

**CONSTITUTION (LEGISLATIVE COUNCIL) AMENDMENT
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 reduce the number of politicians in the Legislative Council and to reduce their maximum term Of office; and
- (b) to apply to the Legislative Council the same method of filling casual vacancies as applies to the Senate.

It will be necessary, in accordance with section 7A of the Constitution Act 1902, for the Bill to be submitted to a referendum and approved by a majority of the electors before the Bill is presented to the Governor for Her Majesty's assent.

It is proposed to hold the referendum in conjunction with the next general election. In this Explanatory Note, references to general elections in particular years apply if the Bill is approved by the electors at the next general election.

Amendments relating to reduction in number of politicians and their term of office

At present the Legislative Council consists of 45 Members, with 15 Members being elected at each general election. Members serve for 3 terms of the Legislative Assembly. At the time of the last reconstitution of the Legislative Council in 1978, the term of office of a Member of the Legislative Council was a maximum of 9 years, but because of the extension of the term of the Legislative Assembly to 4 years the term of office is now a maximum of 12 years.

Under the Bill:

- (a) 21 Members will be elected at each general election and will serve for 2 terms of the Legislative Assembly—resulting in a Legislative Council consisting of 42 Members each serving a maximum period of 8 years.

Constitution (Legislative Council) Amendment 1991

The Legislative Council is to be reconstituted immediately after the approval of the Bill at a referendum. During the first period after its reconstitution, the Legislative Council will consist of the Members elected at the 3 previous general elections [i.e. elections held in 1984 and 1988 and the election to be held by 1992], other than the last 3 Members elected at the earliest of those general elections [i.e. the election held in 1984]. During the period after the subsequent general election [i.e. the election to be held by 1996], the Legislative Council will consist of the 21 Members elected at that general election, the 15 Members elected at the previous general election [i.e. the election to be held by 1992] and the first 6 Members elected at the next previous general election [Le. the election held in 1988].

The quota of votes a candidate requires for election to the Legislative Council will be reduced from 6.25% to 4.55%.

Voters at a general election will be required to vote for a minimum of 15 candidates for the Legislative Council instead of 10 candidates.

Other consequential changes will be made.

Amendments relating to method of filling casual vacancies

At present there are 2 methods of filling casual vacancies in the Legislative Council. The first method applies when a vacancy occurs in the seat of a Member who was included in a group of candidates at the general election at which the Member was originally elected. The vacancy is filled by the candidate "next in the group" i.e. the candidate (if any) next in order in the group who was not elected and who has not since become a Member.

If the vacancy cannot be filled by that method, the vacancy is filled at a joint sitting of the Legislative Council and Legislative Assembly. At the joint sitting only candidates who are currently members of the same political party as the person whose seat has become vacant may be elected to fill the vacancy.

Under the Bill the method of filling casual vacancies by the candidate "next in the group" is no longer to apply and vacancies will be filled at a joint sitting. The Bill brings the method of filling casual vacancies in the Legislative Council into line with the method in the Senate. The Bill ensures as far as practicable that a casual vacancy is filled by a person of the same political party as the original Member chosen by the people. Under the "next in the group" method, the person next in the group may have ceased to be a member of the party concerned.

Detailed summary of provisions of Bill

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 consequential amendments to the Parliamentary Electorates and Elections Act 1912.

Constitution (Legislative Council) Amendment 1991

Schedule 1—Amendment of Constitution Act 1902

Schedule 1 (1) is consequential on the proposed requirement that 21 instead of 15 Members of the Legislative Council are to be elected at each general election.

Schedule 1 (2) omits an obsolete reference to the continuing Members in relation to the reconstitution of the Legislative Council in 1978.

Schedule 1 (3) replaces the existing sections of the Constitution Act 1902 relating to the constitution of the Legislative Council with the following proposed sections:

Proposed section 16 contains definitions. “Periodic Council election” is defined to include previous general elections for 15 Members at which the continuing Members were elected. “The 1991 reconstitution Act” is defined to mean the proposed Act.

Proposed section 17 provides for the reconstitution of the Legislative Council on the commencement of the 1991 reconstitution Act (being the date of its assent by the Governor following the referendum). The reconstituted Legislative Council will consist of 42 Members. In order that the Legislative Council is duly constituted the proposed section provides that the last 3 Members elected at the earliest general election of the Council [i.e. the election held in 1984] cease to be Members. The terms of proposed section 17 (2) will ensure that the other existing Members (including those who were elected to fill casual vacancies) retain their seats.

Schedule 1 (4) omits obsolete provisions relating to the holding of the first Legislative Council general election after the reconstitution of the Council in 1978.

Schedule 1 (5) provides that the term of office of Members of the Legislative Council is to be 2 terms of the Legislative Assembly, namely a maximum of 8 years. However, in order that the Legislative Council is duly constituted, special provision is made for the term of office of the first 12 Members elected at the earliest general election [Le. the election held in 1984] and the first 6 Members elected at the subsequent general election [Le. the election held in 1988] to expire after 3 terms of the Legislative Assembly as at present.

Schedule 1 (6) omits the provision that requires a casual vacancy in the office of a Member of the Legislative Council to be filled by the unelected candidate “next in the group” at the original general election.

Schedule 1 (7) makes consequential amendments.

Schedule 1 (8) omits an obsolete provision relating to the first election of the President of the Legislative Council in 1978.

Schedule 1 (9) omits an obsolete Schedule to the Principal Act which contains the names of continuing Members in relation to the reconstitution of the Legislative Council in 1978.

Schedule 1 (10) (a) provides for Legislative Council general elections to return 21 Members instead of 15 Members.

Schedule 1 (10) (b) requires voters at Legislative Council general elections to vote for at least 15 candidates instead of 10 candidates. The amendment is a consequence of the increase in the number of members to be elected at each such election.

Schedule 1 (10) (c) makes the necessary changes to the method of determining an election quota at Legislative Council general elections.

Constitution (Legislative Council) Amendment 1991

**Schedule 2—Consequential amendment of Parliamentary Electorates
and Elections Act 1912**

Schedule 2 (1) is consequential on the proposed requirement that 21 instead of 15 Members of the Legislative Council are to be elected at each general election.

Schedule 2 (2) repeals section 81I as a consequence of the proposed changes to the method of filling casual vacancies. Section 81I requires claims by candidates for the Legislative Council to be grouped on the ballot-paper to be kept for 3 terms of the Legislative Assembly to verify the candidate eligible to fill a vacancy.

Schedule 2 (3), (4) and (5) are consequential on the proposed requirement that electors vote for at least 15 candidates instead of at least 10 candidates.
