

CONSTITUTION AMENDMENT (LEGISLATIVE COUNCIL ELECTIONS) ACT.

Act No. 8, 1933.

George V,
No. 8, 1933.

An Act to make further provision for the election of Members of the Legislative Council; to amend the Constitution Act, 1902, the Constitution Further Amendment (Legislative Council Elections) Act, 1932, and certain other Acts; and for purposes connected therewith. [Assented to, 25th September, 1933.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title
and citation.

1. (1) This Act may be cited as the "Constitution Amendment (Legislative Council Elections) Act, 1933."

(2) The Constitution Further Amendment (Legislative Council Elections) Act, 1932, as amended by this Act may be cited as the Constitution (Legislative Council Elections) Act, 1932-1933.

Amendment
of Act
No. 5, 1933.

2. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is amended—

Sec. 5.
(Defini-
tions.)

(a) by omitting from the definition of the expression "This Part" in section five the words "Second Schedule" and by inserting in lieu thereof the words "Second, Third and Fourth Schedules";

Sec. 7 (6).
(Day of
ballot.)

(b) by inserting in subsection six of section seven after the word "day" where secondly occurring the words "not earlier than the seventh day after the day of nomination and";

(c)

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- (c) by omitting from subsection one of section nine the words "the hour at which the sittings of the respective Houses of the Parliament are to commence" and by inserting in lieu thereof the words "the hour at which the taking of the votes at the sittings of the respective Houses of the Parliament is to commence"; Sec. 9 (1).
(Correction.)
- (d) (i) by inserting in subsection one of section thirteen after the words "day of nomination" the words "or as soon as practicable thereafter"; Sec. 13.
(Proceedings on nomination.)
- (ii) by inserting in subsection two of the same section after the words "day of nomination" the words "or as soon as practicable thereafter."

3. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended— Further amendment of
Act No. 5, 1933

- (a) (i) by omitting from subsection two of section fourteen the words "prescribed form" and by inserting in lieu thereof the words "form set out in the Third Schedule to this Act"; Sec. 14.
(Ballot-papers.)
- (ii) by inserting after paragraph (c) of subsection three of the same section the following new paragraph:—
- (c1) the names of the candidates may be printed either in one continuous column or in such other manner (without departing from the said alphabetical order) as, in the opinion of the returning officer, is best calculated to facilitate the marking and counting of votes;
- (iii) by omitting from paragraph (d) of the same subsection the words "a square shall be printed opposite" and by inserting in lieu thereof the words "a rectangle shall be printed opposite and to the left of";
- (iv)

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cf. Act
No. 41, 1912,
s. 89.

(iv) by inserting after subsection four of the same section the following subsection:—

(5) The returning officer shall deliver to the Clerk of the Assembly, and himself retain, such numbers respectively of the ballot-papers (with counterfoils attached) as are sufficient for the use of Members of the Assembly and Members of the Council, as the case may be, in the taking of the ballot; and the returning officer and the Clerk of the Assembly shall keep an exact account of all such ballot-papers and counterfoils;

Third
Schedule. (b) by inserting after the Second Schedule the following new Schedule:—

Sec. 14 (2).

THIRD SCHEDULE.

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ACT, 1932-1933.

BALLOT-PAPER.

Election of (*here insert number of candidates to be elected*) Member(s) of the Legislative Council.

CANDIDATES.

<input type="checkbox"/> ABBOTT, John	<input type="checkbox"/> HUGHES, Alfred
<input type="checkbox"/> ADAMSON, Joseph	<input type="checkbox"/> HUGHES, David
<input type="checkbox"/> ALLEN, Charles	<input type="checkbox"/> KENNEDY, Andrew
<input type="checkbox"/> BAKER, William	<input type="checkbox"/> MURPHY, Patrick
<input type="checkbox"/> CARR, Henry	<input type="checkbox"/> PETERS, Albert
<input type="checkbox"/> CLARKE, Herbert	<input type="checkbox"/> SMITH, Aubrey
<input type="checkbox"/> DOUGLAS, Robert	<input type="checkbox"/> THOMSON, Edward
<input type="checkbox"/> EDWARDS, George	<input type="checkbox"/> WOOD, Arthur
<input type="checkbox"/> GRACE, Thomas	<input type="checkbox"/> YOUNG, Geoffrey

Further
amendment of
Act No. 5, 1933.

4. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Sec. 15.
New subsection (4).

(a) by inserting after subsection three of section fifteen the following new subsection:—

Rules—
Fourth
Schedule.

(4) The Special Rules set out in Division I of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

The

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The Special Rules set out in Division II of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

- (b) by inserting after the Third Schedule (as inserted in the Constitution Further Amendment (Legislative Council Elections) Act, 1932, by section three of this Act) the following new Schedule:—

Fourth
Schedule.

FOURTH SCHEDULE.

Sec. 15 (4).

DIVISION I—LEGISLATIVE COUNCIL.

Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Council at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.

1. The Standing Rules and Orders of the Legislative Council for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the President of the Legislative Council in pursuance of subsection one of section seven of this Act is received, the President, after reporting the Message, shall direct the Clerk to read the Writ.

The President shall direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the President may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5.

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5. For the purposes of a sitting the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The President may record his vote at any time during the progress of the ballot, provided that a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the President shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The President shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the President, come forward to the Table and obtain his ballot-paper from the Clerk.

He shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

10. After receiving his ballot-paper, no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the President shall announce that such hour has arrived and shall direct that the doors be locked.

The doors having been locked, the President shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a List, which shall be handed to the President.

The President shall then direct that the doors be unlocked.

An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.

After such opportunity has been given the President shall declare the ballot closed.

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12. After the close of the ballot any Member of the Government may forthwith move the adjournment of the House.

DIVISION II.—LEGISLATIVE ASSEMBLY.

Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Assembly at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.

1. The Standing Rules and Orders of the Legislative Assembly for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the Speaker of the Legislative Assembly in pursuance of subsection one of section seven of this Act is received, the Speaker, after reporting the Message, shall direct the Clerk to read the Writ.

The Speaker shall then direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the Speaker may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5. For the purposes of a sitting, the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7.

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7. The Speaker may record his vote at any time during the progress of the ballot, provided a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the Speaker shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The Speaker shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the Speaker, come forward to the Table and obtain his ballot-paper from the Clerk.

He shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper, he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

10. After receiving his ballot-paper no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the Speaker shall announce that such hour has arrived, and shall direct that the doors be locked.

The doors having been locked, the Speaker shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a list, which shall be handed to the Speaker.

The Speaker shall then direct that the doors be unlocked.

An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.

After such opportunity has been given the Speaker shall declare the ballot closed.

12. After the close of the ballot, any Member of the Government may forthwith move the adjournment of the House.

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5. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further
amendment of
Act No. 5,
1933.

- (a) by omitting from section eighteen the words “corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark,” and by inserting in lieu thereof the words “attached to that counterfoil, and the Clerk having marked the ballot-paper on the back with his signature”;
- Sec. 18.
(Issue of
ballot-
papers.)
- (b) (i) by inserting in subsection one of section nineteen after the word “forthwith” the words “retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private”;
- Sec. 19.
(Marking of
votes.)
- (ii) by omitting from the same subsection the words “square opposite,” and by inserting in lieu thereof the words “rectangle opposite and to the left of”;
- (iii) by omitting from the same subsection the words “squares respectively opposite” wherever occurring, and by inserting in lieu thereof the words “rectangles respectively opposite and to the left of”;
- (iv) by omitting from subsection two of the same section the words “official mark,” and by inserting in lieu thereof the words “signature of the Clerk”;
- (c) (i) by omitting paragraph (a) of section twenty and by inserting in lieu thereof the following paragraph:—
- Sec. 20.
(Parcels.)
- (a) make up in one parcel the ballot-papers which have remained unused at the taking of the ballot, the spoilt ballot-papers (if any) and the counterfoils of all ballot-papers which were retained by him as returning officer or delivered to him by the returning officer (as the case may be) in pursuance of subsection five of section

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section fourteen; and in a second separate parcel all other papers and records used by the Clerk in connection with the taking of the ballot;

- (ii) by inserting in paragraph (c) of the same section after the word "election," the words "the number of spoilt ballot-papers";

Sec. 22.

(Offences.)

- (d) by inserting at the end of section twenty-two the following new subsection:—

(4) This section shall not extend to the display of a ballot-paper to the Clerk for the purpose of satisfying him, in accordance with subsection three of section nineteen of this Act, that the ballot-paper has been spoilt by mistake or accident.

Further
amendment of
Act No. 5, 1933.

6. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended:—

Sec. 23.

(Invalid
ballot-
papers.)

- (a) (i) by omitting from paragraph (a) of section twenty-three the words "prescribed official mark," and by inserting in lieu thereof the words "signature of the Clerk";

- (ii) by inserting at the end of the same section the following new subsection:—

(2) A ballot-paper shall not be invalid for any reason other than the reasons specified in this section, but shall have effect according to the elector's intention, so far as his intention is clear.

cf. C'with.
Electoral
Act, 1918-
1928, s. 133
(2).

Sec. 24 (1)
(a).

cf. Act No.
41, 1912,
s. 120.

- (b) (i) by inserting in paragraph (a) of sub-section one of section twenty-four after the word "presence" the words "and subject to the inspection";

- (ii) by inserting at the end of subsection one of section twenty-four the following paragraphs:—

No person other than a candidate or a person authorised by the returning officer, shall be entitled to be present at the proceedings referred to in paragraph (a) of this subsection.

Sec. 24.
(Proceed-
ings to
ascertain
result.)

Any

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Any person present at such proceedings who interferes with any ballot-papers, documents or records, in use at such proceedings, or obstructs the conduct of the proceedings, or distracts the attention of the returning officer or any of his assistants, and who refuses on being required by the returning officer, or any person acting under the direction or authority of the returning officer, to desist from such interference, obstruction or distraction may be removed by or under the direction of the returning officer from the place at which such proceedings are being conducted, and shall be liable on summary conviction to a penalty not exceeding ten pounds.

- (iii) by omitting from subsection four of the same section the words “in or to the effect of the prescribed form”;
- (iv) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

(5) The returning officer shall indorse upon, or attach to, the writ, a copy of the certificate, and (in the case of an election at which more than one seat is to be filled) shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act, and shall return the writ, with the documents (if any) so attached, to the Governor, within the time specified in the writ.

7. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further
amendment of
Act No. 5, 1933.

- (a) (i) by omitting from section thirty-one the words “election of the sixty Members who are to be elected in pursuance of section 17A of the Principal Act for the first constitution of the Legislative Council” and by inserting in lieu thereof the words “four elections referred to in section 17D of the Principal Act”;

Sec. 31.
(First
elections.)

(ii)

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- (ii) by inserting at the end of the same section the words “and such modifications and amendments shall apply to and in respect of those four elections only”;
- Sec 32.**
(One writ.) (b) by omitting from subsection two of section thirty-two the words “referred to in section 17D of the Principal Act”;
- Sec. 34 (1).**
(Days of ballot.) (c) by inserting at the end of subsection one of section thirty-four the following words “and the day of the ballot for the first of the four elections shall be a day not earlier than the seventh day after the day of nomination”;
- New sec.**
35A. (d) by inserting next after section thirty-five the following new section:—
- Proceed-
ings on
nomination.**
- 35A. (1) The returning officer shall at noon on the day of nomination, or as soon as practicable thereafter, and at the place for receiving the nomination papers, announce that ballots for each of the four elections will be taken, and the names of the persons who have become candidates for the four elections, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement.
- (2) Subsection one of this section shall be read in lieu of subsection two of section thirteen of this Act.
- Sec. 36.**
(Return of writ.) (e) (i) by omitting from subsection one of section thirty-six the words “in or to the effect of the prescribed form”;
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
- (2) The returning officer shall attach to the writ a copy of the certificate, and shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act relating to each of the four elections, and shall return the writ with the documents so attached, to the Governor, within the time specified in the writ.
- (f)

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- (f) by inserting after section thirty-six the following new section:—

New sec.
36A.

36A. (1) The Governor may, by proclamation published in the Gazette at any time after the day of the ballot for the first of the four elections and before the day of the ballot for the second of the four elections, amend the writ issued for the four elections, by altering the days of the ballot appointed by such writ for the second, third, and fourth elections respectively. The proclamation may fix a later but not an earlier date for the day of the ballot for the second of the four elections, and may fix either earlier or later dates for the days of the ballot for the third and fourth of the four elections than those respectively appointed by the writ. Upon publication of the proclamation in the Gazette the writ shall be deemed to be amended accordingly.

Governor
may alter
days of
third and
fourth
ballots.

(2) The Governor shall by message addressed to the President of the Legislative Council and to the Speaker of the Legislative Assembly respectively, inform both Houses of the Parliament of the issue of the proclamation.

The message shall be accompanied by a copy of the proclamation.

8. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further
amendment of
Act No. 5, 1932.

- (a) by inserting after subsection one of section twenty-seven the following new subsections:—

Sec. 27.
(Disputed
elections.)

(1A) No election of a candidate shall be declared void by reason only of the fact that at any of the relevant times mentioned in subsection three of section thirteen of this Act, such candidate died or was not qualified to become a Member of the Council, or was disqualified from being a Member of the Council, or was incapable of sitting or voting in the Council, but the Court trying the election petition may declare that he vacated his seat in accordance with the provisions of that subsection.

(1B)

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(1B) The validity of any election or return shall not be disputed otherwise than in accordance with this section.

Sec. 37.
(Petitions.)

- (b) (i) by omitting from subsection one of section thirty-seven the words "within forty days after" and by inserting in lieu thereof the words "not earlier than";
- (ii) by inserting at the end of the same subsection the words "and not later than the fortieth day after the day so appointed";

Sec. 37.
(Powers of
court.)

- (c) by inserting after subsection two of section thirty-seven the following new subsections:—

(3) Where in accordance with the provisions of paragraph (a) of subsection one of section twenty-seven of this Act, the Court declares the election of a candidate at any of the four elections to be void, the Court shall declare that such one as justice may require of the candidates not returned as elected at that election, was elected; and if the candidate so declared by the Court to have been elected was returned as elected at another of the four elections, the Court shall declare the seat to which he was so returned as elected to be vacant.

(4) Subsection three of this section shall be read in lieu of paragraph (b) of subsection one of section twenty-seven of this Act.

Further
amendment of
Act No. 5, 1933.

Second
Schedule,
Division 1,
Rule 4.

9. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- (a) (i) by inserting at the end of paragraph (b) of Rule four of Division 1 of the Second Schedule the following proviso—

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering the ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

(ii)

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- (ii) by omitting from Rule seven of Division 1 of the same Schedule the words “ The expression ‘determine by lot’ shall have the meaning ascribed to it in Division 2 of this Schedule” and by inserting in lieu thereof the following words:—

Second
Schedule,
Division 1,
Rule 7.

“ The expression ‘determine by lot’ means determine in accordance with the following direction:—

The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall be excluded in the order in which their names are drawn.”

- (b) by inserting at the end of Rule three of Division 2 of the same Schedule the following definition:—

Division 2,
Rule 3.

In this rule “number” includes nil.

- (c) (i) by inserting after Rule three of Division 2 of the same Schedule the following new rule:—

New
Rule 3A.

3A. (a) Except as provided in paragraph (b) of this rule it shall not be necessary to arrange on the order of preferences the names of candidates for whom no first preferences have been recorded.

Candidates
with no
first pre-
ferences.

(b) (i) If a value is credited to any such candidate at the end of any count, the name of that candidate shall be placed on the order of preferences next after the last name already appearing thereon.

(ii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are unequal, the candidates shall be arranged on the order of preferences in the order of the values so credited

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credited to them, beginning with the candidate who has the highest value so credited to him.

(iii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are equal, the returning officer shall arrange those candidates as amongst themselves on the order of preferences in accordance with the method provided by rule three in relation to equal candidates.

(ii) by inserting in Rule ten of the same Division after the words "the returning officer shall exclude" the words "in one operation, all candidates who have no value then credited to them, and such operation shall be deemed to be a separate count. He shall then exclude";

(iii) by omitting from Rule thirteen of the same Division the words "to each candidate at the end of that count" and by inserting in lieu thereof the words "at the end of that count to each candidate whose value was affected at that count";

(iv) by inserting at the end of paragraph (c) of Rule fourteen of the same Division the following proviso:—

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering a ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

(v) by omitting from the definition of the expression "determine by lot" in paragraph (k) of Rule fourteen of the same Division all words following the words "slip drawn first";

(vi)

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APPENDIX.

Election of Members of the Legislative Council—Result Sheet.

Quota (value sufficient to secure the election of a candidate).....

(Signature)Returning Officer.

SUPPLY