

Queensland



ANNO VICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

No. 5 of 1978

An Act to provide with respect to the eligibility of members of the Legislative Assembly to accept or hold certain appointments or to perform certain services and to amend the Legislative Assembly Act 1867–1977, to rectify the effect of the application of section 7B of the Constitution Act 1867–1977 and other laws to certain appointments and to amend that Act and for related purposes

[ASSENTED TO 17TH MAY, 1978]

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 *Legislative Assembly Act and Another Act Amendment Act 1978*.

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

PART I—PRELIMINARY (ss. 1–2);

PART II—AMENDMENT OF LEGISLATIVE ASSEMBLY ACT (ss. 3–4);

PART III—AMENDMENT OF CONSTITUTION ACT (ss. 5–6);

PART IV—RECTIFICATION PROVISIONS (ss. 7–12).

PART II—AMENDMENT OF LEGISLATIVE ASSEMBLY ACT

3. Citation. The *Legislative Assembly Act 1867–1977* as amended by this Part may be cited as the *Legislative Assembly Act 1867–1978*.

4. Amendment of Legislative Assembly Act. The *Legislative Assembly Act 1867–1977* is amended by—

(a) re-numbering section 7A as section 7E;

(b) inserting after section 7 the following sections:—

“**7A. Eligibility of members to hold offices etc.** (1) A member of the Assembly is not eligible to accept or hold any office or place of profit under the Crown or any position of the prescribed description.

(2) If a member of the Assembly is appointed to an office, place or position to which subsection (1) applies his appointment to such office, place or position shall be null and void.

(3) If a person becomes a member of the Assembly while he is appointed to an office, place or position to which subsection (1) applies his appointment to such office, place or position shall terminate on the date of his election to the Assembly.

(4) Subsection (1) does not apply to—

(a) any office or place of profit under the Crown or any position of the prescribed description if an Act requires or expressly permits that the office, place or position be held by a member of the Assembly, however described;

(b) an office the holder of which is an Officer of the Crown referred to in section 3 of the *Officials in Parliament Act 1896–1975*; or

(c) any position of the prescribed description that is specified in an Order in Council duly made under section 7C if, when such a position is held by a member of the Assembly, neither he nor any other person is entitled to or receives any fee or other reward on account of his holding the position.

7B. Eligibility of members to perform services. (1) If a member of the Assembly in any capacity transacts any business or performs any duty or service for the Crown or a Crown instrumentality or a body representing the Crown (excluding the State Government Insurance Office (Queensland))—

(a) neither he nor any other person shall be entitled to or receive any fee or other reward or any expenses on account of such transaction or performance; and

(b) the question whether he should continue as a member of the Assembly shall be determined by the resolution of the Assembly.

(2) If pursuant to subsection (1) the Assembly resolves that a person should not continue as a member of the Assembly the seat of that person in the Assembly shall become vacant on the date on which the resolution is taken.

(3) Subsection (1) does not apply to—

(a) the attendance by a member of the Assembly 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;

(b) the transaction of business or performance of a duty or service for the Crown or a Crown instrumentality or a body representing the Crown if an Act requires or expressly permits a member of the Assembly to so transact that business or so perform that service or duty; or

(c) the transaction of business or performance of a duty or service for the Crown or a Crown instrumentality or a body representing the Crown as part of the functions or duties of an Officer of the Crown referred to in section 3 of the *Officials in Parliament Act 1896–1975*.

7C. Exclusion of positions from s. 7A. (1) If at any time it is resolved by the Assembly that any position of the prescribed description should be one to which section 7A (1) shall not apply, the Governor in Council may, by Order in Council, specify that position accordingly.

(2) Subject to subsection (3), it is not competent to the Governor in Council to revoke, amend or supersede an Order in Council made pursuant to subsection (1) unless the Assembly has first so resolved.

(3) It is competent to the Governor in Council to vary, by Order in Council, the title or description of any position specified in an Order in Council made pursuant to subsection (1) where the same has undergone a change.

(4) Every Order in Council made pursuant to subsection (1) or to amend an Order in Council so made shall be laid before the Assembly within 14 sitting days after its publication in the Gazette if the Assembly is then in session but if not then within 14 sitting days after the commencement of its next session and section 28A of the *Acts Interpretation Act 1954–1977* shall apply in respect of every such Order in Council as it applies to regulations made under an Act.

(5) The Clerk of the Parliament shall keep in his custody a copy of every Order in Council made pursuant to subsection (1) and of every Order in Council in amendment thereof for as long as such order is in force.

7D. Meaning of expressions. (1) The expression "position of the prescribed description" in sections 7A and 7C means a position on a Crown instrumentality or a body representing the Crown or on any authority, corporation, board or other body appointment to which is made—

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

(2) A reference to the Crown in sections 7A and 7B and in subsection (1) is a reference to the Crown in right of Queensland.

(3) The expression "fee or other reward" in section 7A does not include any amount due or paid for recoupment of or on account of out of pocket expenses reasonably incurred."

PART III—AMENDMENT OF CONSTITUTION ACT

5. Citation. The *Constitution Act 1867–1977* as amended by this Part may be cited as the *Constitution Act 1867–1978*.

6. Repeal of ss. 7B and 7C. (1) The *Constitution Act 1867–1977* is amended by repealing sections 7B and 7C.

(2) The repeal provided for by subsection (1) shall be deemed to have taken effect on 1 July 1977.

PART IV—RECTIFICATION PROVISIONS

7. Legislative Assembly seats preserved. It is declared that, notwithstanding section 7B of the *Constitution Act 1867–1977* or any other provision of law, the seat in the Legislative Assembly of any person elected or deemed to be elected to the Assembly did not at any time become vacant by reason of—

- (a) that person, prior to the passing of this Act, accepting or holding an office or place of profit under the Crown or an appointment of the prescribed description; or
- (b) that person, prior to the passing of this Act, transacting any business or performing any duty or service whatsoever in any capacity for or on behalf of the Crown or a Crown instrumentality or body representing the Crown,

and that such a person was not at any time, by reason thereof, incapable of sitting or voting as a member of the Assembly.

8. Status of Ministers and Executive Councillors preserved. It is declared that the appointment and status of any person as a Minister of the Crown or as a member of the Executive Council and the lawfulness and validity of any action done, exercise of powers or performance of functions by a person acting or claiming to act in either of those capacities have not at any time been affected by reason of—

- (a) that person, prior to the passing of this Act, accepting or holding an office or place of profit under the Crown or an appointment of the prescribed description; or

- (b) that person, prior to the passing of this Act, transacting any business or performing any duty or service whatsoever in any capacity for or on behalf of the Crown or a Crown instrumentality or body representing the Crown,

which acceptance, holding, transaction or performance would, but for section 7, be taken to have caused his seat in the Legislative Assembly to be or become vacant.

9. Qualification of electoral candidate and validity of election preserved. It is declared that, notwithstanding any provision of law, the qualification of any person to be nominated as a candidate and to be elected a member of the Legislative Assembly for any electoral district in Queensland has not at any time been affected and the election of any person as a member of the Assembly has not at any time been null and void by reason of—

- (a) that person, prior to the passing of this Act, accepting or holding an office or place of profit under the Crown or an appointment of the prescribed description; or
- (b) that person, prior to the passing of this Act, transacting any business or performing any duty or service whatsoever in any capacity for or on behalf of the Crown or a Crown instrumentality or body representing the Crown,

which acceptance, holding, transaction or performance would, but for section 7, be taken to have caused his seat (if he had one) in the Assembly to be or become vacant.

10. Termination of existing appointments. (1) Where immediately prior to the passing of this Act a person elected as a member of the Legislative Assembly holds an office or place of profit under the Crown or an appointment of the prescribed description which, but for section 7, would be taken to have caused his seat in the Assembly to be or become vacant, upon the passing of this Act and by force of this Act his term of appointment to such office, place or appointment shall terminate.

(2) Subsection (1) does not apply to an office the holder of which is an Officer of the Crown referred to in section 3 of the *Officials in Parliament Act* 1896–1975.

11. Legislative intent as to retrospectivity. It is declared that the provisions of this Part shall be given effect and, where necessary, retrospective effect so that—

- (a) every seat in the Legislative Assembly, office as a Minister of the Crown or as a member of the Executive Council, action, exercise of power or performance of function referred to in section 8, and qualification for election to and election to the Legislative Assembly of any person within the application of the provisions of this Part is preserved and validated and shall not be questioned in any proceedings before a court of law or other tribunal for any reason referred to in this Part; and
- (b) any decision of a court of law or other tribunal that is contrary to any provision of this Part and any order made as a result of such a decision shall have and be given no effect.

12. Meaning of expression. The expression “appointment of the prescribed description” in this Part means an appointment to a Crown instrumentality or a body representing the Crown or to any authority, corporation, board or other body where 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; or
- (c) subject to the approval of the Governor in Council or a Minister of the Crown.