

**CONSTITUTION AND OTHER ACTS
(AMENDMENT) ACT.**

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 67, 1975.

An Act relating to the exercise or performance of the functions of an Executive Councillor by another Executive Councillor acting for him or on his behalf; to provide for the appointment, functions and remuneration of Parliamentary Secretaries; for these and other purposes to amend the Constitution Act, 1902, the Parliamentary Allowances and Salaries Act, 1956, the Parliamentary Contributory Superannuation Act, 1971, and the Parliamentary Remuneration Tribunal Act, 1975; to validate certain matters; and for purposes connected therewith. [Assented to, 31st October, 1975.]

BE

Constitution and Other Acts (Amendment).

No. 67, 1975 **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, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.**

Short title. **1.** This Act may be cited as the "Constitution and Other Acts (Amendment) Act, 1975".

Commencement. **2.** (1) Except as provided in this section, this Act shall commence on the date of assent to this Act.

(2) Sections 9 (b) and 13 shall commence on 1st January, 1976.

(3) Section 11 shall be deemed to have commenced on 14th April, 1975.

(4) Section 12 shall be deemed to have commenced on 1st July, 1975.

Division of Act. **3.** This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–3.

PART II.—PROVISIONS AS TO THE FUNCTIONS OF EXECUTIVE COUNCILLORS—ss. 4–6.

PART III.—PROVISIONS AS TO PARLIAMENTARY SECRETARIES—ss. 7–10.

PART IV.—MISCELLANEOUS PROVISIONS—ss. 11–13.

PART

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PART II.

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PROVISIONS AS TO THE FUNCTIONS OF EXECUTIVE
COUNCILLORS.

4. The Constitution Act, 1902, is amended—

Amendment
of Act No.
32, 1902.

- (a) by inserting after the definition of “Executive Councillor” in section 35 the following definitions :—

Sec. 35.
(Interpre-
tation.)

“Functions” includes powers, authorities and duties.

“Unavailable”, in relation to an Executive Councillor, means unavailable by reason of the Executive Councillor’s absence or disability or for any other reason.

- (b) by omitting sections 36, 37 and 38 and by inserting instead the following sections :—

36. (1) The Governor may, from time to time, authorise an Executive Councillor to act for and on behalf of another Executive Councillor for any period specified or described by the Governor.

Authority
for
Executive
Councillor
to act for
and on
behalf of
another
Executive
Councillor.

(2) Where an Executive Councillor is authorised under this section to act for and on behalf of another Executive Councillor, any function appertaining or annexed to the office of that other Executive Councillor may, while the authority remains in force, be exercised or performed from time to time by the Executive Councillor so authorised instead of by that other Executive Councillor.

(3) An authority under this section may be revoked by the Governor.

(4)

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(4) An Executive Councillor may be authorised under this section by reference to his name or by reference to the title of the office which he holds as Executive Councillor.

(5) Notice of an authority under this section, or the revocation of such an authority, may be published in the Gazette at any time, and, where such a notice is so published, judicial notice shall be taken of the notice and of the authority or revocation, as the case may be.

(6) Every authority under this section shall be recorded by the officer in charge of the records of the Executive Council.

Unavaila-
bility of
Executive
Councillor.

37. An Executive Councillor may exercise or perform for and on behalf of another Executive Councillor a function appertaining or annexed to the office of that other Executive Councillor if the firstmentioned Executive Councillor is satisfied that that other Executive Councillor is unavailable and that any Executive Councillor authorised under section 36 to exercise or perform that function is unavailable.

Provisions
ancillary
to sections
36 and 37.

37A. (1) Sections 36 and 37 apply to the functions appertaining or annexed to the office of an Executive Councillor, whether those functions are conferred or imposed by the terms (express or implied) of an Act or instrument under an Act, or by or under any other law, or by official or other custom, but do not apply to the functions appertaining or annexed to that office by virtue of an authority under section 36.

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(2) Any act, matter or thing done or omitted by an Executive Councillor while acting for or on behalf of another Executive Councillor—

- (a) under an authority under section 36; or
- (b) under the authority of section 37,

shall be as valid and effectual and shall have the same consequences as if the act, matter or thing had been done or omitted by that other Executive Councillor.

(3) In all proceedings and before all persons acting judicially, it shall be presumed, in the absence of evidence to the contrary, that an Executive Councillor who purports to act for or on behalf of another Executive Councillor was authorised by or under section 36 or 37 so to act.

38. (1) Nothing in section 36, 37 or 37A authorises an Executive Councillor to exercise any function that is by an Act or any other law annexed or incident to the office of the Attorney-General.

Limitation as to exercise of Attorney-General's functions.

(2) Where a function is annexed or incident to the office of the Attorney-General by reason only of the fact that the Attorney-General administers an Act or part of an Act, subsection (1) does not apply in relation to that function unless the administration of that Act or part is expressly vested in the Attorney-General by any Act.

5. Any act, matter or thing done or omitted, before the date of assent to this Act, by an Executive Councillor while purporting to act for or on behalf of another Executive Councillor shall be as valid and effectual and shall have the same consequences, and shall be deemed always to have been as valid and effectual and to have had the same consequences, as if the act, matter or thing had been done or omitted by that other Executive Councillor.

6.

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- No. 67, 1975** **6.** An authority in force under section 36 of the Constitution Act, 1902, immediately before the date of assent to this Act shall be deemed to have been given under section 36 of that Act, as amended by section 4.
- Transitional provision.**

PART III.**PROVISIONS AS TO PARLIAMENTARY SECRETARIES.**

- 7.** The Constitution Act, 1902, is further amended—
- Further amendment of Act No. 32, 1902.**
- Sec. 1.** (Short title and division.)
- (a) by inserting after the matter relating to Part IV in section 1 the following matter :—
- PART IVA.—PARLIAMENTARY SECRETARIES—
ss. 38B–38E.**
- Sec. 26.** (Offices of profit.)
- (b) by inserting at the end of section 26 the following proviso :—
- Provided further that a person holding office as Parliamentary Secretary is capable of being elected and of sitting and voting as a Member of the said Assembly.**
- Sec. 27.** (Effect of acceptance of office of profit.)
- (c) by inserting in paragraph (c) of the proviso to section 27 after the word “Government” the words “, or the office of Parliamentary Secretary”;
- Sec. 29.** (Exceptions.)
- (d) by inserting in section 29 (1) (a) after the word “Government” the words “or the office of Parliamentary Secretary”;

(e)

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(e) by inserting after Part IV the following Part : — No. 67, 1975

PART IVA.Part IVA.**PARLIAMENTARY SECRETARIES.**

38B. (1) The Premier may, from time to time, appoint a Member or Members of the Legislative Assembly to hold office as Parliamentary Secretary.

Appoint-
ment of
Parlia-
mentary
Secretaries.

(2) Section 47 does not apply to or in respect of the office of Parliamentary Secretary.

38C. (1) A Parliamentary Secretary shall have and may perform such functions as the Premier may, from time to time, determine in respect of him.

Functions
of Parlia-
mentary
Secretary.

(2) Nothing in this section authorises a Parliamentary Secretary to perform any functions that may, by the terms (express or implied) of an Act or instrument under an Act, or by or under any other law, only be performed by some other person.

38D. (1) A person holding office as Parliamentary Secretary ceases to hold that office—

How Parlia-
mentary
Secretary
ceases to
hold office.

- (a) if he dies;
- (b) if the person by whom he was appointed as such ceases to be Premier;
- (c) if he resigns his office as such by writing under his hand addressed to the Premier;
- (d) if he is removed from office as such by the Premier;
- (e) if his seat as a Member of the Legislative Assembly becomes vacant, otherwise than by reason of the fact that the Legislative Assembly has been dissolved or has expired by the effluxion of time; or

(f)

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(f) upon the day appointed for the taking of the poll for the general election next following his appointment to hold that office.

(2) The Premier may, for any cause which appears to him to be sufficient, remove any person from office as Parliamentary Secretary.

Restrictions relating to Parliamentary Secretaries.

38E. (1) A person shall not be appointed to hold office as Parliamentary Secretary if he is a Minister of the Crown or a member of the Executive Council.

(2) A person shall not be appointed as a Minister of the Crown or a member of the Executive Council if he is a Parliamentary Secretary.

Amendment of Act No. 22, 1956. Sec. 4A.

8. The Parliamentary Allowances and Salaries Act, 1956, is amended by inserting after section 4 the following section :—

Salary and allowances of Parliamentary Secretary.

4A. There shall be payable to a Parliamentary Secretary holding office under Part IVA of the Principal Act—

- (a) a salary at the rate of \$20,220 per annum;
- (b) an expense allowance at the rate of \$1,008 per annum;
- (c) an electoral allowance at the yearly rate specified in the Fifth Schedule to the Principal Act in respect of the electoral district for which he is the member; and

(d)

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- (d) if he would be entitled to receive a special expenses allowance under section 28 of the Principal Act had he not been appointed to hold that office—a special expenses allowance at the rate at which he would be so entitled to receive that allowance.

9. The Parliamentary Remuneration Tribunal Act, 1975, is amended—

- (a) by inserting after paragraph (q) of Schedule 1 the following paragraph :—

(r) Parliamentary Secretary, as referred to in Part IVA of the Constitution Act, 1902.

- (b) by inserting at the end of Schedule 2 the following matter :—

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ment) Act, 1975.

Section 8.

10. The reference in section 15 (2) (c) of the Parliamentary Remuneration Tribunal Act, 1975, to section 29 (1) (a) of the Constitution Act, 1902, is a reference to section 29 (1) (a) of the lastmentioned Act, as amended by this Act as well as by the Constitution (Amendment) Act, 1968.

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PART IV.

MISCELLANEOUS PROVISIONS.

Further amendment of Act No. 25, 1975. Sec. 3. (Interpretation.)

11. The Parliamentary Remuneration Tribunal Act, 1975, is further amended—

(a) by inserting after section 3 (1) the following subsection :—

(1A) For the purposes of this Act, a person elected as a member of the Legislative Assembly shall be deemed—

(a) to become a member of that Assembly on the day of his election; and

(b) to cease to be a member of that Assembly on—

(i) the day of his death;

(ii) the day on which his seat as such a member becomes vacant, otherwise than by reason of the fact that that Assembly has been dissolved or has expired by the effluxion of time; or

(iii) the day appointed for the taking of the poll for the general election next following his election,

whichever first occurs.

Sec. 7A.

(b) by inserting after section 7 the following section :—

Report to specify certain allowances.

7A. Where the Tribunal makes a determination in relation to any Parliamentary remuneration, he shall specify, in the report of his determination under section 5 (3) or 7 (2), what portion (if any) of the remuneration is in the nature of an allowance for electoral or other expenses incurred in the course of the duties of a Minister of the Crown, recognised office holder or member.

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12. The Parliamentary Contributory Superannuation Act, No. 67, 1975 1971, is amended—

- Amendment
of Act No.
53, 1971.
- (a) (i) by inserting in section 19 (2) (b) after the words “electoral allowance” the words “or special expenses allowance”;
- Sec. 19.
(Members’
super-
annuation
benefit.)
- (ii) by inserting in section 19 (4) (b) after the words “electoral allowance” the words “, special expenses allowance”;
- (b) by inserting in section 23 (4) (b) after the words “electoral allowance” the words “or special expenses allowance”.
- Sec. 23.
(Pension
for widows.)

13. The Parliamentary Contributory Superannuation Act, 1971, is further amended—

- Further
amendment
of Act No.
53, 1971.
- (a) by inserting in the definition of “salary” in section 3 after the word “enactment,” the words “and all remuneration payable to him under the Parliamentary Remuneration Tribunal Act, 1975, excluding any portion thereof specified under section 7A of that Act as being in the nature of an allowance for electoral or other expenses,”;
- Sec. 3.
(Interpre-
tation.)
- (b) (i) by omitting section 19 (2) and by inserting instead the following subsection :—
- Sec. 19.
(Members’
super-
annuation
benefit.)
- (2) For the purpose of calculating any instalment of pension payable under subsection (1) at any particular time, “current basic salary” means—
- (a) where the person entitled to the instalment last served as a member in the Legislative Council—the salary payable at that particular time to a
- member**

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member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of the Parliamentary Remuneration Tribunal Act, 1975) and expressed at an annual rate; or

- (b) where the person entitled to the instalment last served as a member in the Legislative Assembly—the salary payable at that particular time to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of the Parliamentary Remuneration Tribunal Act, 1975) and expressed at an annual rate.

- (ii) by omitting section 19 (4) and by inserting instead the following subsections :—

(4) For the purpose of subsection (1), the total basic salary of a person who is entitled to a pension and who last served in the Legislative Council is the sum of the following amounts :—

- (a) the total amount (if any) that, during any period (not being a period before 1st January, 1952) during which that person was entitled to salary, was payable from time to time as salary or allowances to a member of the Legislative Council under section 17G of the Constitution Act, 1902, other than—

- (i) any expense allowance or living away from home allowance; or

(ii)

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(ii) any amount payable as an allowance to that member only in his capacity as the person recognised as the principal representative of the members of the Legislative Council not being supporters of the Government or as salary to that member only in his capacity as the President, or Chairman of Committees, of the Legislative Council; and

(b) the total amount (if any) that, during any period during which that person was entitled to salary, was payable from time to time as remuneration under the Parliamentary Remuneration Tribunal Act, 1975, to a member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of that Act), excluding any portion thereof specified under section 7A of that Act as being in the nature of an allowance for expenses.

(4A) For the purpose of subsection (1), the total basic salary of a person who is entitled to a pension and who last served in the Legislative Assembly is the sum of the following amounts :—

(a) the total amount (if any) that, during any period (not being a period before 1st January, 1952) during which that person was entitled to salary, was payable from time to time as salary or

allowances

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allowances to a member of the Legislative Assembly under section 28 of the Constitution Act, 1902, other than any electoral allowance, special expenses allowance or additional allowance; and

- (b) the total amount (if any) that, during any period during which that person was entitled to salary, was payable from time to time as remuneration under the Parliamentary Remuneration Tribunal Act, 1975, to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of that Act), excluding any portion thereof specified under section 7A of that Act as being in the nature of an allowance for electoral or other expenses.

Sec. 23.
(Pension
for
widows.)

- (c) by omitting section 23 (4) and by inserting instead the following subsection :—

(4) For the purposes of subsections (1), (2) and (3), “current basic salary” means—

- (a) where the member who has died last served in the Legislative Council—the salary payable from time to time to a member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of the Parliamentary Remuneration Tribunal Act, 1975) and expressed at an annual rate; or

(b)

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- (b) where the member who has died last served in the Legislative Assembly—the salary payable from time to time to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of the Parliamentary Remuneration Tribunal Act, 1975) and expressed at an annual rate.

DANGEROUS