

Act 1992 No. 106

## CONSTITUTION (AMENDMENT) BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The Constitution (Entrenchment) Amendment Bill 1992 is cognate with this Bill. The objects of this Bill are:

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

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**Clause 1** specifies the short title of the proposed Act.

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

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

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

**Clause 5** contains transitional provisions that:

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

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*Constitution (Amendment) 1992 [Act 1992 No. 106]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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