

Queensland



ANNO VICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE

No. 24 of 1977

**An Act to amend the Constitution Act of 1867 (as amended from time to time) in certain particulars and the Legislative Assembly Act 1867–1971 in a certain particular and for another purpose**

[ASSENTED TO 21ST APRIL, 1977]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Constitution Act and Another Act Amendment Act 1977*.

**2. Commencement.** This Act shall commence on a day to be fixed by Proclamation.

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

PART I—PRELIMINARY;

PART II—AMENDMENTS OF THE CONSTITUTION ACT OF 1867 (AS AMENDED FROM TIME TO TIME);

PART III—AMENDMENT OF THE LEGISLATIVE ASSEMBLY ACT 1867–1971;

PART IV—PROVISION WITH RESPECT TO ACT NO. 92 OF 1976.

PART II—AMENDMENTS OF THE CONSTITUTION ACT OF 1867  
(AS AMENDED FROM TIME TO TIME)

**4. Citation.** (1) In this Part, the *Constitution Act* of 1867 (as amended from time to time) is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Constitution Act 1867–1977*.

**5. New s. 7B.** The Principal Act is amended by inserting after section 7A the following section:—

“**7B. Seats to become vacant in certain cases.** (1) Except where otherwise expressly provided or permitted by any Act, a member of the Legislative Assembly is not eligible to accept or hold any office or place of profit under the Crown or appointment to a Crown instrumentality or body representing the Crown or to any authority, corporation, board or other body where his appointment thereto is—

- (a) on the nomination of a Minister of the Crown;
- (b) by the Governor in Council or a Minister of the Crown;
- (c) subject to the approval of the Governor in Council or a Minister of the Crown,

whether or not in any case as aforesaid he receives any fee or other remuneration or otherwise profits in respect thereof, and if any member, except where otherwise expressly provided or permitted by any Act, accepts or holds any office or place of profit or appointment as aforesaid, his seat shall thereupon become vacant.

(2) (a) If any member of the Legislative Assembly, except where otherwise expressly provided or permitted by any Act, transacts any business or performs any duty or service whatsoever in any capacity for or on behalf of the Crown or a Crown instrumentality or body representing the Crown (but excluding the State Government Insurance Office (Queensland)), whether or not for or in expectation of any fee, gain or reward, his seat shall thereupon become vacant.

(b) Paragraph (a) does not apply in relation to the attendance by any member at a court or other place or to the giving of evidence by him at a court or other place in obedience to any court process, whether or not he receives witnesses' or other expenses in connexion therewith.

(3) In this section, a reference to the Crown is a reference to the Crown in right of the State.”.

**6. New s. 7C.** The Principal Act is amended by inserting after section 7B as inserted by this Act the following section:—

“**7C. Power of Legislative Assembly to relieve from consequences of alleged defaults.** (1) Notwithstanding the provisions of section 7B, where it is made to appear to the Legislative Assembly that any act, matter or thing has or may have caused the seat of a member of the Legislative Assembly to become vacant, the Legislative Assembly may, if it is satisfied that the act, matter or thing—

- (a) has ceased to have effect;
- (b) was in all the circumstances of a trifling nature; and

(c) occurred or arose without the actual knowledge or consent of the member or was accidental or due to inadvertence,

by resolution direct that any such act, matter or thing for the purposes of section 7B be deemed never to have occurred or arisen but any such resolution shall not, save as aforesaid, affect the determination of any petition, question or matter inquired into by or referred to the Elections Tribunal pursuant to section 101 (2) of the *Elections Act* 1915-1976.

(2) In any case where apart from this provision the Governor or the Speaker would be required to issue, when the Legislative Assembly is not in session or during any adjournment of the Legislative Assembly, a writ for election of a member thereof in the place of a member whose seat has become vacant pursuant to section 7B, the Governor or Speaker may, if it appears to him that an opportunity should be given to the Legislative Assembly to consider the making of a resolution referred to in subsection (1), defer the issue of the writ pending the determination of the Legislative Assembly.”

### PART III—AMENDMENT OF THE LEGISLATIVE ASSEMBLY ACT 1867-1971

7. **Citation.** The *Legislative Assembly Act* 1867-1971 as amended by this Part may be cited as the *Legislative Assembly Act* 1867-1977.

8. **New s. 8A.** The *Legislative Assembly Act* 1867-1971 is amended by inserting after section 8 (but before the heading “WRITS OF ELECTION”) the following section:—

“8A. **Vacancy occurring by reason of resignation to contest Commonwealth election.** If for the purpose of seeking election for the Parliament of the Commonwealth a member of the Assembly—

- (a) resigns his seat therein not later than 21 days prior to the issue of the writ for the said election; and
- (b) at the time of tendering his resignation, notifies in writing to the Speaker—
  - (i) his intention to seek such election; and
  - (ii) his intention in the event of his failing to secure such election to become again a candidate for the vacancy occurring pursuant to his resignation,

the issue of a writ for an election to fill such vacancy shall be deferred until—

- (c) if he is elected a member of either House of the Parliament of the Commonwealth and a petition against his election or return thereto is not lodged within the time allowed for the lodging of such petitions, the expiration of the time so allowed;
- (d) if he is elected a member of either House of the said Parliament and a petition against his election or return thereto is lodged within the time allowed for the lodging of such petitions, the final determination of that petition;

- (e) if he is not elected a member of either House of the said Parliament and he does not lodge a petition against the election or return of another person thereto within the time allowed for the lodging of such petitions, the expiration of the time so allowed;
- (f) if he is not elected a member of either House of the said Parliament and lodges a petition against the election or return of another person thereto within the time allowed for the lodging of such petitions, the final determination of that petition;
- (g) if he is not nominated as a member of either House of the said Parliament, or if nominated does not consent to such nomination, within the time required for nomination in accordance with the laws of the Commonwealth, the expiration of that time.”.

PART IV—PROVISION WITH RESPECT TO ACT NO. 92 OF 1976

**9. Cesser of application of Act No. 92 of 1976.** On the commencement of this Act, the provisions of the *Crown Appointments Declaratory Act 1976* do not apply in relation to any authority, appointment or standing in relationship referred to in that Act in respect of the continuation after the commencement of this Act of the holding of any such authority or appointment or the standing in such relationship.