

NEW ZEALAND CONSTITUTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the New Zealand Constitution Act 1852 (U.K.). Parliament is competent to alter, suspend, or repeal that Act by section 1 of the New Zealand Constitution (Amendment) Act 1947 (U.K.).

Clause 1 relates to the Short Title.

Clause 2 re-enacts in an amended form section 53 of the 1852 Act, relating to the power of the General Assembly to make laws. That section provides that it shall be competent for the General Assembly "to make laws for the peace, order, and good government of New Zealand". The section also provides that such laws must not be repugnant to the law of England, but by virtue of section 2 (2) of the Statute of Westminster 1931 (U.K.) (which was adopted in New Zealand by the Statute of Westminster Adoption Act 1947) this provision is no longer operative.

The report of the Special Law Reform Committee on Admiralty Jurisdiction included a suggested draft Admiralty Bill, which was adopted by the Government and is now before the House with only minor changes. The Committee's draft Bill included a draft clause 14 declaring that the jurisdiction conferred may be exercised notwithstanding any limitation expressed or implied in section 53 of the New Zealand Constitution Act 1852. In its report the Committee stated that clause 14 had been added because, although the Committee had no doubt whatever of the legislative competence of the New Zealand Parliament to legislate extra-territorially, section 53 still imposes a legislative restraint in the absence of clear language to the contrary elsewhere.

The omission of the proposed clause 14 from the Admiralty Bill was discussed by the Statutes Revision Committee when considering the Bill, and it was explained that to cover the matter expressly in that Bill would leave uncertainty as to the validity of other legislation. The doubts that the clause was designed to remove exist in respect of a number of Acts. It was the view of members of the Committee, first, that the powers of Parliament should be clarified and its full competence put beyond doubt, and second, that this should be done on a general basis and not by piecemeal amendments. Examples of other legislation affected are—

The Aviation Crimes Act 1972

The Antarctica Act 1960

The Crimes Act 1961

The Submarine Cables and Pipelines Protection Act 1966
The Continental Shelf Act 1964
The Shipping and Seamen Act 1952
The Fisheries Act 1908
The Marine Pollution Bill, at present before the House.

The new section 53 is intended to make clear that Parliament has sovereign power to make laws, at least since the passing of the Statute of Westminster Adoption Act 1947 (without prejudice to the validity of earlier Acts), that it is for Parliament itself to decide what laws it will make, and that the validity of an Act cannot be challenged on the ground that, particularly in the case of an Act having extra-territorial effect, it is not "for the peace, order, and good government of New Zealand".

The new section declares that the General Assembly has full power to make laws having effect in or in respect of New Zealand or any part thereof and laws having effect outside New Zealand. It also declares that all Acts duly passed since the passing of the Statute of Westminster Adoption Act 1947 are, and always have been, valid, but without prejudice to the validity of earlier Acts.

Clause 3 repeals some obsolete provisions of the 1852 Act. The sections repealed are—

- (a) Section 57—Governor to conform to instructions transmitted by Her Majesty as to assenting to or dissenting from Bills or reserving Bills for Her Majesty's pleasure.
- (b) Section 58—Disallowance by Her Majesty of Bills assented to by Governor.
- (c) Section 59—Reserved Bill not have any force until assented to by Her Majesty.
- (d) Section 61—Duties not to be levied on supplies for troops or inconsistently with treaties.

Subclause (2) contains amendments to section 56 which are consequential on the repeal of section 57.

Hon. Dr Finlay

NEW ZEALAND CONSTITUTION AMENDMENT

ANALYSIS

Title	2. Power of General Assembly to make laws
1. Short Title	3. Repeal of obsolete provisions

A BILL INTITULED

An Act to amend the New Zealand Constitution Act 1852

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

1. Short Title—This Act may be cited as the New Zealand Constitution Amendment Act 1973, and shall be read together with and deemed part of the New Zealand Constitution Act 1852* of the United Kingdom Parliament
10 (hereinafter referred to as the principal Act).

2. Power of General Assembly to make laws—The principal Act is hereby amended by repealing section 53, and substituting the following section:

“53. (1) The General Assembly shall have full power to
15 make laws having effect in, or in respect of, New Zealand or any part thereof and laws having effect outside New Zealand.

“(2) Without limiting the validity of any Act of the General Assembly passed before the 25th day of November

*1957 Reprint, Vol. 11, p. 115
Amendment: 1970, No. 94

1947 (being the date of the passing of the Statute of Westminster Adoption Act 1947), every Act of the General Assembly duly passed on or after that date is hereby declared to be and always to have been valid and within the powers of the General Assembly."

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3. Repeal of obsolete provisions—(1) Sections 57, 58, 59, and 61 of the principal Act are hereby repealed.

(2) Section 56 of the principal Act is hereby amended by omitting the words "and to such instructions as may from time to time be given in that behalf by Her Majesty" and also the words "or that he reserves such Bill for the signifi- 10 cation of Her Majesty's pleasure thereon".