



ANALYSIS

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1999, No. 86

An Act to amend the Constitution Act 1986

[3 August 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Constitution Amendment Act 1999, and is part of the Constitution Act 1986 (“the principal Act”).

(2) This Act comes into force on 1 November 1999.

2. New sections inserted—The principal Act is amended by inserting, after section 3, the following sections:

“3A. Advice and consent of Executive Council—(1) The Sovereign or the Governor-General may perform a function or duty, or exercise a power, on the advice and with the consent of the Executive Council if that advice and consent are given at a meeting of the Executive Council at which neither the Sovereign nor the Governor-General is present if the Sovereign or the Governor-General is prevented from attending the meeting by some necessary or reasonable cause.

“(2) The performance of the function or duty, or the exercise of the power takes effect from the date of the meeting unless another time is specified for the performance of the function or duty, or for the exercise of the power, to take effect.

“(3) Neither the validity of the performance of the function or duty, nor the validity of the exercise of the power, can be challenged in any legal proceedings on the ground that the Sovereign or the Governor-General was not prevented from attending the meeting of the Executive Council by some necessary or reasonable cause.

Cf. 1924, No. 11, s. 23; 1983, No. 22, s. 3

“3B. Exercise of powers and duties by Administrator—

(1) The Administrator of the Government may perform a function or duty imposed on the Governor-General, or exercise a power conferred on the Governor-General, if—

“(a) The office of Governor-General is vacant; or

“(b) The Governor-General is unable to perform the function or duty or exercise the power.

“(2) The performance or exercise by the Administrator of the Government of a function or duty imposed, or a power conferred, on the Governor-General is conclusive evidence of the authority of the Administrator to perform the function or duty or exercise the power.

Cf. 1924, No. 11, s. 25E; 1986, No. 115, s. 9”

3. New sections inserted—The principal Act is amended by inserting, after section 9, the following sections:

“9A. Solicitor-General may perform functions of Attorney-General—The Solicitor-General may perform a function or duty imposed, or exercise a power conferred, on the Attorney-General.

Cf. 1924, No. 11, s. 4; 1952, No. 81, s. 27

“9B. Appointment of person to act in place of Solicitor-General—(1) The Governor-General may appoint a barrister or solicitor of at least 7 years’ practice to act—

“(a) In place of, or for, the Solicitor-General during the absence from office of the Solicitor-General or if the Solicitor-General is incapacitated in a way that affects the performance of his or her duties; or

“(b) During a vacancy in the office of Solicitor-General.

“(2) The performance of a function or duty or the exercise of a power by a person appointed under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the authority of that person to do so.

Cf. 1924, No. 11, s. 25B (1), (2); 1979, No. 71, s. 2

“9C. Delegation of powers of Attorney-General and Solicitor-General—(1) The Solicitor-General may, with the

written consent of the Attorney-General, in writing delegate to a Deputy Solicitor-General, any of the functions or duties imposed, or powers conferred, on the Attorney-General.

“(2) The Solicitor-General may in writing delegate to a Deputy Solicitor-General any of the functions or duties imposed, or powers conferred, on the Solicitor-General, except for the power to delegate conferred by this subsection.

“(3) A delegation is revocable and does not prevent the Attorney-General or the Solicitor-General from performing the function or duty or exercising the power.

“(4) A delegation may be made on conditions specified in the instrument of delegation.

“(5) The fact that a Deputy Solicitor-General performs a function or duty or exercises a power is, in the absence of proof to the contrary, sufficient evidence of his or her authority to do so.”

This Act is administered in the Ministry of Justice.
