

CONSTITUTIONAL PROVISIONS BILL

EXPLANATORY NOTE

THIS Bill arises from the revision of the Letters Patent constituting the office of Governor-General. This Bill is intended to avoid inconsistencies between the proposed new Letters Patent and existing legislation.

It is proposed at the appropriate stage to seek the leave of the House to divide this Bill into 4 parts with a view to the enactment of a Royal Powers Act, an Administrator's Powers Act, an Acts Interpretation Amendment Act, and a Civil List Amendment Act.

Clause 1 relates to the Short Title.

PART I

ROYAL POWERS

Clause 2 relates to the commencement of Part I, which is to come into force on the passing of the Act.

Clause 3 provides that Part I shall bind the Crown.

Clause 4 re-enacts section 2 of the Royal Powers Act 1953.

Clause 5 provides for the situation where a Regent or Counsellors of State are required or authorised, under the law for the time being in force in the United Kingdom, to perform royal functions. The clause provides that where, under that law,—

- (a) The royal functions are being performed in the name and on behalf of the Sovereign by a Regent, the royal functions of the Sovereign in right of New Zealand shall be performed in the name and on behalf of the Sovereign by that Regent; or
- (b) Royal functions are being performed by Counsellors of State, any royal function of the Sovereign in right of New Zealand may be performed in the name and on behalf of the Sovereign by those Counsellors of State unless the Governor-General may perform that royal function.

Clause 6 provides that the United Kingdom Regency Acts are not in force in New Zealand.

Clause 7 effects the consequential repeal of the Royal Powers Act 1953.

Clause 8 provides that Part I shall be in force in Tokelau.

PART II

ADMINISTRATOR'S POWERS

Under the proposed new Letters Patent the offices of Deputy Governor-General and Lieutenant Governor-General are abolished.

The Chief Justice, acting as Administrator of the Government, is to perform the functions of the Governor-General whenever the office of Governor-General is vacant or the holder of that office is for any reason unable to perform all or any of the functions of that office. If there is no Chief Justice able so to act, the President of the Court of Appeal is to be the Administrator of the Government in his stead. If there is no President of the Court of Appeal able so to act, the Senior Judge for the time being of the Court of Appeal is to be Administrator of the Government in his stead.

Clause 9 relates to the commencement of Part II, which is to come into force on a date to be appointed by the Governor-General by Order in Council. It is intended that the date appointed will be the date on which the new Letters Patent come into force.

Clause 10 provides that Part II shall bind the Crown.

Clause 11 provides that the fact that the Administrator of the Government exercises or performs any function, duty, or power that may be exercised or performed by the Governor-General shall be conclusive evidence of the authority of the Administrator of the Government to do so, and no person shall be concerned to inquire whether the occasion requiring or authorising him to do so has arisen or ceased.

Clause 12: Subclause (1) repeals the Deputy Governor's Powers Act 1912.

Subclause (2) is a saving provision.

Clause 13 provides that Part II shall be in force in Tokelau.

PART III

AMENDMENTS TO OTHER ACTS

Acts Interpretation

Clause 15: Subclause (1) inserts into section 4 of the Acts Interpretation Act 1924 a definition of the term "Administrator of the Government".

Subclause (2) substitutes in section 4 of the Acts Interpretation Act 1924 new definitions of the terms "Governor-General" and "Governor-General in Council".

Clause 16 substitutes a new section 23 in the Acts Interpretation Act 1924. This section (which relates to the manner in which the advice and consent of the Executive Council is signified) is extended so that it is no longer limited to statutory powers.

Clause 17 inserts new sections 25B and 25C into the Acts Interpretation Act 1924.

Section 25B provides that in any Imperial Act which is in force in New Zealand any reference to the Governor of New Zealand or of the colony shall be read as a reference to the Governor-General.

Section 25c provides that in any Imperial Act which is in force in New Zealand any reference to the Governor-General or Governor of New Zealand or of the colony shall be read as including a reference to the Administrator of the Government.

Clause 18 effects consequential repeals.

Clause 19 provides that *clauses 14 to 18* and this clause shall be in force in Tokelau.

Civil List

Clause 21 substitutes a new section 8 in the Civil List Act 1979. This section (which deals with the salary of the Administrator) is consequentially amended to provide for the case where (under the new Letters Patent) the President of the Court of Appeal or the Senior Judge of the Court of Appeal acts as Administrator of the Government.



Right Hon. Mr Muldoon

CONSTITUTIONAL PROVISIONS

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A BILL INTITULED

An Act to make provision in the constitutional law of New Zealand and to amend certain enactments consequent upon the granting by Her Majesty the Queen of new Letters Patent constituting the office of Governor-General

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Constitutional Provisions Act 1982.

PART I

ROYAL POWERS

2. Commencement of Part I—This Part of this Act shall come into force on the day on which this Act receives the Governor-General's assent. 5

3. Part I to bind the Crown—This Part of this Act shall bind the Crown.

4. Exercise of royal powers by Her Majesty the Queen or the Governor-General—(1) It is hereby declared that every power conferred on the Governor-General by any 10 enactment is a royal power which is exercisable by the Governor-General on behalf of Her Majesty the Queen, and may accordingly be exercised either by Her Majesty in person or by the Governor-General.

(2) It is hereby further declared that every reference in any 15 Act to the Governor-General in Council or any other like expression includes a reference to Her Majesty the Queen acting by and with the advice and consent of the Executive Council of New Zealand.

Cf. 1953, No. 19, s. 2

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5. Regent or Counsellors of State to act—Where, under the law for the time being in force in the United Kingdom,—

- (a) The royal functions are being performed in the name and on behalf of the Sovereign by a Regent, the royal functions of the Sovereign in right of New 25 Zealand shall be performed in the name and on behalf of the Sovereign by that Regent; or
- (b) Royal functions are being performed by Counsellors of State, any royal function of the Sovereign in right of New Zealand may be performed in the name and on 30 behalf of the Sovereign by those Counsellors of State unless the Governor-General may perform that royal function.

6. Regency Acts—The following Imperial Acts, 35 namely,—

- (a) The Regency Act 1937 (1 Edw. 8 and 1 Geo. 6 c. 16); and
 - (b) The Regency Act 1943 (6 and 7 Geo. 6 c. 42); and
 - (c) The Regency Act 1953 (2 and 3 Eliz. 2 c. 1)— 40
- are hereby declared not to be in force in New Zealand.

7. Repeal—The Royal Powers Act 1953 is hereby consequentially repealed.

8. Application of Part I to Tokelau—(1) This Part of this Act shall be in force in Tokelau.

5 (2) Every reference to New Zealand in section 6 of this Act includes Tokelau.

PART II

ADMINISTRATOR'S POWERS

9. Commencement of Part II—This Part of this Act shall
10 come into force on a date to be appointed by the Governor-General by Order in Council.

10. Part II to bind the Crown—This Part of this Act shall bind the Crown.

11. Administrator's authority not to be questioned—
15 The fact that the Administrator of the Government exercises or performs any function, duty, or power that may be exercised or performed by the Governor-General shall be conclusive evidence of the authority of the Administrator of the Government to do so, and no person shall be concerned to
20 inquire whether the occasion requiring or authorising him to do so has arisen or ceased.

12. Repeal and saving—(1) The Deputy Governor's Powers Act 1912 is hereby repealed.

(2) The repeal effected by subsection (1) of this section
25 shall not affect the validation effected by section 5 of the Deputy Governor's Powers Act 1912.

13. Application of Part II to Tokelau—This Part of this Act shall be in force in Tokelau.

PART III

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AMENDMENTS TO OTHER ACTS

Acts Interpretation

14. Sections to be read with Acts Interpretation Act 1924 —(1) This section and the next 5 succeeding sections shall be read together with and deemed part of the Acts
35 Interpretation Act 1924* (in those sections referred to as the principal Act).

*R.S. Vol. 1, p. 9

Amendments: 1979, No. 71; 1979, No. 128

(2) This section and the next 5 succeeding sections shall come into force on a date to be appointed by the Governor-General by Order in Council.

15. Interpretation—(1) Section 4 of the principal Act is hereby amended by inserting, after the definition of the term “Act”, the following definition:

“ ‘Administrator of the Government’ means the Administrator of the Government authorised by law to perform all or any of the functions of the Governor-General whenever the office of the Governor-General is vacant or the holder of the office of Governor-General is for any reason unable to perform all or any of the functions of the office of Governor-General:”.

(2) Section 4 of the principal Act is hereby amended by 15 repealing the definitions of the terms “Governor” and “Governor in Council”, and substituting the following definitions:

“ ‘Governor-General’ or ‘Governor’ means the Governor-General of New Zealand; and includes the Administrator of the Government: 20

“ ‘Governor-General in Council’ or ‘Governor in Council’ or any other like expression, means the Governor-General acting by and with the advice and consent of the Executive Council of New Zealand:”.

16. Orders in Council, etc., how advice and consent of Executive Council signified—The principal Act is hereby amended by repealing section 23, and substituting the following section: 30

“23. (1) Where in any Act any act, power, function, or duty is required to be done, exercised, or performed by the Governor-General in Council, or where in any such Act any other like expression is used in relation either to the Governor-General or to Her Majesty the Queen, or where Her Majesty or the Governor-General, in exercising any other power or authority belonging to the Crown, whether prerogative or statutory, does so on the advice and with the consent of the Executive Council of New Zealand (in this section called an exercise of authority) it shall be sufficient, and shall be deemed always to have been sufficient, if the advice and consent of the Executive Council to such exercise of authority is signified at a meeting of the Council, although Her Majesty or, as the case may require, the Governor- 35 40

General is prevented from attending or presiding thereat by some necessary or reasonable cause, if such meeting is duly convened and held in accordance with any law relating thereto for the time being in force.

5 “(2) On the advice and consent of the Executive Council being signified in manner aforesaid, Her Majesty the Queen or the Governor-General may exercise the authority in like manner as if Her Majesty had herself, or the Governor-General had himself, been present at the meeting at which
10 such advice and consent were signified.

“(3) Every authority exercised in the above manner shall take effect from the date of the aforesaid meeting, unless some other time is named or fixed or is expressly provided by law for the taking effect thereof.

15 “(4) No authority exercised in manner aforesaid by Her Majesty the Queen or the Governor-General shall be called in question in any Court on the ground that Her Majesty or, as the case may require, the Governor-General was not prevented by any necessary or reasonable cause from
20 attending any such meeting of the Executive Council as aforesaid.”

17. New sections inserted—The principal Act is hereby amended by inserting, after section 25A (as inserted by section 2 (1) of the Acts Interpretation Amendment Act
25 1973), the following sections:

“25B. **Governor-General may act under certain Imperial Acts**—In any Imperial Act which is in force in New Zealand any reference to the Governor of New Zealand or of the colony shall be read as a reference to the Governor-
30 General.

“25C. **Administrator of the Government may act under certain Imperial Acts**—In any Imperial Act which is in force in New Zealand any reference to the Governor-General or Governor of New Zealand or of the colony shall be read as
35 including a reference to the Administrator of the Government.”

18. Repeals—The following enactments are hereby consequentially repealed, namely,—

- 40 (a) Section 80 of the New Zealand Constitution Act 1852:
(b) Section 19 (2) of the Oaths and Declarations Act 1957.

19. Application of sections 14 to 19 to Tokelau—

(1) Sections 14 to 18 of this Act and this section shall be in force in Tokelau.

(2) Sections 25B and 25C of the principal Act apply not only in respect of any Imperial Act which is in force in New Zealand but also in respect of any Imperial Act which is in force in Tokelau.

Civil List

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20. Sections to be read with Civil List Act 1979—

(1) This section and the next succeeding section shall be read together with and deemed part of the Civil List Act 1979* (in that section referred to as the principal Act).

(2) This section and the next succeeding section shall come into force on a date to be appointed by the Governor-General by Order in Council.

21. Salary of Administrator—The principal Act is hereby amended by repealing section 8, and substituting the following section:

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“8. (1) Where the Chief Justice, or the President of the Court of Appeal, or, as the case may require, the Senior Judge for the time being of the Court of Appeal acts as the Administrator of the Government, that person shall, in respect of the period for which that person acts as the Administrator of the Government, be paid either:

“(a) A salary at half the rate of the Governor-General’s salary and a salary at half the rate of the salary of that person’s judicial office; or

“(b) A salary at the rate of the salary of his judicial office,—

whichever is the greater.

“(2) The salary paid to any person to whom subsection (1) of this section applies shall, in respect of the period for which he acts as the Administrator of the Government, be in substitution for the salary payable in respect of that person’s judicial office.

“(3) This section shall have effect notwithstanding anything in section 10 of the Judicature Act 1908.

“(4) Notwithstanding subsections (1) and (2) of this section, if a person who acts as the Administrator of the Government is a contributor to the Government Superannuation Fund, that person’s rate of salary shall, for the purposes of the Government Superannuation Fund Act 1956, be deemed to remain, during the period for which that person so acts, that of that person’s judicial office.”

*1979, No. 33