

ACTS AMENDMENT (CONSTITUTION).

No. 59 of 1978.

**AN ACT to amend the Constitution Act, 1889-1970
and the Constitution Acts Amendment Act,
1899-1977.**

[Reserved 20th September, 1978.]

*[Royal Assent proclaimed
15th November, 1978.]*

WHEREAS by an Act of the United Kingdom Preamble.
passed in the Tenth Year of the Reign of His
Majesty King George the Fourth, being an Act to
provide for the Government of His Majesty's
Settlements in Western Australia, it was enacted,
inter alia, that it shall be lawful for His Majesty
by any Order to be made by Him with the Advice of
His Privy Council to make, ordain, and to authorise
and empower any Three or more Persons resident
and being within the said Settlements to make,
ordain and establish all such Laws, Institutions,
and Ordinances and to constitute such Courts and
Officers as may be necessary for the Peace, Order,
and Good Government of His Majesty's subjects and
others within the said Settlements:

And whereas by Letters of His Majesty King William the Fourth made Patent at Westminster on the Fourth day of March, 1831 James Stirling, Esquire, Captain in His Majesty's Royal Navy was constituted and appointed to be His Majesty's Governor and Commander-in-Chief in and over His Majesty's Territory called Western Australia:

And whereas by Letters Patent under the Great Seal of the United Kingdom dated the Seventeenth day of November, 1877 it was recited, *inter alia*, that it was desirable to make effectual and permanent provision for the office of Governor and Commander-in-Chief in and over the Colony of Western Australia; and whereas by those Letters Patent it was ordered and declared that there shall be a Governor and Commander-in-Chief in and over the Colony of Western Australia and that the person who will fill the said office of Governor shall be from time to time appointed by Commission under the Royal Sign Manual and Signet:

And whereas, by Letters Patent dated the Twenty-fifth day of August, 1890, consequent upon an alteration in the Constitution of the Colony of Western Australia having been effected by the Western Australia Constitution Act, 1890, under the Great Seal of the United Kingdom, the office of Governor and Commander-in-Chief in and over the Colony of Western Australia and its Dependencies was reconstituted and it was provided that appointments to the said office shall be made by Commission under the Royal Sign Manual and Signet:

And whereas, by Letters Patent dated the Twenty-ninth day of October, 1900 under the Great Seal of the United Kingdom, consequent upon the enactment of the Commonwealth of Australia Constitution Act, 1900 and of the issuing of Her Majesty's Proclamation thereunder, the office of Governor in and over the State of Western Australia and its Dependencies was again reconstituted and it was provided that appointments to the said office shall be made by Commission under the Royal Sign

Manual and Signet, and it was further provided that the Governor be authorised, empowered and commanded to do and execute all things that belong to his office and to exercise all powers and authorities vested in him according to such instructions as may from time to time be given to him under the Royal Sign Manual and Signet or by Order of Her Majesty in Her Privy Council or by Her Majesty through one of Her Principal Secretaries of State and according to such Laws as are from time to time in force in the State of Western Australia:

And whereas by section 2 of the Constitution Act, 1889, it was provided that there shall be in place of the Legislative Council then subsisting a Legislative Council and a Legislative Assembly and that it shall be lawful for Her Majesty by and with the consent of the said Council and Assembly to make laws for the peace, order and good Government of Western Australia and its Dependencies and that such Council and Assembly shall, subject to the provisions of that Act have all the powers and functions of the then subsisting Legislative Council:

And whereas it is proper and expedient that further constitutional provision be made to further establish the offices aforesaid and to regulate the powers of the holders of those offices and to confirm the established constitutional provision aforesaid and to regulate the manner and form in which the powers of the Parliament of Western Australia may hereafter be exercised in relation to the offices and powers aforesaid:

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Acts Amendment* Short title.
(Constitution) Act, 1978.

PART I.—CONSTITUTION ACT, 1889-1970.

Citation.

2. (1) In this Part the Constitution Act, 1889-1970 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Constitution Act, 1889-1978.

Section 1
amended.

3. Section 1 of the principal Act is amended by adding after the passage "PART III.—ELECTIVE COUNCIL." the passage "PART IIIA.—THE GOVERNOR."

Section 2
amended.

4. Section 2 of the principal Act is amended—

(a) by adding after the section number "2." the subsection designation "(1)"; and

(b) by adding at the end thereof the following subsections—

(2) The Parliament of Western Australia consists of the Queen and the Legislative Council and the Legislative Assembly.

(3) Every Bill, after its passage through the Legislative Council and the Legislative Assembly, shall, subject to section 73 of this Act, be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.

Part IIIA
added.

5. The principal Act is amended by adding immediately after section 49 the following new Part—

PART IIIA.—THE GOVERNOR.

Office of
Governor

50. (1) The Queen's representative in Western Australia is the Governor who shall hold office during Her Majesty's pleasure.

(2) Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with subsection (2) of section seventy-three.

(3) In this Act and in every other Act a reference to the Governor shall be taken—

- (a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty's Royal Sign Manual and Signet to the office of Governor of the State of Western Australia constituted under Letters Patent under the Great Seal of the United Kingdom; and
- (b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual and Signet to administer the Government of the State of Western Australia whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia; and
- (c) to also include any other person exercising, by virtue of an appointment by the Governor in accordance with Letters Patent under the Great Seal of the United Kingdom, any powers and authorities of the Governor during a temporary absence of the Governor for a short period from the seat of Government or from the State.

51. (1) It is the duty of the Governor to act in obedience to instructions conveyed to him by the Queen with the advice of Her Privy Council or under Her Majesty's Royal Sign Manual and Signet or through one of Her Majesty's principal Secretaries of State in the United Kingdom for his guidance, in the exercise of the powers vested in him.

Instructions
to Governor.

(2) In this section and in section fifty the expression "Royal Sign Manual" means the signature or royal hand of the Sovereign and the expression "Signet" means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign.

Section 73
amended.

6. Section 73 of the principal Act is amended—

(a) by deleting the words "The Legislature" in line one and substituting the passage "(1) Subject to the succeeding provisions of this section, the Legislature"; and

(b) by adding at the end thereof the following subsections—

(2) A Bill that—

(a) expressly or impliedly provides for the abolition of or alteration in the office of Governor; or

(b) expressly or impliedly provides for the abolition of the Legislative Council or of the Legislative Assembly; or

(c) expressly or impliedly provides that the Legislative Council or the Legislative Assembly shall be composed of members other than members chosen directly by the people; or

(d) expressly or impliedly provides for a reduction in the numbers of the members of the Legislative Council or of the Legislative Assembly; or

(e) expressly or impliedly in any way affects any of the following sections of this Act, namely—

sections 2, 3, 4, 50, 51, and 73,

shall not be presented for assent by or in the name of the Queen unless—

- (f) the second and third readings of the Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly, respectively; and
- (g) the Bill has also prior to such presentation been approved by the electors in accordance with this section,

and a Bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

(3) On a day fixed by the Governor by Order in Council, being a day not sooner than two months, and not later than six months, after the passage through the Legislative Council and the Legislative Assembly of a Bill of a kind referred to in subsection (2) of this section, the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the Electoral Act, 1907.

(4) When the Bill is submitted to the electors the vote shall be taken in such manner as is fixed by law.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for assent by or in the name of the Queen.

(6) Any person entitled to vote at a general election of members of the Legislative Assembly is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy

to enforce the provisions of this section either before or after a Bill of a kind referred to in subsection (2) of this section is presented for assent by or in the name of the Queen. .

Section 75
amended.

7. Section 75 of the principal Act is amended by deleting the interpretation "Governor".

PART II.—CONSTITUTION ACTS AMENDMENT
ACT, 1899-1977.

Citation.

8. (1) In this Part the Constitution Acts Amendment Act, 1899-1977 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Constitution Acts Amendment Act, 1899-1978.

Section 3
amended.

9. Section 3 of the principal Act is amended by deleting the interpretation "Governor".
