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MEMORANDUM OF UNDERSTANDING BETWEEN THE
HONOURABLE NICHOLAS FRANK GREINER, MP, PREMIER
FOR AND ON BEHALF OF THE
LIBERAL/NATIONAL PARTY GOVERNMENT (THE GOVERNMENT)
AND MR JOHN HATTON, MP, MS CLOVER MOORE, MP,
AND DR PETER MACDONALD, MP (THE INDEPENDENT MEMBERS)

The aim of this Memorandum of Understanding is to provide stable Government for the people of New South Wales and to enhance Parliamentary democracy and open and accountable Government in New South Wales.

The Independent Members of the Legislative Assembly, concerned that the balance of power between the Parliament and the Executive Government has shifted too far in favour of the Executive Government, have proposed to the Government a "Charter of Reform" containing a series of measures which the Independent Members believe would in large measure redress that imbalance.

The New South Wales Government, having considered the submission from the Independent Members, accepts that over the 135 years since the advent of responsible Government in New South Wales in 1856, the balance of power between the Parliament and the Executive Government has shifted unduly in favour of the Executive Government.

In particular, the parties agree as follows:-

Item A

1. The Independent Members agree to vote with the Government on the following matters:
 - (a) Motions regarding Bills for Appropriation and Supply.
 - (b) All Motions of No Confidence except where matters of corruption or gross maladministration are involved which reflect upon the conduct of the Government as a whole except as provided for in (3) below.
2. If the Premier or a Minister on behalf of the Premier moves a Motion of Confidence in the Government or declares a question or a Bill then before the House to be a matter of Confidence, the Independent Members are free to vote on such Motion or question or Bill as they think fit.

No such Motion of Confidence or declaration of a matter to be a matter of Confidence will be initiated without consultation between the signatories to this Agreement in an endeavour to resolve the issues which gave rise to such intention on the part of the Premier or the Minister.

3. Notwithstanding (1)(b) above, the Independent Members reserve the right to move a Motion of No Confidence in relation to matters of corruption or gross maladministration which reflect upon the conduct of the Government as a whole. No such Motion of No Confidence will be initiated by the Independent Members without consultation between the signatories to this Agreement in an endeavour to resolve the issues which gave rise to such intention on the part of the Independent Members.

In addition, the Independent Members also reserve the right to move a Motion of No Confidence in the Government if the Liberal/National Party Government is supported by fewer Members than the A.L.P. in the Legislative Assembly. No such Motion of No Confidence will be initiated by the Independent Members unless, after consultation with the Government, the Independent Members are of the view that satisfactory government is not being provided to the State of New South Wales.

4. The Government acknowledges that the Independent Members shall have the freedom to vote on any other matters before the Parliament as they think fit.
5. The Independent Members and the Government reserve the right to regard this Agreement as having been irretrievably breached if the other party does not honour its obligations under this Agreement. No such withdrawal from this Agreement will be initiated without consultation between the signatories to this Agreement.

Item B

The Independent Members agree to attend all Parliamentary sittings and be present for all votes and divisions on matters listed in Item A and not to abstain from voting on such matters except where pairs have been granted.

Item C

The Government agrees that, where agreement has been reached on the general principle, the Government will implement the reforms in consultation with the Independent Members. The reforms are to be implemented in a manner and to a timetable agreeable to the Independent Members.

Item D

This Memorandum of Agreement is signed by the Hon Nick Greiner, MP, Premier, for and on behalf of the Liberal/National Party Government of New South Wales.

Item E

For the purposes of this Agreement, the Member for Tamworth is to be regarded as a Member supporting the Government.

1. CONSTITUTIONAL REFORM AND PROTECTION OF THE INDEPENDENCE OF THE PARLIAMENT

Statement of Principle

The Government acknowledges that changes to the framework of Government in New South Wales to re. ct a strong Parliament and to ensure the accountability of Executive Government to the Parliament are necessary. These changes must be achieved in a fashion which is not subsequently able to be removed by a Government not committed to such changes..

Elements of Reforms

- i) Fixed four year terms for the Parliament as proposed in Annexure A. The Government agrees that, pending passage of the Fixed Four Year Term Legislation, the Government will act according to the spirit of a Fixed Four Year Term.
- ii) A Management Board for the Parliament as agreed by both parties. The Board shall determine all matters pertaining to the running and finances of the Parliament subject to the Budget.
- iii) Provision of Parliamentary Counsel services to Parliament for the use of non-Ministerial Members as decided by Parliament through the Parliamentary Appropriations Bill.
- iv) Constitutional recognition of the independence of the two presiding officers and their roles as the voice of the Parliament to Executive Government.

- v) Setting into the Constitution Act the method of election of the Speaker using the secret elimination ballot system with provision for resolution of deadlocks.
- vi) Making the annual appropriation for the Legislature a separate Bill.
- vii) Constitutional recognition of the independence of the Judiciary as set out in Annexure B.
- viii) Requiring all party Parliamentary Committee (with minority report) approval of Cabinet nominations for the Auditor-General, Commissioner of ICAC, Ombudsman and DPP.
- ix) Reference to the Parliamentary Committee on ICAC of reform of the pecuniary interests disclosures by Members and senior public sector executives and the establishment of a Parliamentary Code of Ethics (Annexure C).

Timetable for Implementation

- i) Legislation fixing the next election for March 1995 with provision for the orderly change of Government, or an early election, in the event of a successful no confidence motion, to be passed in the Budget Session 1991. Entrenchment of the fixed four year term to go to a referendum at the next general election.
- ii) The Government and the Independent Members agree that constitutional reform will be developed for presentation to the Parliament in the Autumn Session of 1992.

2. REFORM OF THE PROCEDURES OF THE PARLIAMENT

Statement of Principle - Short Term

The Government agrees with the concerns expressed by the Independent Members that the role of the Legislature and the procedures of the Legislative Assembly provide too few opportunities for real participation by Members in the shaping and enactment of legislation. In addition, it is acknowledged that much more can and should be done to enhance the ability of Members to make the Executive Government of the day, within the doctrine of the separation of powers, more accountable to the Legislature.

Elements of Reform

- i) Estimates Committees for the Parliament in accordance with current Sessional Orders.
- ii) Legislation Committees for the Legislative Assembly on "landmark" Bills. Such Legislative Committees to have both the power and facility to draft amendments to legislation and to be serviced by the Parliament with an undertaking to second or make available departmental advisers if and when necessary in the opinion of the Committee.
- iii) Provision of broader opportunities for Private Members to raise issues or initiate legislation as set out in the three released Cabinet discussion papers on "Matters of Public Importance - Budget Session 1991", "Interim Arrangements for Private Members Bills and Rearranging Sitting Thursdays" and "Debate on Reports from Parliamentary Committees".
- iv) Reform of Question Time and the process for Questions on Notice as proposed in the released Cabinet discussion papers.
- v) Further refinement of a Performance Review Committee system for the Legislature to scrutinise Government departments including statutory bodies.
- vi) Alternatives to traditional use of the "gag" and "guillotine" will be introduced through the Standing Orders Committee. The Government acknowledges that use of these devices should be for the orderly management of the Parliamentary programme rather than to prevent adequate debate occurring. The parties note that reform in this area will also need to evolve through convention and practise as it is not easy to encompass all changes in a written formula.
- vii) Reform of the speaking times in the Legislative Assembly to increase participation by Members.
- viii) Publication of a weekly advance indicative agenda for the Legislative Assembly prior to each sitting week.
- ix) Introduction of supplementary questions at question time in the Legislative Assembly.
- x) The budget of the Parliament to make provision for:-
 - a) A more equitable distribution of resources among Members of Parliament.

- b) Improved funding for information technology for Members of Parliament.
- c) Adequate funding for all Parliamentary Committees including staff, resources and accommodation outside Parliament House.
- d) Improved resources for the Parliamentary Library including the establishment of a Bills digest and research services which are to be available to all Members.

Timetable for Implementation

- i) Budget Session 1991.
- ii) Budget Session 1991.
- iii) Budget Session 1991.
- iv) Budget Session 1991.
- v) End of May 1992 (through process in Item F below); a paper to be drawn up in consultation with the Independents and issued by March 1992.
- vi) Being discussed by the Standing Orders Committee - Budget Session 1991. Much in this area, however, will need to be achieved by convention. "Long notice" of the guillotine to provide for "adequate debate" is to be trialled by the Government on appropriate Bills.
- vii) Budget Session 1991.
- viii) Budget Session 1991.
- ix) Budget Session 1991.
- x) The Government does not believe that the Executive Government should seek to set expenditure priorities for the Parliament and this view is shared by the Independent Members.

As a first step the Government agrees to hold separate the savings to the costs of the Parliament made available as a result of the reduction in the number of Members of the Legislative Assembly available to the Legislative Assembly until the Members of the Assembly itself have determined their priorities for expenditure of the money. The money would be made available for those purposes after the Assembly had adopted such priorities.

In addition, the Government agrees that proper support must be provided to legislation committees and that sufficient funds should be provided for these purposes.

Further, the Government agrees that it is desirable to expand the range of research services available to Members through the Parliamentary Library. The Government and the Independent Members agree that a formal proposal will be developed through the Parliamentary Library for operation through the Parliamentary Budget processes and implemented for the 1992/93 Budget year.

Statement of Principle - Longer Term

The Government and the Independent Members agree that the programme of reform which is to be trialled for the Legislative Assembly commencing in the 1991 Budget Session will start the process of changing the operations of and attitudes in the Assembly. The changes expected to accrue from this process will be written into the permanent procedures of the Parliament.

Elements of Reform

- i) A complete overhaul of the Standing Orders of the Legislative Assembly is appropriate. Such rewriting of the Standing Orders will provide the opportunity to enshrine the changes to procedure which will arise out of the experiments being undertaken in the 1991 Budget Session and any further proposals evolving from them.
- ii) A longer term method of providing access for debate on Private Members issues and legislation should be available for discussion with the Opposition and Independent Members and the community prior to implementation.
- iii) A review will be undertaken involving Members and staff of the Parliament of the days and weeks of sitting and the general Parliamentary sitting pattern.
- iv) Any proposed changes will be presented to the Parliament for debate and decision.

Timetable for Implementation

- i) Presentation of new Standing Orders for the Legislative Assembly to the Governor by the end of 1992 to take effect from the commencement of the 1993 Autumn Session.
- ii) Options paper to be released in early 1992 for operation in end of November 1992 and incorporation in new Standing Orders as proposed in (i) above; and
- iii) To be conducted by the end of June 1992 by the Leader of the House in the Legislative Assembly and the Leader of the Government in the Legislative Council.

3. REFORM OF THE LEGISLATIVE PROCESS

Statement of Principle

The Independent Members have sought to provide wider opportunity for community scrutiny of legislation involving major issues of public interest. The Government believes that legislation should be thoroughly scrutinised by all interested parties and their views conveyed to the Parliament to ensure rational and informed debate. The Independents and the Government acknowledge that changes to Parliamentary procedure are necessary to achieve this. These changes will assist in evolving conventions which will ensure that consultation on major issues becomes the practise for future Governments.

Elements of Reform

- i) Legislation Committees to be established for "landmark" Bills as discussed above.
- ii) Acceptance by the Government of the proposal that "landmark" legislation should be released in exposure draft for community consideration for a minimum of 28 days and, if significant changes are proposed to the initial draft, a further period of 28 days should be allowed for public comment.
- iii) Pre-circulation of non-controversial legislation to the Opposition and Independent Members to allow speedy passage, by leave of the House, so that this process becomes part of the conventions of the Parliament.
- iv) Establishment of procedures to report to the Parliament, and debate if necessary, legislation which has not been proclaimed within 90 days of assent by the Governor.

- v) Inclusion, where appropriate, of sunset clauses in legislation to expand on the process introduced by the Government of progressive review and elimination of redundant legislation and regulations.
- vi) Review of structures of departments, statutory authorities and similar bodies to be dealt with through the proposed Triennial Review structure; and
- vii) Establish a system of statements for legislation on its financial, social or environmental impact.

Timetable for Implementation

- i) Budget Session 1991.
- ii) Immediate.
- iii) Ongoing.
- iv) Budget Session 1991.
- v) Ongoing and to be discussed, if necessary, on a case by case basis, as provided for in Item F below.
- vi) End of May 1992 (through process in Item F below); and
- vii) July 1992.

4. SCRUTINY OF THE ELECTION PROCESS

Statement of Principle

The Government acknowledges that the current laws relating to electoral funding are in need of overhaul. In particular the artificial distinction between "maintenance" and "election" donations to political parties should be eliminated. The Government will clarify the terms of the Inquiry by the Joint Select Committee on Election Funding in accordance with Annexure D.

Elements of Reform

- i) Expanded terms of reference for Committee in terms of Annexure D.
- ii) Elimination of the distinction between "election" and "maintenance" donations to political parties.

Timetable for Implementation

- i) Budget Session 1991; and
- ii) To be incorporated in legislation following presentation of the report of the Select Committee which is expected prior to the end of May 1992.

5. GUARANTEEING OPEN AND ACCOUNTABLE GOVERNMENT

A. FREEDOM OF INFORMATION

Statement of Principle

The Government and Independent Members agree that there is a need to strengthen the Government's Freedom of Information Act to allow the public access to all Government information unless a compelling case can be made for such information remaining confidential.

Elements of Reform

- i) Any claim for the exemption of a document from the provisions of the FOI Act must demonstrate that the release of that particular document would come within a category or would have particular effects such that release of the document would be contrary to the public interest. Public interest to be defined to exclude embarrassment or loss of confidence in the Government or an agency, that release would lead to confusion on the part of the applicant or that release of the document would lead to the applicant misinterpreting or misunderstanding the information contained in the document.
- ii) The following are to be the only exempt agencies: the ICAC, DPP, the Ombudsman and the Auditor-General in relation to their operational functions but not their general administration, and the functions of State agencies (such as the State Bank) that compete with the private sector.
- iii) The FOI Act is to apply to Local Government on the same broad basis as it does to State Government.
- iv) The present 45 day statutory time limit for responses should be shortened to 21 days.

- v) As the Opposition is able to access FOI through the Leader of the Opposition's administrative budget, provision should be made through the Parliament, for a budget allowance for minor parties and Independent Members.
- vi) Refusals to process on the grounds of "unreasonable demand" on an agency's resources should be made a reviewable determination under the FOI Act.
- vii) The Premier will advise agencies that, in preference to the refusing of an application pursuant to "unreasonable demands" provisions, the agency should negotiate a longer period to comply which could balance the rights of access for the applicant with the needs of the agency to discharge its functional obligations.
- viii) The District Court, in deciding any appeal under the FOI Act, will be required to consider any report or recommendation of the Ombudsman.
- ix) The Ombudsman will be enabled to recommend changes to agencies' FOI procedures so that they better conform with the requirements of the Act.
- x) The Ombudsman, should he consider it appropriate, will be able to include in his report on any agency determination, comment that, notwithstanding the exempt status of a document, it should, nonetheless, be released in the public interest.
- xi) Review of Ministerial Certificates will be undertaken by the Supreme Court rather than the District Court. Only in the case of Cabinet documents and Executive Council documents will the Minister's ability to confirm the certificate be retained. However, the requirements for the issue of such certificates will be strengthened by providing that the Minister must particularise in the certificate the basis upon which the document is claimed to be a Cabinet document, including reasons supporting such assertion and findings of fact (e.g. who prepared the document, when and in what context).

Law enforcement and public safety documents will only be exempt from the FOI Act if it can be shown that the release of the document would not be "in the public interest", public interest to be defined as above and subject to review by the Supreme Court.

In respect of law enforcement and public safety documents, the public interest qualification will remain and ministerial certificates will be retained but the decision of the Supreme Court will be binding. The Government and the Independent Members agree to discuss further how to protect extremely sensitive information in this area.

Ministerial Certificates will no longer be available for interstate FOI documents.

- xii) The five year time rule prior to the commencement of the FOI Act for existing documents is to be repealed; and
- xiii) The Premier has made an Order specifying the fees and charges to be imposed in respect of applications under the FOI Act. A reduction in charges by one half is provided for in special cases of financial hardship, applicants under the age of 18 years, applicants applying on behalf of non-profit organisations that can demonstrate financial hardship and which applicants whose applications relate to information it is in the public interest to make available. The Order also provides for 20 hours free processing time in respect of applicants who apply for documents relating to their personal affairs.

Charges made by an agency in respect of an FOI application are presently subject to internal review and external review by the Ombudsman and the District Court. While the Ombudsman has recommendation powers only, the District Court has the power to vary the charges imposed by the agency. The Government is prepared to build into the District Court's review of charges a requirement that the Court take into account matters set out in the Order and any recommendation made by the Ombudsman.

Timetable for Implementation

- i) Draft legislation by June 1992.
- ii) Draft legislation by June 1992.
- iii) Part of the Local Government Reform legislation to be enacted by the end of May 1992.
- *iv) Statute Law Reform Bill, 1991.
- v) 1991 Budget.
- *vi) Statute Law Reform Bill, 1991.

- vii) Premier's circular to be distributed in November 1991.
- viii) To be included in legislation pursuant to (i).
- ix) As for (viii).
- x) As for (viii).
- xi) As for (viii).
- xii) As for (viii).
- xiii) As for (vii). Subject to review by the Government and the Independent Members in June 1992.
- (*) If not technically appropriate for Statute Law Reform Bills, separate short Bill early in 1992 Autumn Session.

B. SCRUTINY OF STATUTORY AUTHORITIES

Statement of Principle

The Government concurs with the view of the Independent Members that there should be a wider range of information provided by statutory authorities and by departments in their annual reports.

Elements of Reform

- i) Board minutes of statutory authorities shall be available for public inspection in accordance with the draft memo attached (Annexure E). If it becomes apparent that some Boards are not complying with the spirit of the Memorandum, then, through the ongoing consultation process, an appropriate review mechanism, such as the Ombudsman, could then be implemented.
- ii) An examination will be undertaken of matters currently omitted from annual reporting requirements which might be required.
- iii) An examination will be undertaken of any further measures which might be desirable to ensure greater standardisation of format of annual reports.
- iv) Ministers to report to Parliament any failure to meet report deadlines.
- v) Sessional Orders shall provide for brief debate on printing of reports.

Timetable for Implementation

- i) Circular November 1991.
- ii) Examination to be completed by the end of April 1992. Changes for reports for periods concluding on or after 30 June 1992 are to be implemented by Premier's circular pending amendment in the Budget Session of 1992 of relevant Annual Reports or other Acts.
- iii) See (ii).
- iv) Draft legislation by June 1992.
- v) Budget Session 1991.

6. RIGHTS OF CITIZENS

A. WHISTLEBLOWER LEGISLATION

Statement of Principle

The Government recognises the fundamental right of freedom of speech for all public sector employees and will legislate to provide full protection of the rights and employment of any public sector employee who exposes corruption or matters constituting public maladministration or significant waste.

Such legislation while providing protection for genuine public interest exposures must not protect exposure of distorted, fabricated or incomplete material.

Elements of Reform

A Whistleblower Protection Bill will be prepared for public exposure, in draft form, in conjunction with the Independent Members. If the parties agree, the assistance of the Law Reform Commission may be sought.

Timetable for Implementation

Exposure Draft by April 1992; public comment and revision (if needed) by September 1992; and enactment in end of November 1992.

B. DEFAMATION LAWS

Statement of Principle

The Government agrees that it will amend the Defamation Act to the extent necessary to remove restrictions on full and fair media reporting. Such reforms shall not be dependent upon conformity with similar legislation in other States.

- i) Draft new Defamation Act to be introduced to "lie on the Table of the House".
- ii) Draft Bill to be referred to a Legislation Committee to examine, amongst other issues, containment of costs, capping of damages, the range of pre-trial resolution options and provision for prompt redress; and
- iii) Further discussions by the Attorney General with his Queensland and Victorian counterparts on any recommendations arising out of (ii) above to see if uniformity can be obtained. If not, it is noted that New South Wales may make reforms in this State in addition to those proposed for Victoria and Queensland.

Timetable for Implementation

- i) November 1991.
- ii) November 1991.
- iii) December 1991 to March 1992 and enactment by end of end of May 1992.

C. SCRUTINY OF THE LEGAL PROFESSION

Statement of Principle

The Government and the Independent Members agree that a system of external accountability of the legal profession is desirable.

Elements of Reform

- i) The methods of investigating and adjudicating complaints against Members of the legal profession will be referred to the NSW Law Reform Commission for prompt report.

Elements of Reform

- i) The methods of investigating and adjudicating complaints against Members of the legal profession will be referred to the NSW Law Reform Commission for prompt report.

The terms of reference will request the Law Reform Commission, in preparing its report, to consult fully with peak professional bodies of the legal profession in New South Wales together with other relevant community organisations and other interested individuals and take into account any proposals of those bodies to reform and strengthen their mechanisms for investigating and adjudicating complaints.

- ii) The necessity for the accountability and openness of Government Legal Services will be referred to the NSW Law Reform Commission for prompt report.

See Annexure F for draft terms of reference to the NSW Law Reform Commission.

Timetable for Implementation

- i) The Law Reform Commission is to be asked to report by February 1992. Any resultant legislation would be released in the first half of 1992 for enactment in the 1992 Budget Session.

D. POWERS OF THE OMBUDSMAN AND AUDITOR-GENERAL

Statement of Principle

As part of this general review process, the Independent Members have proposed a number of matters to which the Government has agreed which will strengthen the role of the Ombudsman and the Auditor-General.

Elements of Reform

- i) The Minister responsible for the department or agency in respect of which a report of non-compliance under s.27 of the Ombudsman Act has been made will respond to the Ombudsman's report by a public statement to the Parliament within twelve sitting days of the House of Parliament in which the Minister sits.

- ii) The Ombudsman will have free unfettered access to Government documents in carrying out his functions, notwithstanding obligations of secrecy, duties of confidence and the laws relating to public interest and legal professional privilege except in relation to Cabinet documents. A similar provision will be established for the Auditor-General. Cabinet documents are to be defined as per Schedule I of the FOI Act.
- iii) Statutory provision for the right of the Ombudsman to report directly to the Presiding Officers of the Parliament at any time. Similar provisions to apply to the Auditor-General; and
- iv) Any report presented to the Presiding Officers by the Ombudsman or Auditor-General to be tabled by each Presiding Officer in the relevant House on the first sitting day following the receipt of the report and be subject to debate or if Parliament is not sitting, released forthwith by each presiding officer and attract privilege.

Timetable for Implementation

- i) Statutory changes in respect to this point are to be introduced by the end of November 1992. In the interim the changes to be implemented by an instruction to Ministers.
- ii) See (i) above
- iii) End of November 1992.
- iv) The Premier will write to the Presiding Officers asking for implementation by convention.

E. THIRD PARTY RIGHTS

Statement of Principle

The Government shares the Independents concerns over the broad issue of "third party" rights in the legal system. In particular the Government agrees with the proposed changes to the Environmental Offences and Penalties Act to give third parties standing in environmental cases. Other areas of concern to be looked at on a case by case basis.

The Government is not, however, prepared to support blanket legislation and considers that the rules of standing are important in creating legal certainty for third parties who are making decisions or arranging their affairs on the basis of official approvals or decisions.

Elements of Reform

Changes to s.25 and s.13 of the Environmental Offences and Penalties Act as set out in Annexure G.

Timetable for Implementation

Budget Session 1991.

Item F

The Independent Members and the Government acknowledge the complexity of a number of issues raised by the Independent Members. The parties therefore agree to establish monthly consultations to ensure that the spirit and intent of the Independent Members' proposals are accommodated in the most practical and cost-effective manner. In particular, it is acknowledged that a large legislative programme will be required to give effect to this agreement. The Government and the Independent Members agree to discuss any timing difficulties which might arise and to set mutually acceptable timetable should this be necessary.

Item G

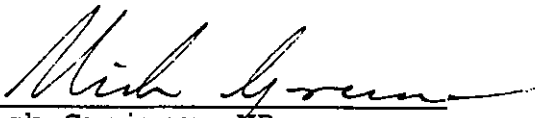
The Independent Members acknowledge that the Government has also indicated its intention to pursue other elements of Parliamentary reform including a statutory definition of the precincts of Parliament and a review of the Parliamentary Evidence Act. The Independent Members agree to discuss with the Leader of the Government of the Legislative Assembly proposals for further matters of reform of the Parliament pursuant to Item H below.

Item H

The Independent Members and the Government agree that the Leader of the Government in the Legislative Assembly will meet with the Independent Members each and every month or otherwise by agreement to discuss progress on these issues.

Item I

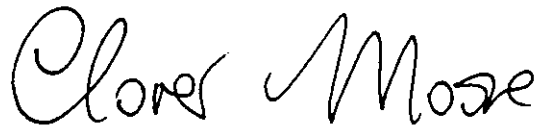
This document shall be interpreted according to the spirit of the agreement not the letter.



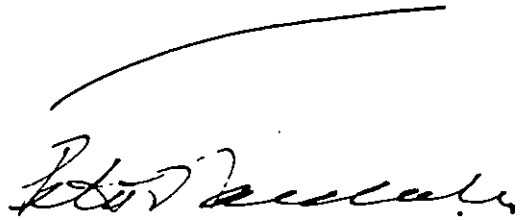
Nick Greiner, MP
Premier



John Hatton, MP



Clover Moore, MP



Peter Macdonald, MP

ANNEXURES

- A. Constitution (Fixed Term Parliaments) Special Provisions Bill and Constitution (Fixed Term Parliaments) Amendment Bill
- B. Independence of the Judiciary Draft Amendment
- C. Draft Notice of Motion Pecuniary Interests
- D. Draft Notice of Motion Election Funding
- E. Premier's Circular No 91- Board Minutes
- F. Terms of Reference NSWLRC Legal Profession
- G. Third Party Rights Draft Amendment to s.25 of Environmental Offences & Penalties Act

**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.
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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).
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CONSTITUTION (FIXED TERM PARLIAMENTS)
AMENDMENT BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to provide for fixed term Parliaments, with general elections held (except in special circumstances) on the fourth Saturday in March every 4 years; and
- (b) to require a referendum for any future legislation that would change the date for the holding of general elections as provided for under this Bill.

This Bill will not apply to the holding of the next general election. However, under the Constitution (Fixed Term Parliaments) Special Provisions Bill 1991, the next general election is to be held on 25 March 1995, unless the Assembly is sooner dissolved in similar special circumstances to those applying under this Bill.

Because of section 7B of the Constitution Act 1902, this Bill is required to be submitted to a referendum and will not become law unless it is approved by a majority of the electors. The proposed Constitution (Fixed Term Parliaments) Special Provisions Act 1991 ensures that the referendum is held at or before the next general election.

Under this Bill (if it is approved at a referendum):

- (a) General elections after the next general election will be held every 4 years on the fourth Saturday in March, unless the Assembly is sooner dissolved in the special circumstances mentioned below.
- (b) If the Assembly is so dissolved, the general election is to be held (as at present) within 40 days after the issue of the writs for the election. The following general election will revert to the fourth Saturday in March. Accordingly, the Assembly chosen after the dissolution will have a term generally between 3 years and 2 months and 4 years and 2 months depending on the date of the dissolution.

Constitution (Fixed Term Parliaments) Amendment 1991

- (c) The existing discretion of the Governor to dissolve the 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:
- 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.
 - If the next scheduled election date of the fourth Saturday in March is an unsuitable date for the general election (e.g. it occurs during a holiday period or 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.
- (d) Any existing power of the Governor to act otherwise than on the advice of the existing Government in connection with the dissolution of the Legislative Assembly is preserved.
- (e) A referendum will be required for any future legislation that would authorise any reduction in the term of the Legislative Assembly or would alter the date on which a general election is required to be held.
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FIRST PRINT

CONSTITUTION (FIXED TERM PARLIAMENTS)
AMENDMENT BILL 1991

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Constitution Act 1902 No. 32
4. Consequential amendment of Parliamentary Electorates and Elections Act 1912 No. 41, s. 73 (Polling day at Assembly general elections)
5. Amendments not to apply to current Assembly

SCHEDULE 1—AMENDMENTS

**CONSTITUTION (FIXED TERM PARLIAMENTS)
AMENDMENT BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to require the Parliament of New South Wales to serve full 4-year terms and to prevent politicians calling early general elections or changing these new constitutional rules without a further referendum.

Constitution (Fixed Term Parliaments) Amendment 1991

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors as required by the Constitution Act 1902, and by the authority of the same, as follows:

Short title

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

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 Parliamentary Electorates and Elections Act 1912 No. 41, s. 73 (Polling day at Assembly general elections)

4. The Parliamentary Electorates and Elections Act 1912 is amended by omitting section 73.

Amendments not to apply to current Assembly

5. The amendments made by this Act do not apply to the current Assembly within the meaning of the Constitution (Fixed Term Parliaments) Special Provisions Act 1991, but apply to any Legislative Assembly thereafter.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 7B (Referendum for Bills with respect to Legislative Assembly and certain other matters):

Omit section 7B (1) (b), insert instead:

Constitution (Fixed Term Parliaments) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (b) contains any provision to reduce or extend, or to authorise the reduction or extension of, the duration of any Legislative Assembly or to alter the date required to be named for the taking of the poll in the writs for a general election,
- (2) Section 10 (Time and place for holding sessions, and prorogation, of Parliament):
Omit the words “, and dissolve the said Assembly”.
- (3) Section 24:
Omit the section, insert instead:
Duration of Assembly
24. (1) A Legislative Assembly shall, unless sooner dissolved under section 24B, expire on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.
(2) 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.
- (4) Sections 24A, 24B:
After section 24, insert:
Date of general election for Legislative Assembly
24A. The writs for a general election of Members of the Legislative Assembly must name as the day for the taking of the poll at that general election:
(a) if the previous Legislative Assembly expired—the fourth Saturday in March next following the expiry; or
(b) if the previous Legislative Assembly was dissolved—a day that is not later than the fortieth day from the date of the issue of the writs.
Dissolution of Legislative Assembly during 4 year term
24B. (1) The Legislative Assembly may be dissolved by the Governor by proclamation, but only in the circumstances authorised by this section.

Constitution (Fixed Term Parliaments) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

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

- (3) The Legislative 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 Legislative Assembly may be dissolved within 2 months before the Assembly is due to expire if the 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.

(5) The enactment of this section 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.

ANNEXURE B

DRAFT AMENDMENT TO CONSTITUTION ACT 1902

Section 5

Add after the words "Commonwealth of Australia Consitution Act", the words "and this Constitution".

Add the following section:-

Judicial Independence

- 8B (1) The Parliament may not by law remove or authorise the loss of or removal from office of a judge unless the two Houses of Parliament have by resolution, passed by absolute majority, determined that by reason of misbehaviour or incapacity the judge should lose or be removed from office.
- (2) The Parliament may establish procedures for determining whether misbehaviour or incapacity warranting loss of or removal from office of a judge have been proved.
- (3) This section does not prevent the appointment of a judge subject to retirement from office at an age specified by the Parliament as the retiring age for judges of the Court in question.
- (4) The Parliament may not amend or repeal this section other than by an Act passed on the third reading by a two thirds majority of both Houses of the Parliament.

ANNEXURE C

DRAFT NOTICE OF MOTION - PECUNIARY INTERESTS

Mr Speaker:-

I wish to give notice that tomorrow I shall move:-

That this House refers to the Committee on the Independent Commission Against Corruption the following matters for investigation and report:-

- (i) The adequacy of the existing pecuniary interest provisions applying to Members of Parliament;
- (ii) The adequacy of existing pecuniary interest provisions applying to senior executives in the public sector in New South Wales; and
- (iii) The need for and suggestions as to the content of a Code of Ethics for Members of Parliament taking into account the provisions already applying to Ministers and how these provisions might be streamlined and incorporated into a more general code which would apply to all Members of Parliament.

ANNEXURE D

DRAFT NOTICE OF MOTION - ELECTION FUNDING

Mr Speaker:-

I wish to give notice that tomorrow I shall move:-

That this House refers to the Joint Select Committee Upon the Process and Funding of the Electoral System the following specific matters for investigation and report:-

- (i) Mandatory disclosure of the original source of all contributions to political parties, groups or candidates, whether financial or in kind;
- (ii) Disclosure being made annually by a declaration of income and expenditure no later than 30 days after the end of each financial year;
- (iii) Disclosure by unsuccessful candidates and groups of any donation, whether financial or in kind, after any election in which they were candidates;
- (iv) Mandatory disclosure of all forms of income and expenditure by third parties which involve themselves in the election process;
- (v) Disclosure of all donations made between the previous election and the announcement of the current election no later than two days after the election announcement; and
- (vi) The desirability of provisions to ensure that where a candidate or party fails to disclose sources of funding, or makes a false or incomplete declaration of sources of funding, that candidate or party being ineligible to receive funding from the Election Funding Authority for five years following the date of the election for which there was failure to disclose, or a false or incomplete declaration was made.

ANNEXURE E

MEMORANDUM NO 91 -

MINUTES OF BOARD MEETINGS OF STATUTORY AUTHORITIES

(Memorandum to all Ministers)

You will be aware that the Government is reviewing legislative provisions and administrative procedures to enhance both Parliamentary democracy, and open and accountable Government in New South Wales.

One of the matters raised for consideration in this review is the public availability of the minutes of board meetings and the annual reports of statutory authorities.

Under the provision of the Annual Reports (Statutory Bodies) Act 1984, annual reports of relevant statutory authorities are required to be prepared, submitted to the relevant Minister and then tabled in Parliament. Thereafter, such reports are to be made available for public sale and distribution.

However, no provisions exists which would specifically require the minutes of board meetings of such statutory authorities to be made publicly available. Public access to such minutes may of course be provided through the provisions of the FOI Act. Such access is, however, limited by the exemptions provided in Schedule 1 to the FOI Act. These exemptions can properly be invoked to prevent the disclosure of minutes dealing with, for example, commercially sensitive information, information provided in confidence or information the disclosure of which would adversely affect law enforcement operations.

Whilst this arrangement may be regarded as satisfying the principles of openness, I consider that it is desirable to implement improved arrangements to ensure that minutes of board meetings of statutory authorities are more readily accessible. Board minutes of statutory bodies should be made publicly accessible without requiring a formal application under the FOI Act, whether as part of a public register or otherwise, and whether or not subject to payment of a fee or charge.

Statutory authorities should provide maximum access to the minutes of board meetings notwithstanding that such documents may technically fall within one or more of the exemptions in Schedule 1 to the FOI Act. Naturally, where there are substantial and legitimate reasons for maintaining confidentiality such as commercial sensitivity, adverse affect

on law enforcement, prejudice to current litigation or negotiations or interference with the right to privacy of third parties, then it would still be legitimate to excise the relevant information. However, the presumption should be in favour of disclosure, and statutory authorities are expected to exercise their discretion accordingly.

The establishment of this scheme should improve the flow of information from the Government sector and thereby achieve greater openness and accountability. Minutes ought to be freely available and accessible, and the means by which they may be inspected or obtained should be contained in the statement of affairs of the statutory body under the FOI Act.

I would be pleased if you would inform the boards of all statutory bodies within your administration of the terms of this memorandum and request them to implement these procedures as soon as possible.

Yours sincerely,

N F Greiner, MP

Issued: Legal Branch
Date:

ANNEXURE F

NEW SOUTH WALES LAW REFORM COMMISSION

Draft Terms of Reference

1. To inquire into and report on means of implementing alternative mechanisms to those presently existing to deal with complaints about the delivery of legal services to the public, such as a complaints unit, a Legal Services Ombudsman, or some other mechanism. In so inquiring the Commission will have regard to the need for accountability external to the legal profession in any such mechanism.
2. To inquire into and report on means of making the offices of the DPP, the Legal Aid Commission, the Crown Solicitor, and other Government Legal Services more open and accountable. In so inquiring the Commission will have regard for the need for the impartiality and independence of these offices.
3. In preparing its report, to consult fully with peak professional bodies of the legal profession in New South Wales together with other relevant community organisations and other interested individuals and to take into account any proposal of those bodies to reform and strengthen their mechanisms for investigating and adjudicating complaints.

ANNEXURE G

LEGISLATIVE ASSEMBLY

PROTECTION OF THE ENVIRONMENT ADMINISTRATION

BILL 1991 (NO 2)

Amendments in Committee

1. Page 25, Schedule 3. After item (4) (b) of the amendments to the Environmental Offences and Penalties Act 1989, insert:-

(c) After section 13 (2), insert:-

(2A) Subsection (1) does not apply to the institution of proceedings in the Land and Environment Court for an offence against this Act by a person if the Court grants the person leave to bring the proceedings. The Court is not to grant leave unless satisfied that:-

- (a) The Environment Protection Authority has decided not to take any relevant action (as defined in subsection (2B)) in respect of the act or omission constituting the alleged offence against this Act or has not made a decision on whether to take such action within 90 days after the person applied to the Authority for consent to institute the proceedings; and
- (b) The Environment Protection Authority has been notified of the proceedings; and
- (c) The proceedings are not an abuse of the process of the Court; and
- (d) The particulars of the offence disclose, without any hearing of the evidence, a prima facie case of the commission of the offence against this Act.

2(B) Relevant action for the purposes of subsection (2A) is not limited to the institution of criminal proceedings, but includes action under any Act to require the defendant to prevent, control, abate or mitigate any harm to the environment caused by the alleged offence against this Act or to prevent the continuance or recurrence of that alleged offence.

2. Page 25, Schedule 3. Omit item (5) of the amendments to the Environmental Offences and Penalties Act 1989, insert instead:-

(5) Section 25 (Restraint of breaches of an Act or statutory rule which harm the environment). Omit section 25 (1), (2), (3) and (4), insert instead:-

- (1) Any person may bring proceedings in the Land and Environment Court for an order to restrain a breach (or a threatened or apprehended breach) of this or any other Act, or any statutory rule under an Act, if the breach (or the threatened or apprehended breach) is causing or is likely to cause harm to the environment.
- (2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).
- (3) Any such proceedings may only be brought with the leave of the Court. Before granting leave, the Court must be satisfied that:-
 - (a) The proceedings are not an abuse of the process of the Court; and
 - (b) There is a real or significant likelihood that the requirements for the making of an order under this section will be satisfied; and
 - (c) It is in the public interest that the proceedings should be brought.
- (4) A person (other than the Environment Protection Authority or a member of the staff of that Authority) who brings any such proceedings is required to serve a copy of the application on that Authority as soon as practicable after the application is made. The Environment Protection Authority is entitled to become a party to those proceedings.