

Queensland



ANNO TRICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE

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No. 73 of 1987

An Act to provide with respect to the discharge of the office of Governor of the State and the existence of an Executive Council and to repeal or amend certain statutes concerning the government of the State

[ASSENTED TO 1ST DECEMBER, 1987]

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 (Office of Governor) Act 1987*.

**2. Arrangement.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-2);

PART II—GOVERNMENT OF QUEENSLAND (ss. 3-13);

PART III—REPEALS AND AMENDMENTS (ss. 14-18).

#### PART II—GOVERNMENT OF QUEENSLAND

**3. Governor.** (1) There shall be a Governor in and over the State.

(2) The appointment of a person to the office of Governor in and over the State—

(a) shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual;

(b) may be terminated only by instrument under Her Majesty's Sign Manual taking effect upon publication thereof in the Government Gazette or at a later time specified in the instrument in that behalf.

**4. Authorities and powers of Governor.** The Governor is authorized and required to do and execute all things that belong to his office according to the laws that are now or shall hereafter be in force in the State.

**5. Publication of Governor's Commission; Declaration of Governor's Allegiance.** (1) Every person appointed to the office of Governor in and over the State, before entering on any of the duties of his office and with all due solemnity—

(a) shall cause the Commission appointing him to be Governor to be read and published at the seat of government in the State, in the presence of the Chief Justice or the next senior Judge of the State who is able to act and of at least two Members of the Executive Council of the State;

and

(b) thereafter, then and there shall take in the presence of the persons referred to in paragraph (a) the Oath of Allegiance and the Oath of Office subject to and in accordance with the law and practice of the State.

(2) The Chief Justice or next senior Judge of the State who is able to act shall administer the Oaths referred to in subsection (1) or, as permitted by law, take Affirmations in lieu of those Oaths.

**6. Executive Council.** There shall be an Executive Council for the State, which shall consist of—

- (a) the persons who immediately before the passing of this Act are members of the Executive Council;  
and
- (b) persons who may at any time be members of the Executive Council in accordance with any Act in force;  
and
- (c) such other persons as the Governor shall, from time to time in the name and on behalf of Her Majesty and subject to any Act in force, appoint under the Public Seal of the State to be members of the Executive Council,

until their membership thereof be terminated by death, their resignation therefrom or their removal therefrom by the Governor.

**7. Meetings of Executive Council.** (1) The Governor shall attend and preside at all meetings of the Executive Council unless he is prevented by some good and sufficient cause and, in his absence, such member of the Executive Council as the Governor may appoint in that behalf or, in the absence of such an appointee, the member of the Executive Council who is for the time being taken to be the most senior of the members thereof present at the meeting shall preside.

(2) The Executive Council shall not proceed to dispatch business unless—

- (a) it has been duly summoned by authority of the Governor;  
and
- (b) two members thereof, at the least, exclusive of the Governor or member thereof presiding, are present and assisting throughout the whole of the meeting at which the business is dispatched.

**8. Specific power of Governor.** Without prejudice to the operation of any other Act, the Governor is authorized and empowered—

- (a) so far as it is within the powers of Her Majesty so to do, upon cause appearing to him sufficient, to remove or suspend from office any person holding any office or place by virtue of any appointment made in the name or under the authority of Her Majesty;
- (b) as he shall see occasion, where an offender may be tried in the State in respect of an offence (not being an offence against the laws of the Commonwealth) to grant, in the name and on behalf of Her Majesty, to the offender, either free or subject to lawful conditions—

a pardon, a commutation of sentence or a reprieve of execution of sentence for such period as the Governor thinks fit;

or

a remission of any fine, penalty, forfeiture or other consequence of conviction of the offender.

**9. Administration of Government in absence etc. of Governor. (1)**  
In the event of—

- (a) the office of Governor in and over the State becoming vacant;
- or
- (b) the Governor assuming the administration of the Government of the Commonwealth;
- or
- (c) the Governor becoming incapable or being absent from the State, and a deputy not having been appointed pursuant to section 10,

the Lieutenant-Governor or, if there be no such officer in the State and able to act, the Chief Justice of the State or, if there be no Chief Justice in the State and able to act, the next senior Judge of the Supreme Court of Queensland who is in the State and able to act shall administer the Government of the State, first taking the Oaths or Affirmations directed by section 5 to be taken by the Governor in the manner prescribed by paragraph (b) of section 5 (1).

(2) Where the Governor is beyond the boundaries of the State in the course of his passage from one part of the State to another part of the State he shall be deemed not to be absent from the State for the purposes of subsection (1).

(3) Every person who duly assumes the administration of the Government of the State pursuant to subsection (1) is authorized and required to do and execute all things that the Governor might do and execute pursuant to this Act.

(4) A person who by virtue of his office has duly assumed the Administration of the Government of the State pursuant to subsection (1) shall not continue to administer the Government of the State after—

the Governor, by Proclamation;

or

some other person holding an office prior in title to administer the Government of the State under subsection (1), by notification published in the Gazette upon the advice and under the hand of the Premier of the State,

has notified that he has assumed or resumed or is about to assume or resume the administration thereof.

**10. Appointment of deputy for Governor. (1)** In the event of—

- (a) the Governor having occasion to be temporarily absent for a short period from the State or from the seat of government but not from the State, except for the purpose of administering the Government of the Commonwealth;
- or

- (b) the Governor considering it desirable so to do by reason of illness in relation to which there exist reasonable grounds for believing that it will be of short duration,

the Governor may by an instrument under the Public Seal of the State constitute and appoint the Lieutenant-Governor or, if there be no such officer in the State and able to act, the Chief Justice of the State or, if there be no Chief Justice in the State and able to act, the next senior Judge of the Supreme Court of Queensland who is in the State and able to act to be his deputy during his temporary absence or illness and in that capacity to exercise, perform and execute for and on behalf of the Governor during his absence or illness, and no longer, all such authorities and powers vested in the Governor according to law as are specified in such instrument, and no other.

(2) Any appointment of a deputy made under subsection (1) may be revoked by the Governor at any time.

(3) The authority and power of the Governor of the State shall not be abridged, altered or in any way affected by the appointment of a deputy made under subsection (1).

(4) This section shall not be construed to require the Governor of the State to constitute and appoint a deputy upon an event referred to in subsection (1).

**11. Issue of compliance not justiciable.** The issue of compliance with section 5, 6, 7, 9 or 10 shall not be justiciable in any court.

**12. Interpretation.** (1) In this Part, the term "Governor" means the person appointed for the time being to the office of Governor in and over the State and, in sections 6, 7, 8, 9 and 10, includes a person for the time being administering the Government of the State pursuant to section 9 (1) and a person for the time being appointed to be deputy of the Governor pursuant to section 10.

(2) In section 9 (4), the term "Premier" includes a Minister of the Crown for the time being performing the duties of the Premier of the State.

**13. Suspension of Letters Patent.** For as long as the provisions of this Part are in force the provisions of the Letters Patent constituting the Office of the Governor of Queensland made by Her Majesty Queen Elizabeth the Second on 14 February 1986 and proclaimed in the State by His Excellency the Governor on 6 March 1986 are suspended in their operation.

### PART III—REPEALS AND AMENDMENTS

**14. Amendment of Australian Constitutions Act 1842.** 5 & 6 Vic. c. 76 (Imperial). *The Australian Constitutions Act 1842* is amended, in so far as it is part of the law of the State, by repealing sections 31, 32, 33, 40 and 54.

**15. Repeal of Australian States Constitution Act, 1907.** 7 Edw. 7, c. 7 (Imperial). *The Australian States Constitution Act, 1907* is repealed in so far as it is part of the law of the State.

**16. Amendment of Constitution Act 1867 as amended.** (1) The *Constitution Act 1867-1978* as amended by the Australia Act 1986 of the United Kingdom or by the Australia Act 1986 of the Commonwealth is in this section referred to as the Principal Act.

(2) The Principal Act as amended by this section may be cited as the *Constitution Act 1867-1987*.

(3) The Principal Act is amended by—

(a) repealing section 4 and substituting the following section:—

“4. No member to sit or vote until he has taken the following oath of allegiance. No member of the Legislative Assembly shall be permitted to sit or vote therein until that member has taken and subscribed the following oath before the Governor of Queensland or before some person or persons authorized by the Governor to administer the oath:—

“I, . . . (*name of member*) . . . do sincerely promise and swear that I will be faithful and bear true allegiance to Her (*or His*) Majesty . . . (*name of Sovereign*) . . . as lawful Sovereign of Australia and Her (*or His*) other Realms and Territories, and to Her (*or His*) Heirs and Successors, according to law. So help me God.””;

(b) repealing each of the following sections:—

- s. 11—Existing legislature not affected by this Act.
- s. 13—Provisions of former Acts respecting the allowance and disallowance of Bills reserved. Order in Council s. 14.
- s. 31—Duties not to be levied on supplies for troops nor any duties inconsistent with treaties. Order in Council s. 18. Schedule to 18 and 19 Vic. c. 54.
- s. 32—Customs duties may be imposed not differential though contrary to existing Acts of Parliament. Order in Council s. 19. Schedule to 18 and 19 Vic. c. 54.
- s. 33—Force of laws and authority of courts preserved. Order in Council s. 20. Schedule to 18 and 19 Vic. c. 54.
- s. 37—Civil list to be accompanied by surrender of all revenues of the Crown. Schedule to 18 and 19 Vic. c. 54.
- s. 38—Pensions payable to judges of Supreme Court. Schedule to 18 and 19 Vic. c. 54.

**17. Amendment of Constitution Acts Amendment Act 1971-1983.** (1) The *Constitution Acts Amendment Act 1971-1983* is in this section referred to as the Principal Act.

(2) The Principal Act as amended by this section may be cited as the *Constitution Acts Amendment Act 1971-1987*.

(3) Section 3 of the Principal Act is amended by omitting the word “General” and substituting the words “ADJUSTMENT OF PARLIAMENTARY SALARIES”.

**18. Repeal of Constitution of Queensland Amendment Act 1942. 6 Geo. 6 No. 30.** *The Constitution of Queensland Amendment Act of 1942* is repealed.