

Introduced by the Hon D J Gay, MLC

First print



New South Wales

Constitution Amendment (Office of Governor) Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Constitution Act 1902* so as:

- (a) to require legislation to be enacted before certain action is taken in relation to the office of Governor or the role of Government House, and
 - (b) to provide that a referendum is necessary before such legislation can be assented to, and
 - (c) to provide machinery provisions for such a referendum.
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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 amendment to the *Constitution Act 1902* set out in Schedule 1.

Schedule 1 amends the *Constitution Act 1902* to insert 2 new sections.

Section 9J requires legislation to be enacted before certain action is taken in relation to the office of Governor or the role of Government House and provides that a referendum is necessary before such a Bill can be assented to. The matters concerned are actions to abolish the office of Governor, alter the vice-regal role of the Governor, diminish the Governor's constitutional powers, substantially diminish the general scope of the other functions of the Governor, appoint the Governor to a public office created by or under an Act, alienate the whole or any part of Government House, use Government House in a way that makes it unavailable for use as the Governor's principal residence, principal office or venue for official functions formerly customarily performed there or substantially reduces the staff or facilities provided to the Governor. A referendum is also necessary if new sections 9J or 9K are to be expressly or impliedly repealed or amended.

Section 9J (4) defines functions as including powers, authorities or duties, and provides that the section extends to functions conferred or imposed on the Governor under future legislation as well as existing functions.

The proposed section will not prevent the taking of any action to restore the role of Governor or the use of Government House to that which pertained before 30 January 1996.

Section 9K provides machinery provisions for a referendum and is substantially the same as section 7B (2)–(6) of the *Constitution Act 1902*. Subsection (1) provides for a Bill to be submitted to the electors at a referendum to be held at least two months after that Bill has passed both Houses of Parliament. Subsection (2) provides for the date for a referendum to be set under the *Constitution Further Amendment (Referendum) Act 1930*. Subsection (3) requires the referendum to be conducted in accordance with that Act. Subsection (4) provides that, in the event of a successful referendum, the Bill concerned is to be presented for assent. Subsection (5) deals with the possibility that such a Bill could be the subject of a referendum under section 5B, following disagreement between the Houses—in this case, a referendum would not be required under the new section 9J.

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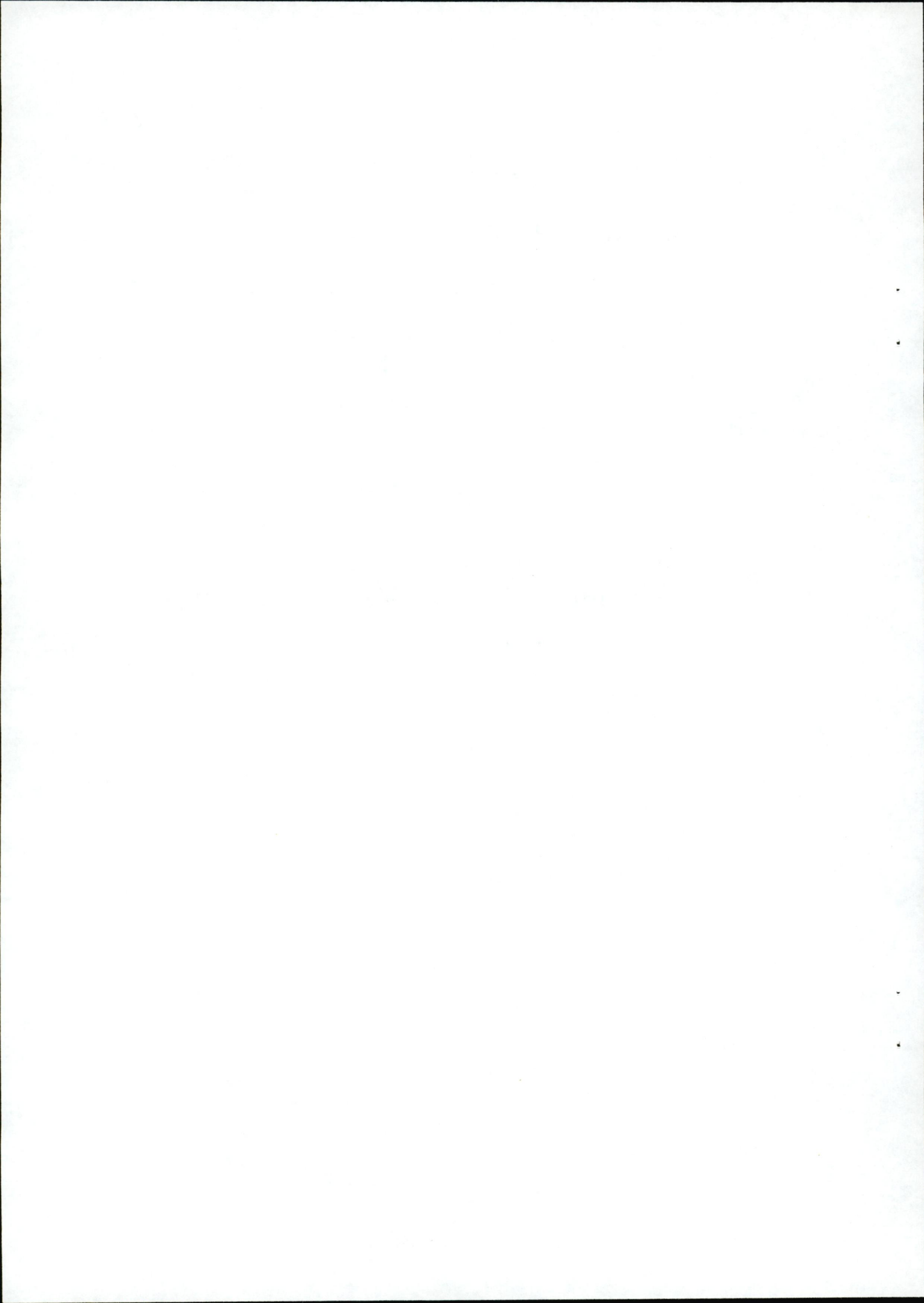


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New South Wales

Constitution Amendment (Office of Governor) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Constitution Act 1902* in relation to the office of Governor and the role of Government House, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Constitution Amendment (Office of Governor) Act 1996*.

2 Commencement

5

This Act commences on the date of assent.

3 Amendment of Constitution Act 1902 No 32

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

Schedule 1 Amendment

(Section 3)

Sections 9J and 9K

Insert after section 9I:

- 9J Referendum for Bills relating to office of Governor or role of Government House** 5
- (1) The office of Governor shall not be abolished, nor shall:
- (a) the role of the Governor as the representative of Her Majesty in the State be abolished, or
 - (b) any prerogative constitutional power of the Governor or any function of the Governor under this Act be abolished or limited, or 10
 - (c) the official functions of the Governor be otherwise substantially limited, or authorised to be substantially limited, or 15
 - (d) the Governor hold or be appointed to any public office, or
 - (e) the whole or any part of Government House not be available to the Governor as the Governor's principal office, or as a venue for the performance of official functions of a kind customarily performed by the Governor at Government House immediately before 30 January 1996, should the Governor so desire, or 20
 - (f) the whole of Government House not be available to the Governor as the Governor's principal place of residence, or 25
 - (g) the whole or any part of Government House be alienated, or
 - (h) the staff or facilities provided to the Governor be substantially reduced in a way that would prevent or hinder the Governor's performance of any official function or, should the Governor so desire, from performing any charitable or public function of a kind performed by the Governor immediately before 30 January 1996, or 35

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Schedule 1 Amendment

- (i) this section or section 9K be expressly or impliedly repealed or amended,
except by or in accordance with legislation enacted after the commencement of this section and expressed to be enacted for such a purpose. 5
- (2) A Bill for any purpose within subsection (1) shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with section 9K.
- (3) Except so far as legislation referred to in subsection (1) otherwise provides: 10
- (a) the Governor cannot hold any public office and automatically vacates any such office, and
- (b) any alienation of the whole or any part of Government House on or after 30 January 1996 and before the commencement of this section is void and is taken never to have occurred. 15
- (4) A reference in this section to a function includes a reference to a power, authority or duty, and extends to a function as so defined that is conferred or imposed after the commencement of this section. 20
- (5) In this section:
- alienation* means any action:
- (a) consisting of a disposition or dedication of Government House (or any part of it) that is contrary to use of the dedicated land as Vice-Regal Residence, or 25
- (b) having the effect of adding the dedicated land (or any part of it) by proclamation under the *Royal Botanic Gardens and Domain Trust Act 1980*, or 30
- (c) having the effect of making any building on the dedicated land an historic house under the *Historic Houses Act 1980*, or

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Amendment

Schedule 1

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- (d) that is inconsistent with the use of the whole of Government House as the principal place of residence or the whole or any part of Government House as the principal office or venue for the performance of official functions of the Governor. 5

dedicated land means the land dedicated for Vice-Regal Residence under section 25 of the *Crown Lands Consolidation Act 1913* by notice published in the Gazette on 2 November 1917 at page 5994.

Government House means the building, known as Government House, situated on the dedicated land as at 1 January 1996 and all its grounds as at that date. 10

public office means a public office under the Government of New South Wales (whether salaried or not) created by an Act or to which a person may be appointed under an Act, but does not include the office of Governor. 15

9K Machinery provisions for referendum under section 9J

- (1) On a day not sooner than two months after the passage of a Bill for any purpose within section 9J (1) through both Houses of Parliament, the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly. 20
- (2) The day referred to in subsection (1) 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. 25
- (3) 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. 30
- (4) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty's assent.

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Schedule 1 Amendment

- (5) Nothing contained in this section affects the operation of section 5B 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.

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