolve the current Assembly at any time and issue writs for an election is to be replaced by a power to dissolve only in the following special circumstances (those circumstances are similar to those proposed under the Constitution (Fixed Term Parliaments) Amendment Bill 1991):
 - If a motion of no confidence in the Government is passed and no Government which has the confidence of the Assembly is formed within 8 clear days of the motion of no confidence. 3 clear days' notice is required to be given of the motion of no confidence.
 - If the Assembly has rejected or failed to pass a supply Bill.

Constitution (Fixed Term Parliaments) Special Provisions 1991

- If the scheduled election date of 25 March 1995 is an unsuitable date for the general election (e.g. it occurs in a period during which a Commonwealth election is being held). In that case, the duration of the Assembly may be reduced by no more than 2 months and an earlier election held.
 - (d) Any existing power of the Governor to act otherwise than on the advice of the Government in connection with the dissolution of the Legislative Assembly is preserved.
 - (e) The Act under which referendums are required to be held is amended to ensure that the referendum on the Constitution (Fixed Term Parliaments) Amendment Bill 1991 (which will apply to future Parliaments if approved by the electors) is held at or before the date of the next general election.
 - (f) A referendum will be required for any future legislation that would repeal or amend the provisions of this Bill.
-

FIRST PRINT

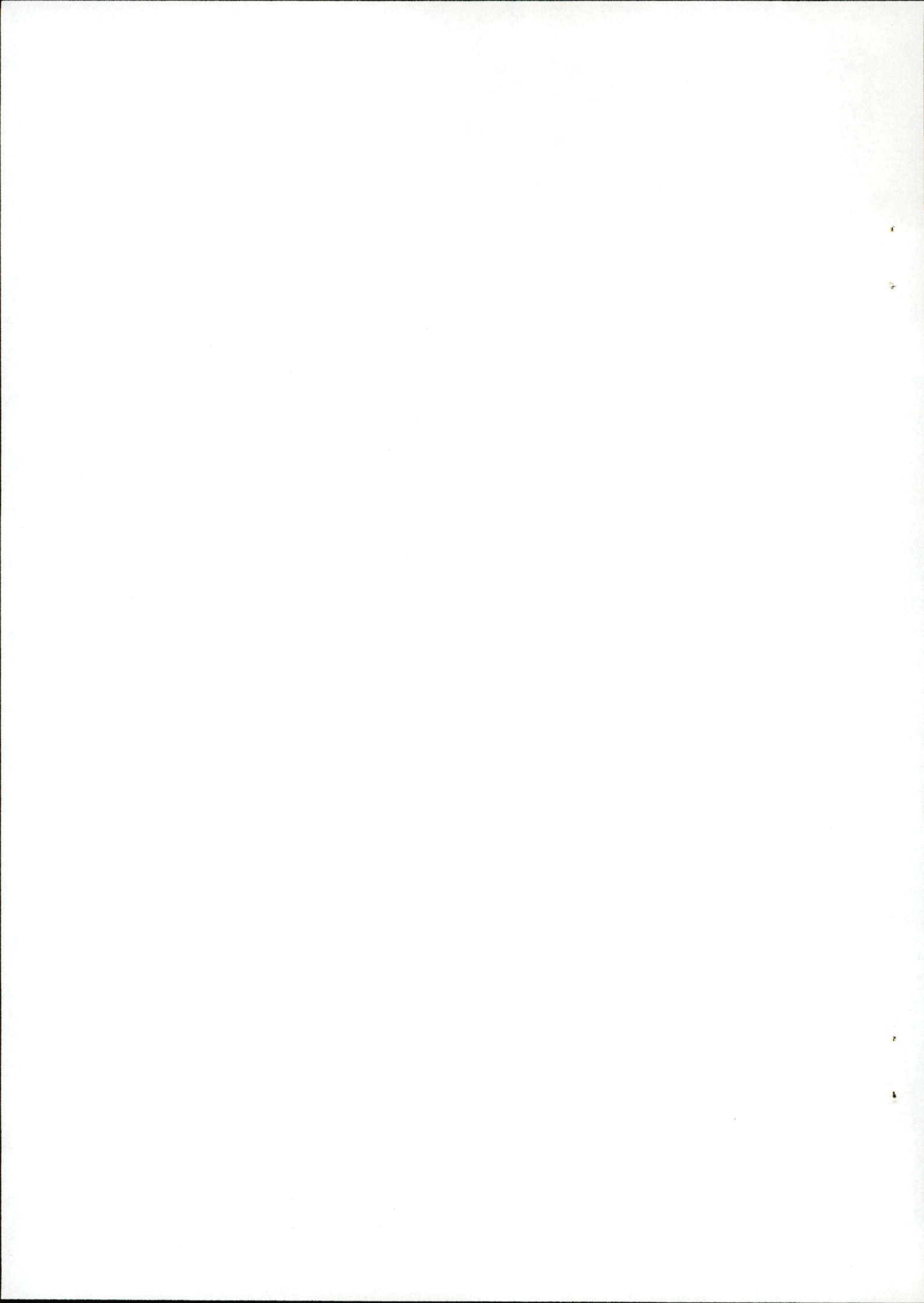
**CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL
PROVISIONS BILL 1991**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Interpretation
 4. Date of next general election
 5. Dissolution of current Assembly before expiry in 1995
 6. Preservation of certain conventions etc. relating to advice to Governor
 7. This Act to prevail
 8. Referendum required to alter this Act
 9. Amendment of Constitution Further Amendment (Referendum) Act 1930 No. 2
-



**CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL
PROVISIONS BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to fix (except in certain circumstances) 25 March 1995 as the date of the next general election of Members of the Legislative Assembly; to require a referendum on any future legislation that would repeal or amend the provisions of this Act; and to make provision with respect to the date of the referendum on the Constitution (Fixed Term Parliaments) Amendment Bill 1991.

Constitution (Fixed Term Parliaments) Special Provisions 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Constitution (Fixed Term Parliaments) Special Provisions Act 1991.

Commencement

2. This Act commences on the date of assent.

Interpretation

3. (1) In this Act:

“**current Assembly**” means the Legislative Assembly existing on the commencement of this Act (being the Legislative Assembly which first met for the dispatch of business on 2 July 1991);

“**next general election**” means the next general election of Members of the Legislative Assembly held after the commencement of this Act.

(2) This Act is to be construed as if it formed part of the Constitution Act 1902.

Date of next general election

4. (1) The writs for the next general election must name 25 March 1995 as the day for the taking of the poll at that general election, unless the current Assembly is dissolved under section 5.

(2) If the current Assembly is dissolved under section 5, the writs for the next general election must name as the day for the taking of the poll at that general election a day that is not later than the fortieth day from the date of the issue of the writs.

(3) If the current Assembly is not dissolved under section 5, the current Assembly expires on 3 March 1995.

(4) In this section, a reference to a writ does not include a reference to a writ issued because of the failure of an election, including a failure of an election because of its being declared void in accordance with law.

Dissolution of current Assembly before expiry in 1995

5. (1) The current Assembly may be dissolved by the Governor by proclamation, but only in the circumstances authorised by this section.

Constitution (Fixed Term Parliaments) Special Provisions 1991

- (2) The current Assembly may be dissolved if:
- (a) a motion of no confidence in the Premier and other Ministers is passed by the current Assembly (being a motion of which not less than 3 clear days' notice has been given in the current Assembly); and
 - (b) during the period commencing on the passage of the motion of no confidence and ending 8 clear days thereafter, the current Assembly has not passed a motion of confidence in the persons who are then the Premier and other Ministers.

After the motion of no confidence is passed, the current Assembly may not be prorogued before the end of that 8-day period, unless the motion of confidence has been passed.

- (3) The current Assembly may be dissolved if it:
- (a) rejects a Bill which appropriates revenue or moneys for the ordinary annual services of the Government; or
 - (b) fails to pass such a Bill before the time the appropriation is required.

(4) The current Assembly may be dissolved within 2 months before the current Assembly is due to expire on 3 March 1995 if the next general election would otherwise be required to be held during the same period as a Commonwealth election, during a holiday period or at any other inconvenient time.

Preservation of certain conventions etc. relating to advice to Governor

6. The enactment of this Act 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 Premier or the Executive Council.

This Act to prevail

7. This Act has effect despite anything to the contrary in the Constitution Act 1902 or any other Act.

Referendum required to alter this Act

8. (1) A Bill that expressly or impliedly repeals or amends this Act shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with this section.

Constitution (Fixed Term Parliaments) Special Provisions 1991

(2) On a day not sooner than 2 months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.

(3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.

(4) When the Bill is submitted to the electors the vote shall be taken under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty's assent.

(6) Nothing contained in this section affects the operation of section 5B of the Constitution Act 1902 and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B and has been approved by a majority of the electors voting may be presented to the Governor for Her Majesty's assent as if this section had not been enacted.

(7) The provisions of this section do not apply to a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 29 (2) of the Constitution Act 1902.

Amendment of Constitution Further Amendment (Referendum) Act 1930 No. 2

9. The Constitution Further Amendment (Referendum) Act 1930 is amended by inserting after section 7 (2) the following subsection:

(3) The day appointed for the taking of the votes of the electors on the Constitution (Fixed Term Parliaments) Amendment Bill 1991 shall be no later than the day named for the taking of the poll in the next general election (within the meaning of the Constitution (Fixed Term Parliaments) Special Provisions Act 1991).

SECOND PRINT

**CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL
PROVISIONS BILL 1991**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Interpretation
 4. Date of next general election
 5. Dissolution of current Assembly before expiry in 1995
 6. Preservation of Governor's power to dissolve current Assembly in accordance with established constitutional conventions
 7. Governor to consider whether viable alternative Government can be formed
 8. This Act to prevail
 9. Referendum required to alter this Act
 10. Amendment of Constitution Further Amendment (Referendum) Act 1930 No. 2
-

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1991

An Act to fix (except in certain circumstances) 25 March 1995 as the date of the next general election of Members of the Legislative Assembly; to require a referendum on any future legislation that would repeal or amend the provisions of this Act; and to make provision with respect to the date of the referendum on the Constitution (Fixed Term Parliaments) Amendment Bill 1991.

Constitution (Fixed Term Parliaments) Special Provisions 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Constitution (Fixed Term Parliaments) Special Provisions Act 1991.

Commencement

2. This Act commences on the date of assent.

Interpretation

3. (1) In this Act:

“**current Assembly**” means the Legislative Assembly existing on the commencement of this Act (being the Legislative Assembly which first met for the dispatch of business on 2 July 1991);

“**next general election**” means the next general election of Members of the Legislative Assembly held after the commencement of this Act.

(2) This Act is to be construed as if it formed part of the Constitution Act 1902.

Date of next general election

4. (1) The writs for the next general election must name 25 March 1995 as the day for the taking of the poll at that general election, unless the current Assembly is dissolved in accordance with this Act.

(2) If the current Assembly is dissolved in accordance with this Act, the writs for the next general election must name as the day for the taking of the poll at that general election a day that is not later than the fortieth day from the date of the issue of the writs.

(3) If the current Assembly is not dissolved in accordance with this Act, the current Assembly expires on 3 March 1995.

(4) In this section, a reference to a writ does not include a reference to a writ issued because of the failure of an election, including a failure of an election because of its being declared void in accordance with law.

Dissolution of current Assembly before expiry in 1995

5. (1) The current Assembly may be dissolved by the Governor under section 10 of the Constitution Act 1902, but only in the circumstances authorised by this section or section 6.

Constitution (Fixed Term Parliaments) Special Provisions 1991

- (2) The current Assembly may be dissolved if:
- (a) a motion of no confidence in the Government is passed by the current Assembly (being a motion of which not less than 3 clear days' notice has been given in the current Assembly); and
 - (b) during the period commencing on the passage of the motion of no confidence and ending 8 clear days thereafter, the current Assembly has not passed a motion of confidence in the then Government.

After the motion of no confidence is passed, the current Assembly may not be prorogued before the end of that 8-day period and may not be adjourned for a period extending beyond that 8-day period, unless the motion of confidence has been passed.

- (3) The current Assembly may be dissolved if it:
- (a) rejects a Bill which appropriates revenue or moneys for the ordinary annual services of the Government; or
 - (b) fails to pass such a Bill before the time that the Governor considers that the appropriation is required.

(4) The current Assembly may be dissolved within 2 months before the current Assembly is due to expire on 3 March 1995 if the next general election would otherwise be required to be held during the same period as a Commonwealth election, during a holiday period or at any other inconvenient time.

Preservation of Governor's power to dissolve current Assembly in accordance with established constitutional conventions

6. This Act does not prevent the Governor from dissolving the current Assembly in circumstances other than those specified in section 5, despite any advice of the Premier or Executive Council, if the Governor could do so in accordance with established constitutional conventions.

Governor to consider whether viable alternative Government can be formed

7. When deciding whether the current Assembly should be dissolved in accordance with this Act, the Governor is to consider whether a viable alternative Government can be formed without a dissolution and, in so doing, is to have regard to any motion passed by the current Assembly expressing confidence in an alternative Government in which a named person would be Premier.

Constitution (Fixed Term Parliaments) Special Provisions 1991

Referendum required to alter this Act

8. (1) A Bill that expressly or impliedly repeals or amends this Act shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with this section.

(2) On a day not sooner than 2 months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.

(3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.

(4) When the Bill is submitted to the electors the vote shall be taken under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty's assent.

(6) Nothing contained in this section affects the operation of section 5B of the Constitution Act 1902 and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B and has been approved by a majority of the electors voting may be presented to the Governor for Her Majesty's assent as if this section had not been enacted.

(7) The provisions of this section do not apply to a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 29 (2) of the Constitution Act 1902.

Amendment of Constitution Further Amendment (Referendum) Act 1930 No. 2

9. The Constitution Further Amendment (Referendum) Act 1930 is amended by inserting after section 7 (2) the following subsection:

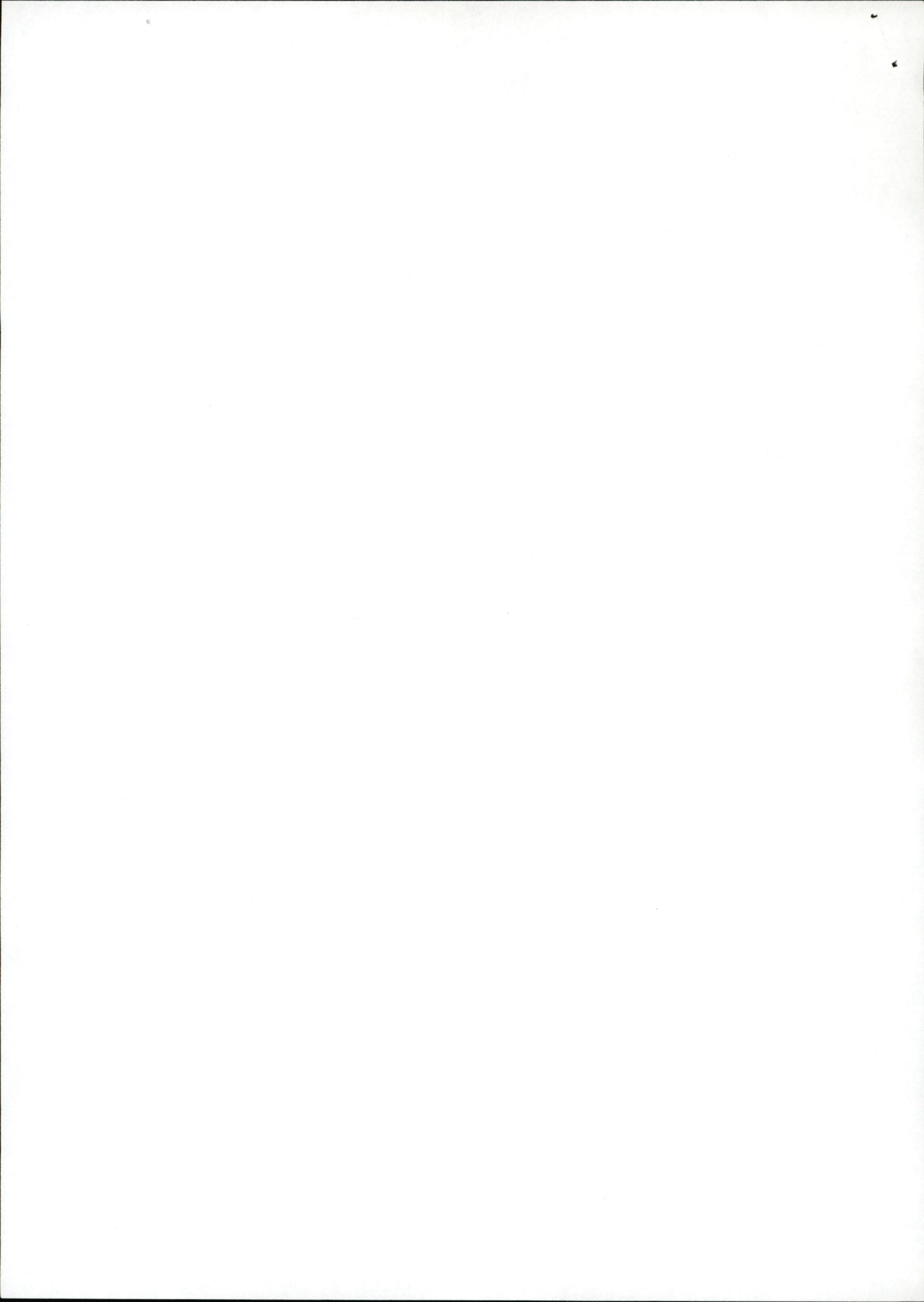
(3) The day appointed for the taking of the votes of the electors on the Constitution (Fixed Term Parliaments) Amendment Bill 1991 (or, if that Bill is re-introduced into the Legislative Assembly in 1992 with or without amendment, that Bill) shall be no later than the day named for the taking of the poll in the next general election (within the meaning of the Constitution (Fixed Term Parliaments) Special Provisions Act 1991).

MR. PRESIDENT,

**THE PURPOSE OF THESE BILLS IS TO PROVIDE FOR A FIXED
FOUR YEAR TERM FOR THE PARLIAMENT.**

**THIS BILL PROVIDES THAT UNLESS CERTAIN LIMITED
EVENTS OCCUR, THE NEXT GENERAL ELECTION WILL BE
HELD ON 25 MARCH 1995.**

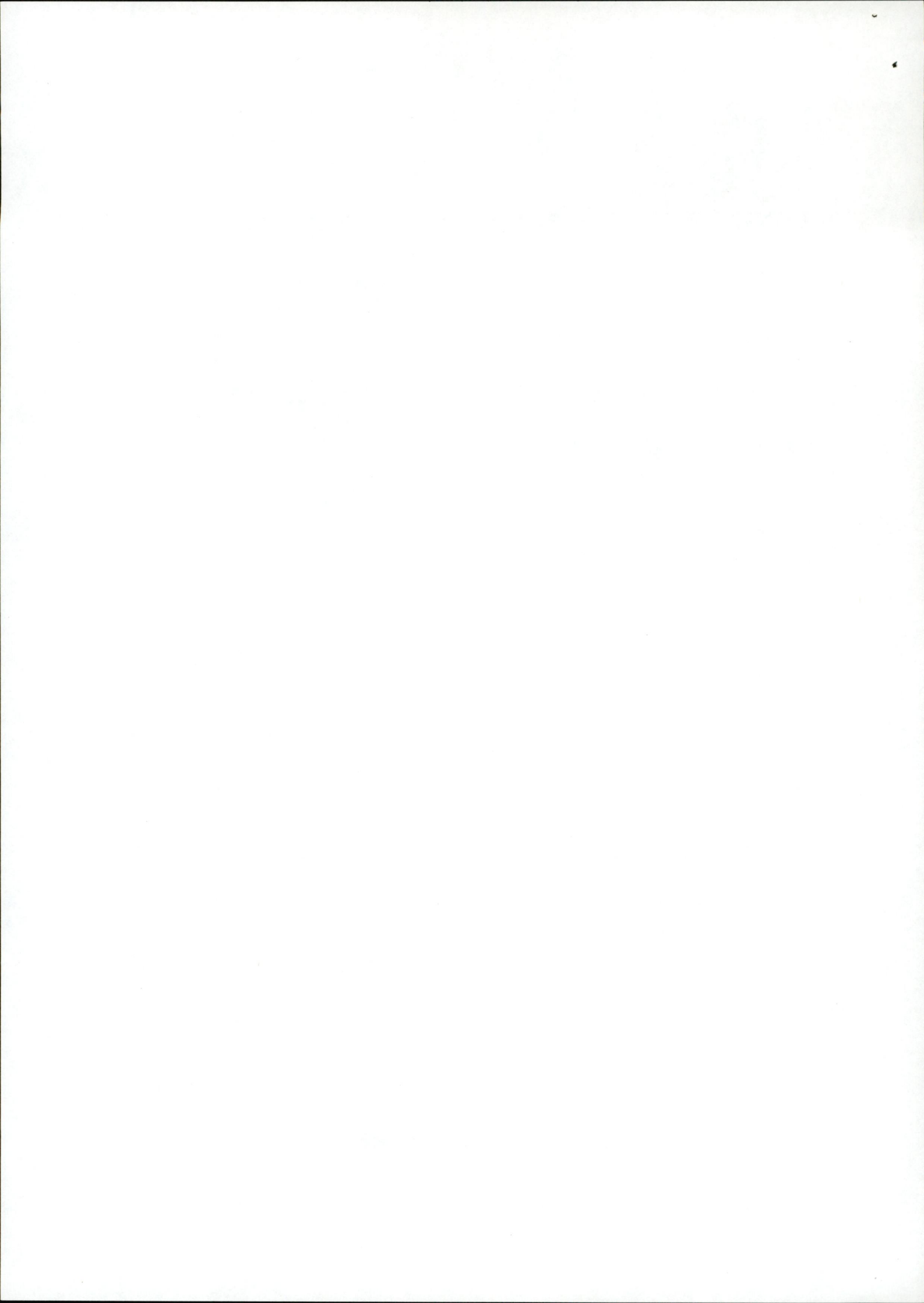
**THE GOVERNOR WILL ONLY BE ABLE TO DISSOLVE THE
PARLIAMENT AT AN EARLIER TIME IF A MOTION OF NO
CONFIDENCE IN THE GOVERNMENT IS PASSED, OR THE
LEGISLATIVE ASSEMBLY HAS REJECTED OR FAILED TO
PASS A SUPPLY BILL, AND NO GOVERNMENT WHICH HAS
THE CONFIDENCE OF THE LEGISLATIVE ASSEMBLY IS
FORMED WITHIN 8 DAYS. THE ONLY OTHER CIRCUMSTANCE
WHICH WOULD PERMIT AN EARLIER DISSOLUTION WOULD BE
IF THE DATE FOR THE ELECTION CLASHED WITH A**



COMMONWEALTH ELECTION OR WAS INCONVENIENT DUE TO A CLASH WITH A HOLIDAY PERIOD OR FOR SOME OTHER REASON. IN THOSE CIRCUMSTANCES THE DURATION OF THE LEGISLATIVE ASSEMBLY COULD BE REDUCED BY NO MORE THAN TWO MONTHS.

MR. PRESIDENT,

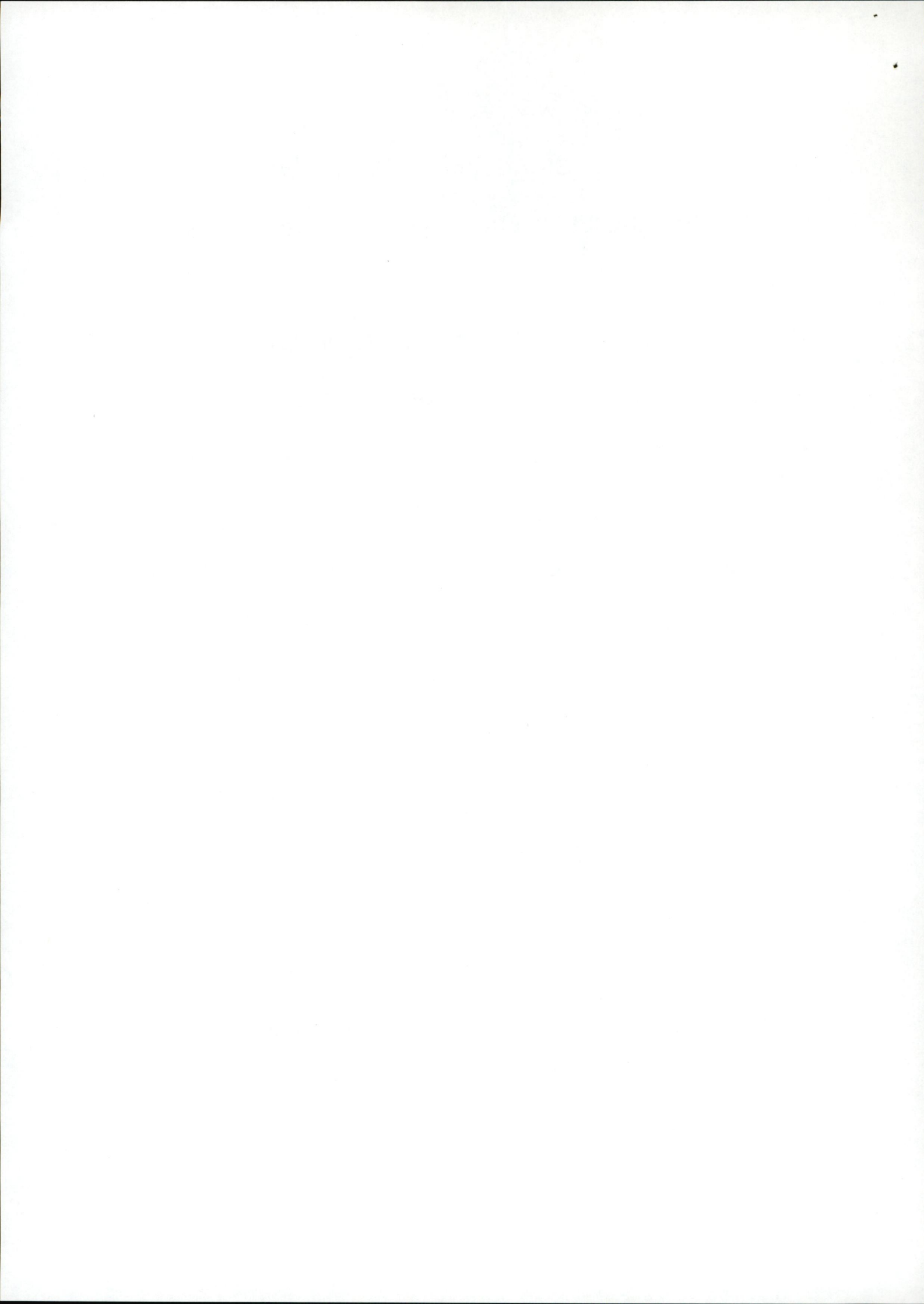
A JOINT SELECT COMMITTEE IS CURRENTLY CONSIDERING A LONG TERM BILL, WHICH WILL ENTRENCH THE PRINCIPLE OF FIXED FOUR YEAR TERMS FOR THE FUTURE. BECAUSE, UNDER THAT BILL, THERE IS A POSSIBILITY THAT IN SOME CIRCUMSTANCES THE LEGISLATIVE ASSEMBLY MAY ENDURE FOR SLIGHTLY LONGER THAN FOUR YEARS, SECTION 7B OF THE CONSTITUTION ACT REQUIRES THAT BILL TO BE SUBMITTED TO A REFERENDUM BEFORE IT CAN BECOME LAW. IN ANY EVENT, THE GOVERNMENT BELIEVES THAT



MATTERS OF THIS SIGNIFICANCE WHICH WILL CONSTRAIN FUTURE PARLIAMENTS SHOULD GO TO A REFERENDUM.

IN VIEW OF THE CONSTITUTIONAL SIGNIFICANCE OF THIS PACKAGE, THE GOVERNMENT REFERRED BOTH BILLS TO A LEGISLATION COMMITTEE. A THOROUGH EXAMINATION PARTICULARLY OF THE LONG TERM MEASURE IS NECESSARY TO ENSURE THAT IT IS PROPERLY SCRUTINISED PRIOR TO ITS SUBMISSION TO THE ELECTORS AT A REFERENDUM AT THE NEXT GENERAL ELECTION.

IT IS IMPORTANT, HOWEVER, THAT THE BILL DEALING WITH THIS PARLIAMENT SHOULD BE PASSED WITH MINIMUM DELAY. IN VIEW OF THIS, THE GOVERNMENT ASKED THE LEGISLATION COMMITTEE TO EXAMINE THE SHORT TERM MEASURE FIRST, WITHIN A TIMEFRAME WHICH PERMITS ITS PASSAGE THROUGH ALL STAGES THIS SESSION.



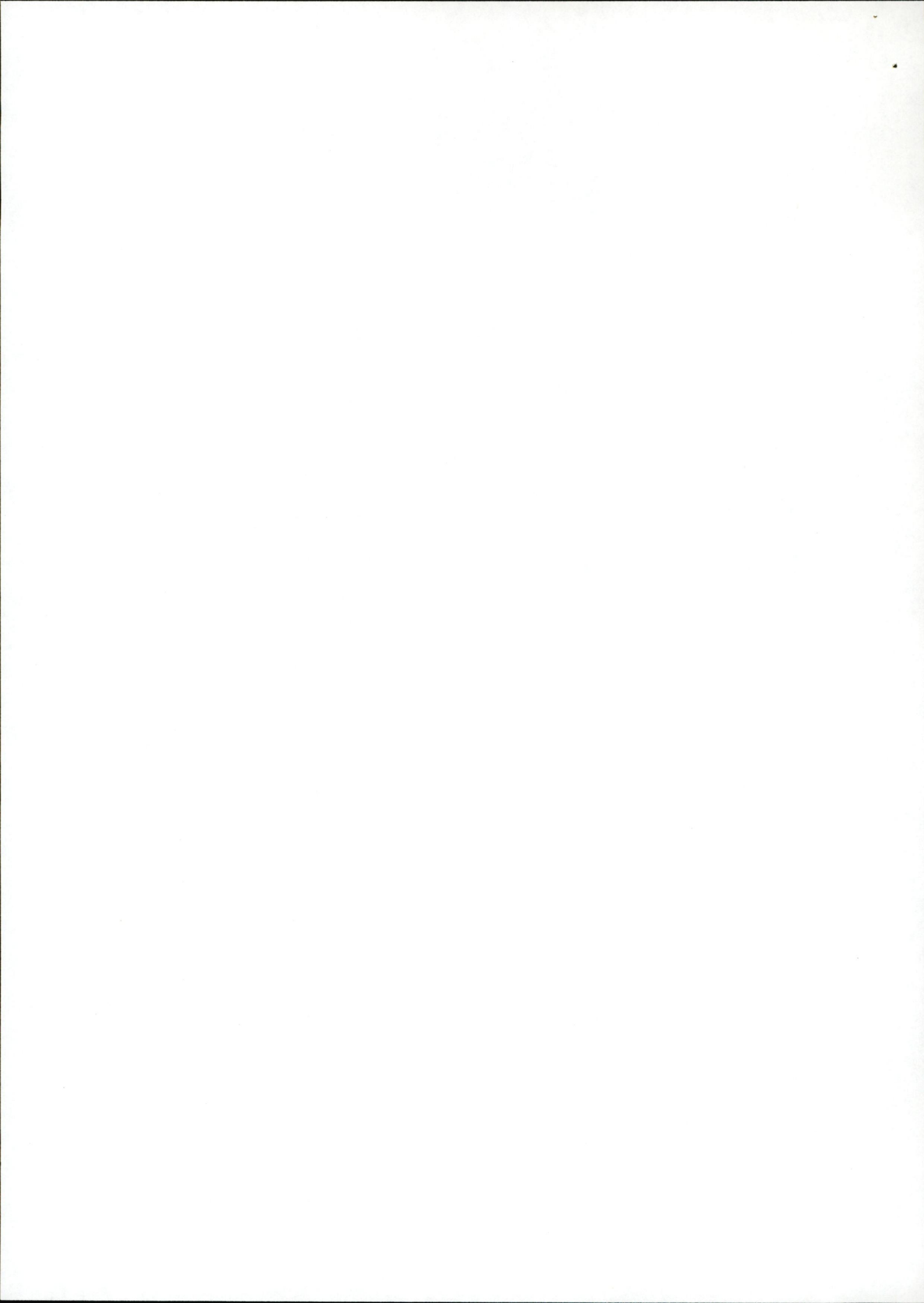
MR. PRESIDENT,

IT IS THE GOVERNMENT'S VIEW THAT ENSURING A FIXED TERM FOR EACH PARLIAMENT IS A POSITIVE AND HISTORIC STEP. THE HISTORY OF NEW SOUTH WALES PARLIAMENTS REVEALS THAT IT HAS BEEN RARE FOR THEM TO ENDURE FOR ANYTHING LIKE FOUR YEARS. THE BILL CURRENTLY BEFORE THE HOUSE WILL ENSURE THAT IN THE FUTURE THERE WILL BE NO CAPACITY FOR THE GOVERNMENT OF THE DAY TO MANIPULATE THE TIMING OF AN ELECTION TO SUIT ITS OWN PURPOSES.

A FIXED FOUR YEAR TERM WILL INTRODUCE GREATER CERTAINTY AND STABILITY. GOVERNMENTS WILL BE ABLE TO PLAN AND TO MAKE THE DIFFICULT DECISIONS THAT ARE OFTEN REQUIRED OF THEM IN A CLIMATE OF CERTAINTY AND STABILITY.

MR. PRESIDENT,

SIMILAR LEGISLATION EXISTS IN BOTH SOUTH AUSTRALIA AND VICTORIA. IN BOTH THOSE STATES, HOWEVER, RATHER THAN PROVIDING FOR A FIXED DAY, THEIR LEGISLATION MERELY LIMITS THE CAPACITY OF THE GOVERNMENT TO CALL AN ELECTION WITHIN THE FIRST THREE YEARS. EFFECTIVELY, THEY PROVIDE FOR MINIMUM THREE YEAR TERMS NOT FIXED FOUR YEAR TERMS. THE BILL INTRODUCED TODAY GOES MUCH FURTHER. IT PROVIDES THAT ELECTIONS WILL BE HELD ON A FIXED DAY EVERY FOUR YEARS UNLESS THE CIRCUMSTANCES REFERRED TO ABOVE OCCUR. THAT IS, A MOTION OF NO CONFIDENCE IS PASSED, THERE IS A FAILURE OF SUPPLY OR THERE IS A CLASH WITH A COMMONWEALTH ELECTION.

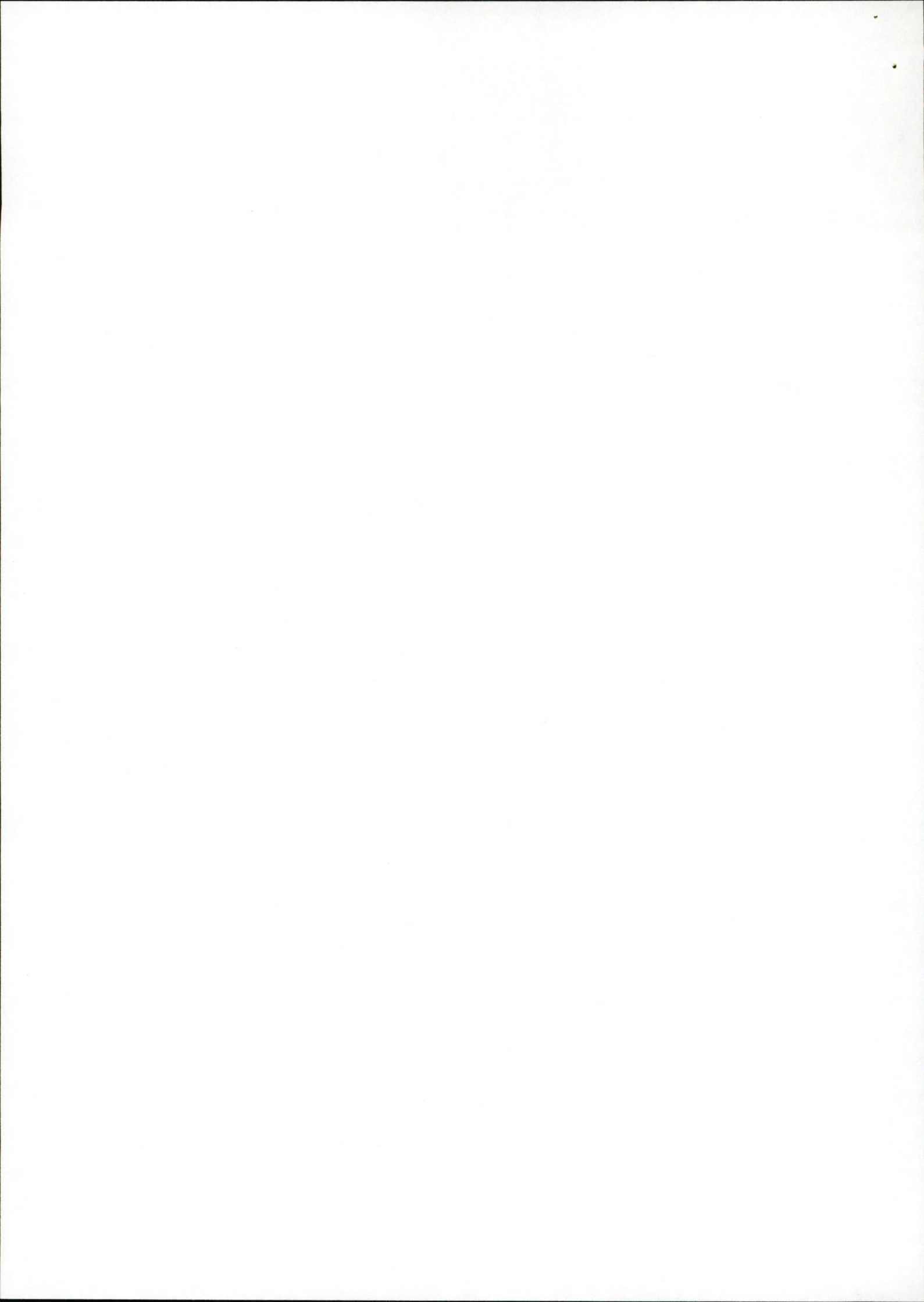


IF THE LEGISLATIVE ASSEMBLY IS DISSOLVED IN THESE CIRCUMSTANCES, THE NEXT GENERAL ELECTION WILL BE HELD WITHIN FORTY DAYS AFTER THE ISSUE OF THE WRITS FOR THE ELECTION.

THE BILL BEFORE THE HOUSE PRESERVES THE EXISTING POWER OF THE GOVERNOR TO ACT OTHER THAN ON THE ADVICE OF THE GOVERNMENT BUT ONLY IN CIRCUMSTANCES OTHER THAN THOSE SPECIFIED IN SECTION 5. IT IS THE GOVERNMENT'S VIEW THAT IT IS IMPORTANT TO PRESERVE SOME CAPACITY FOR THE GOVERNOR TO ACT SHOULD SOME EXTREME AND EXCEPTIONAL CIRCUMSTANCE OCCUR.

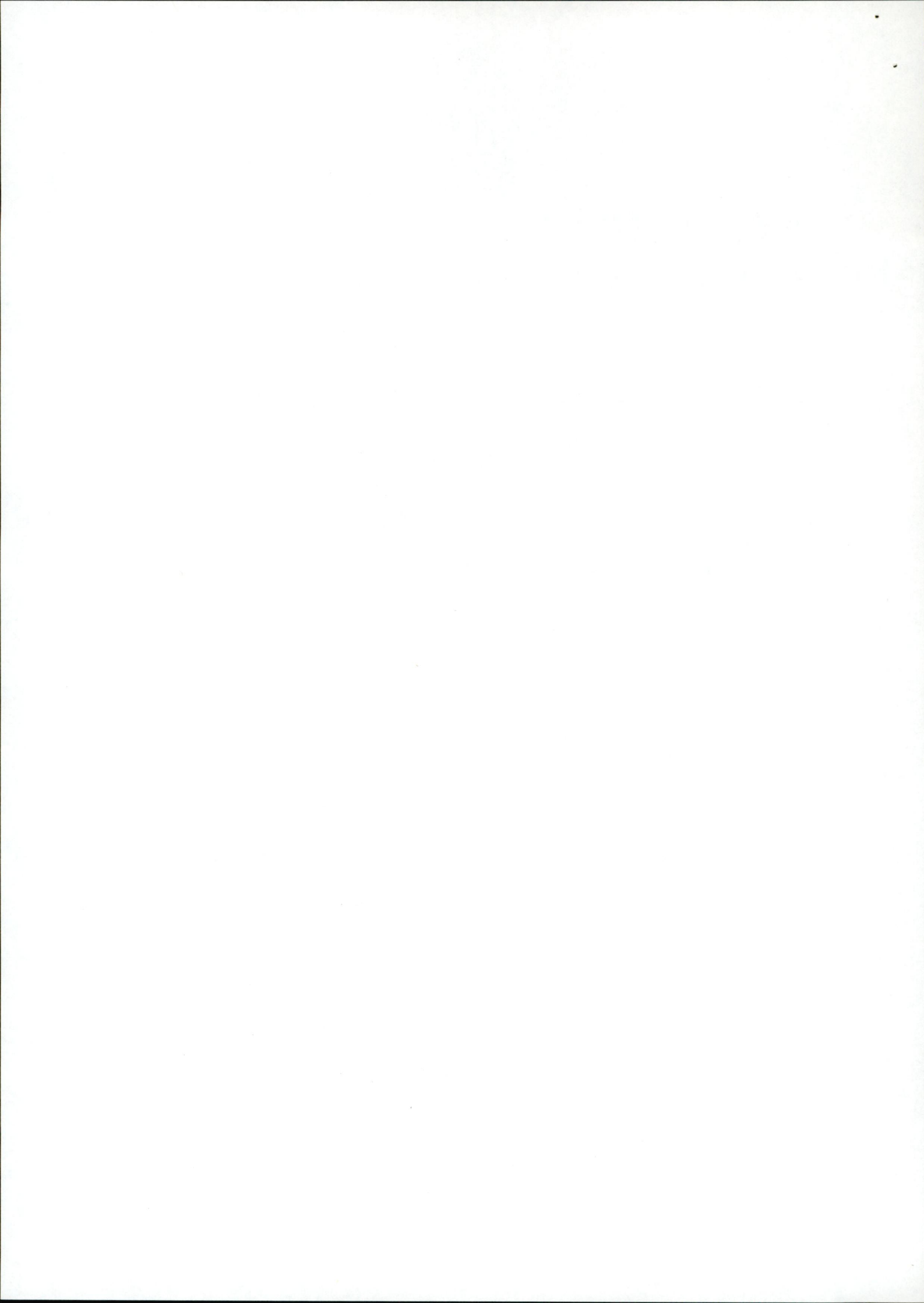
MR PRESIDENT,

THE PROVISIONS OF THE BILL WILL ALSO BE ENTRENCHED.



THAT IS, THEY MAY ONLY BE ALTERED BY A BILL WHICH IS APPROVED BY A MAJORITY OF THE ELECTORS AT A REFERENDUM. THIS WILL ENSURE THAT, ONCE PASSED, THE FIXED TERM WILL NOT BE ABLE TO BE INTERFERED WITH EXCEPT AFTER A REFERENDUM.

THE BILL ALSO AMENDS THE CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT TO ENSURE THAT THE LONG TERM BILL WILL BE SUBMITTED TO THE ELECTORS NO LATER THAN AT THE DATE OF THE NEXT GENERAL ELECTION. UNDER SECTION 7B OF THE CONSTITUTION ACT IT IS THE GOVERNOR WHO FIXES THE DAY FOR HOLDING REFERENDA REQUIRED BY THAT SECTION. THE AMENDMENT TO THE CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT WILL ENSURE THAT THE GOVERNOR WILL BE OBLIGED TO APPOINT A DAY THAT IS



NO LATER THAN THE DATE OF THE NEXT GENERAL
ELECTION.

MR. PRESIDENT,

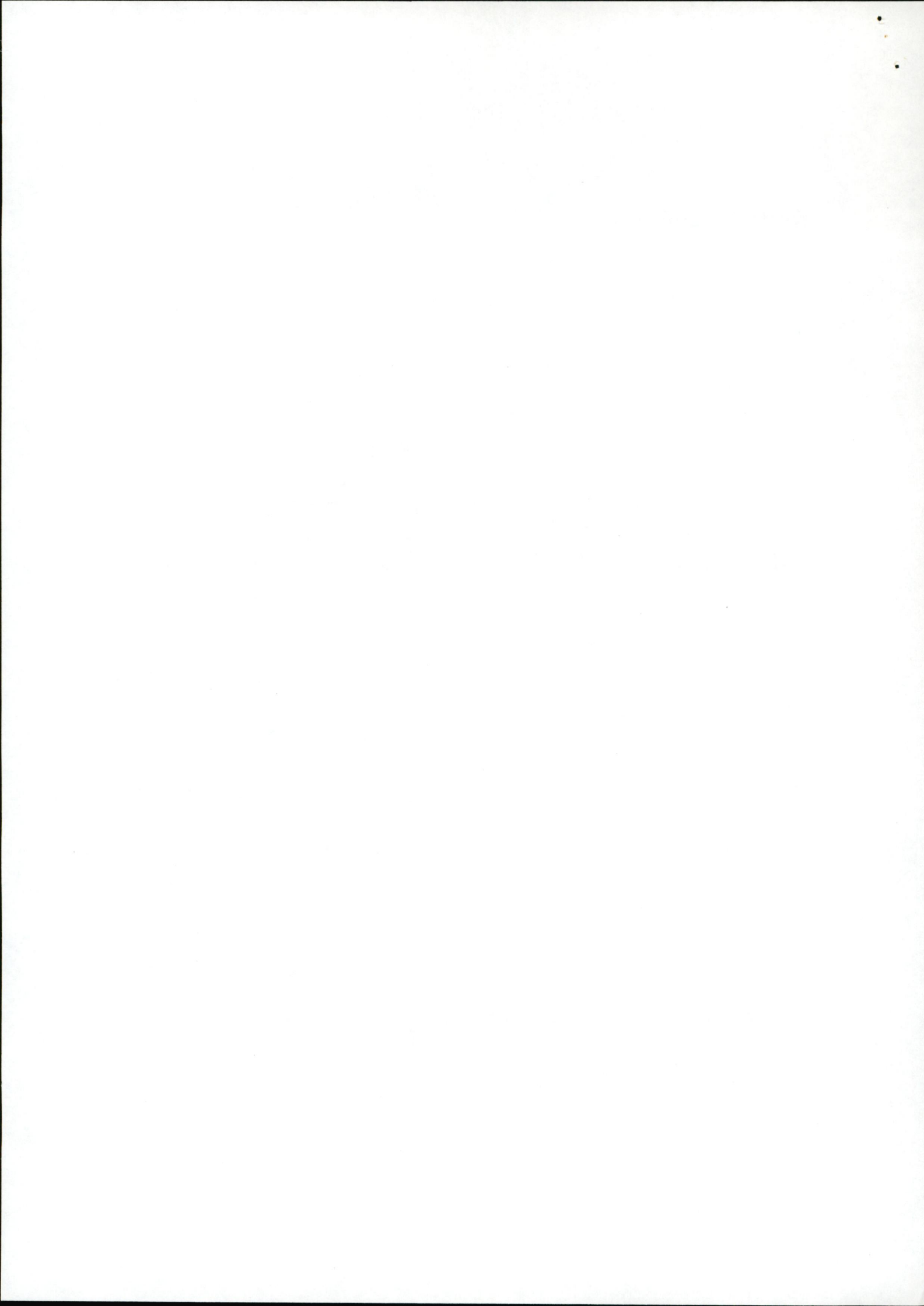
THE LONG TERM BILL ENABLES A PARLIAMENT TO BE
DISSOLVED EARLY IN THE SAME CIRCUMSTANCES AS THE
BILL FOR THE CURRENT ASSEMBLY, THAT IS, NO
CONFIDENCE, A FAILURE OF SUPPLY OR A CLASH WITH A
COMMONWEALTH ELECTION OR OTHER INCONVENIENT TIME.
WHERE, HOWEVER, A GENERAL ELECTION IS HELD AS A
RESULT OF AN EARLY DISSOLUTION, THE NEXT FOLLOWING
GENERAL ELECTION WILL THEN BE HELD ON THE FOURTH
SATURDAY IN MARCH IN THE FOURTH CALENDAR YEAR
THEREAFTER. THIS WILL ENSURE THAT THE FIXED DATE IS
ALWAYS RETURNED TO AND THAT A CYCLE OF ELECTIONS
AT AN INCONVENIENT TIME WILL NOT RESULT AFTER AN

EARLY ELECTION.

MR. PRESIDENT,

THE BILL HAS BEEN EXAMINED BY THE JOINT SELECT COMMITTEE WHICH WAS ESTABLISHED BY THE GOVERNMENT AND IT NOW INCORPORATES A NUMBER OF AMENDMENTS PROPOSED BY THE COMMITTEE. THE MOST SIGNIFICANT OF THOSE CHANGES IS THE INCLUSION OF AN EXPLICIT CLAUSE PROVIDING FOR A "BATON CHANGE" WHERE, AFTER A NO CONFIDENCE MOTION, IT IS POSSIBLE TO FORM A VIABLE ALTERNATIVE GOVERNMENT WITHOUT AN ELECTION.

IN ADDITION, THE PROVISIONS OF THE BILL DEALING WITH THE GOVERNOR'S RESERVE POWERS HAVE BEEN ALTERED TO CLARIFY THE INTENT OF THE BILL.



**A NUMBER OF OTHER MORE MINOR AMENDMENTS
SUGGESTED BY THE COMMITTEE HAVE ALSO BEEN INCLUDED
IN THE BILL.**

**THE GOVERNMENT IS CONFIDENT THAT THIS BILL AND THE
PROPOSED LONG TERM MEASURE WILL LEAD TO GREATER
STABILITY AND CERTAINTY IN GOVERNMENT IN
NEW SOUTH WALES. I AM SURE THAT THIS BILL AND THE
LONG TERM BILL WILL BE SUPPORTED BY THE ELECTORATE.**

I COMMEND THE BILL TO THE HOUSE.

**CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL
PROVISIONS ACT 1991 No. 70**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Interpretation
 4. Date of next general election
 5. Dissolution of current Assembly before expiry in 1995
 6. Preservation of Governor's power to dissolve current Assembly in accordance with established constitutional conventions
 7. Governor to consider whether viable alternative Government can be formed
 8. This Act to prevail
 9. Referendum required to alter this Act
 10. Amendment of Constitution Further Amendment (Referendum) Act 1930 No. 2
-

**CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL
PROVISIONS ACT 1991 No. 70**

NEW SOUTH WALES



Act No. 70, 1991

An Act to fix (except in certain circumstances) 25 March 1995 as the date of the next general election of Members of the Legislative Assembly; to require a referendum on any future legislation that would repeal or amend the provisions of this Act; and to make provision with respect to the date of the referendum on the Constitution (Fixed Term Parliaments) Amendment Bill 1991. [Assented to 17 December 1991]

Constitution (Fixed Term Parliaments) Special Provisions 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Constitution (Fixed Term Parliaments) Special Provisions Act 1991.

Commencement

2. This Act commences on the date of assent.

Interpretation

3. (1) In this Act:

“**current Assembly**” means the Legislative Assembly existing on the commencement of this Act (being the Legislative Assembly which first met for the dispatch of business on 2 July 1991);

“**next general election**” means the next general election of Members of the Legislative Assembly held after the commencement of this Act.

(2) This Act is to be construed as if it formed part of the Constitution Act 1902.

Date of next general election

4. (1) The writs for the next general election must name 25 March 1995 as the day for the taking of the poll at that general election, unless the current Assembly is dissolved in accordance with this Act.

(2) If the current Assembly is dissolved in accordance with this Act, the writs for the next general election must name as the day for the taking of the poll at that general election a day that is not later than the fortieth day from the date of the issue of the writs.

(3) If the current Assembly is not dissolved in accordance with this Act, the current Assembly expires on 3 March 1995.

(4) In this section, a reference to a writ does not include a reference to a writ issued because of the failure of an election, including a failure of an election because of its being declared void in accordance with law.

Dissolution of current Assembly before expiry in 1995

5. (1) The current Assembly may be dissolved by the Governor under section 10 of the Constitution Act 1902, but only in the circumstances authorised by this section or section 6.

Constitution (Fixed Term Parliaments) Special Provisions 1991

- (2) The current Assembly may be dissolved if:
- (a) a motion of no confidence in the Government is passed by the current Assembly (being a motion of which not less than 3 clear days' notice has been given in the current Assembly); and
 - (b) during the period commencing on the passage of the motion of no confidence and ending 8 clear days thereafter, the current Assembly has not passed a motion of confidence in the then Government.

After the motion of no confidence is passed, the current Assembly may not be prorogued before the end of that 8-day period and may not be adjourned for a period extending beyond that 8-day period, unless the motion of confidence has been passed.

- (3) The current Assembly may be dissolved if it:
- (a) rejects a Bill which appropriates revenue or moneys for the ordinary annual services of the Government; or
 - (b) fails to pass such a Bill before the time that the Governor considers that the appropriation is required.

(4) The current Assembly may be dissolved within 2 months before the current Assembly is due to expire on 3 March 1995 if the next general election would otherwise be required to be held during the same period as a Commonwealth election, during a holiday period or at any other inconvenient time.

Preservation of Governor's power to dissolve current Assembly in accordance with established constitutional conventions

6. This Act does not prevent the Governor from dissolving the current Assembly in circumstances other than those specified in section 5, despite any advice of the Premier or Executive Council, if the Governor could do so in accordance with established constitutional conventions.

Governor to consider whether viable alternative Government can be formed

7. When deciding whether the current Assembly should be dissolved in accordance with this Act, the Governor is to consider whether a viable alternative Government can be formed without a dissolution and, in so doing, is to have regard to any motion passed by the current Assembly expressing confidence in an alternative Government in which a named person would be Premier.

This Act to prevail

8. This Act has effect despite anything to the contrary in the Constitution Act 1902 or any other Act.

Constitution (Fixed Term Parliaments) Special Provisions 1991

Referendum required to alter this Act

9. (1) A Bill that expressly or impliedly repeals or amends this Act shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with this section.

(2) On a day not sooner than 2 months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.

(3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.

(4) When the Bill is submitted to the electors the vote shall be taken under and in accordance with the Constitution Further Amendment (Referendum) Act 1930 and any Act amending or replacing that Act.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty's assent.

(6) Nothing contained in this section affects the operation of section 5B of the Constitution Act 1902 and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B and has been approved by a majority of the electors voting may be presented to the Governor for Her Majesty's assent as if this section had not been enacted.

(7) The provisions of this section do not apply to a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 29 (2) of the Constitution Act 1902.

Amendment of Constitution Further Amendment (Referendum) Act 1930 No. 2

10. The Constitution Further Amendment (Referendum) Act 1930 is amended by inserting after section 7 (2) the following subsection:

(3) The day appointed for the taking of the votes of the electors on the Constitution (Fixed Term Parliaments) Amendment Bill 1991 (or, if that Bill is re-introduced into the Legislative Assembly

Constitution (Fixed Term Parliaments) Special Provisions 1991

in 1992 with or without amendment, that Bill) shall be no later than the day named for the taking of the poll in the next general election (within the meaning of the Constitution (Fixed Term Parliaments) Special Provisions Act 1991).

[*Minister's second reading speech made in—
Legislative Assembly on 31 October 1991
Legislative Council on 11 December 1991*]

