

CONSTITUTION AMENDMENT
(LEGISLATIVE COUNCIL) ACT.

Act No. 2, 1933.

George V,
No. 2, 1933.

An Act to reform the constitution and alter the powers of the Legislative Council; to reduce and limit the number of Members of the Legislative Council; to reconstitute the Legislative Council in accordance with the reformed constitution; to amend the Constitution Act, 1902, and certain other Acts; and for purposes connected therewith. [Assented to, 22nd June, 1933.]

BE

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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, with the approval of the electors as required by the Constitution Act, 1902, as amended by subsequent Acts, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Constitution Amendment (Legislative Council) Act, 1932," and shall be read and construed with the Constitution Act, 1902, as amended by subsequent Acts. Short title.

(2) The Constitution Act, 1902, as so amended, is in this Act referred to as the Principal Act.

2. In this Act, unless the context or subject-matter otherwise indicates or requires,— Interpretation.

"The appointed day" means the day appointed by the Governor in pursuance of subsection one of section 17A of the Constitution Act, 1902, as inserted by section three of this Act, as the day on and from which the Legislative Council shall be reconstituted.

3. (1) The Principal Act is amended by inserting next after section seventeen the following new sections:— Amendment of Act No. 32, 1902. New ss. 17A, 17B, 17C, 17D, 17E.

17A. (1) The Legislative Council shall, on and from a day to be appointed by the Governor and notified by proclamation published in the Gazette, be reconstituted, and shall consist of sixty elected members. Constitution of Legislative Council.

The day appointed by the Governor in pursuance of this subsection is in this Act referred to as "the appointed day."

(2) Such Members shall be elected at elections at which the electors shall be the Members of the Legislative Council and the Members of the Legislative Assembly voting as one electoral body and recording their votes at sittings of the respective Houses of the Parliament.

Any vacancy in the seat of a Member shall be filled by a like election.

(3)

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(3) Elections of Members of the Legislative Council shall wherever the election is contested, and more than one seat is to be filled, be according to the principle of proportional representation, each voter having one transferable vote, and where only one seat is to be filled be according to a preferential system.

(4) The voting at any such election shall be by secret ballot.

(5) Each voter at any such election shall be required to indicate the order of his preferences for not less than the prescribed number of candidates.

In this subsection "the prescribed number" means a number equal to twice the number of seats which are to be filled at the election, and where the number of candidates is less than twice the number of seats to be filled, "the prescribed number" means the total number of candidates.

(6) The elections shall be held and conducted and the votes shall be counted and transferred as may be provided by law.

Qualifica-
tions, etc.

17B. (1) Subject to the disqualifications set out in this Act any person whether male or female, married or unmarried—

- (a) who is an elector entitled to vote at the election of Members of the Legislative Assembly, or a person entitled to become such elector, or a person who on the date upon which His Majesty's Assent to the Constitution Amendment (Legislative Council) Act, 1932, is signified is a member of the Legislative Council; and
- (b) who has been for three years at the least resident within the limits of the Commonwealth of Australia; and
- (c) who is a natural-born or naturalized subject of the King,

shall be capable of being elected as a Member of the Legislative Council and of sitting and voting therein.

(2)

(2) No person being a Member of the Legislative Assembly shall be capable of being elected or of sitting or voting as a Member of the Legislative Council.

(3) If after being elected as a Member of the Legislative Council any person accepts any office of profit under the Crown, or any pension from the Crown during pleasure or for a term of years, his election shall thereupon become void, and an election shall be held to fill the vacancy.

Provided that nothing in this subsection shall extend to—

- (a) any person in receipt only of pay, half-pay, or a pension by virtue of service in any of His Majesty's defence forces or who accepts any office of profit in any of His Majesty's defence forces; or
- (b) any person who accepts the office of Vice-President of the Executive Council or any of the offices enumerated in the Second Schedule hereto, or any office of profit under the Crown created by Act of Parliament as an office of the Executive Government.

17c. (1) A person shall not be a candidate at any election of a Member or Members of the Legislative Council unless he is nominated for election.

Nomina-
tions.

(2) Every nomination of a candidate shall be in writing, and shall be made by means of a nomination paper which shall be in or to the effect of such form as may be provided by law.

(3) A nomination paper shall contain the name of one candidate and one candidate only.

(4) A nomination paper shall be invalid unless the person nominated therein has consented to the nomination in such manner as may be provided by law.

(5) Each nomination paper shall be signed by two and not more than two electors.

No elector shall sign more than one nomination paper for any election, but the contravention of this provision shall not of itself invalidate any nomination paper.

Each

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Each elector signing a nomination paper for any election shall certify thereon that he has not previously signed a nomination paper for that election.

If an elector contravenes this subsection by signing more than one nomination paper he shall be liable to such penalty as may be provided by law, and shall be disqualified from voting and from being a candidate at any election of Members of the Legislative Council held within four years after the date of the contravention.

In this subsection "elector" means a person who is for the time being a Member of the Legislative Council or a Member of the Legislative Assembly.

Elections for
the first
constitution
of the
Legislative
Council.

17D. (1) For the purposes of the election of the sixty Members who are to be elected in pursuance of sections 17A, 17B and 17C of this Act for the first constitution of the Legislative Council, there shall be four separate elections at each of which fifteen Members shall be elected, but nominations shall be made as if the four elections formed one election, and notwithstanding the provisions of subsection five of section 17C of this Act—

- (a) each nomination paper shall be signed by two, and not more than two, electors;
- (b) no elector shall sign more than two nomination papers, but the contravention of this provision shall not of itself invalidate any nomination paper;
- (c) each elector signing a nomination paper shall certify thereon that he has not previously signed more than one nomination paper;
- (d) if an elector contravenes this subsection by signing more than two nomination papers he shall be liable to such penalty as may be provided by law, and shall be disqualified from voting and from being a candidate at any election of Members of the Legislative Council held within four years after the date of the contravention.

In this subsection "elector" means a person who is for the time being a Member of the Legislative Council or a Member of the Legislative Assembly.

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(2) At the first of the four elections the candidates shall consist of those persons who are duly nominated for election.

At the second of the four elections the candidates shall consist of those persons who were candidates at the first election and were not declared elected at that election.

At the third of the four elections the candidates shall consist of those persons who were candidates at the second election and were not declared elected at that election.

At the fourth of the four elections the candidates shall consist of those persons who were candidates at the third election and were not declared elected at that election.

17E. (1) If at any election the number of candidates for election does not exceed the number of persons required to be elected all the candidates shall be declared elected.

Where candidates are insufficient, a further election to be held.

(2) If at any election the number of candidates for election is less than the number of persons required to be elected, a fresh election shall be held to fill the vacancies.

(2) The Principal Act is amended by inserting after subsection six of section 7A the following new subsection:—

Sec. 7A.

(7) In any case in relation to which the expression “as may be provided by law” is used in the Constitution Amendment (Legislative Council) Act, 1932, the law may be made as if this section were not in force, and may be so made at any time either before or after the appointed day.

4. (1) This section shall commence upon the appointed day.

Commencement of section.

(2) The Principal Act is amended by omitting sections sixteen and seventeen.

Amendment of Act No. 32, 1902, ss. 16, 17.

(3) The Principal Act is amended by inserting next after section 17E as inserted by section three of this Act the following new section:—

Amendment of Act No. 32, 1902. New s. 17E.

17E. (1) Subject to the provisions of subsections three and six of this section, the term of service of a Member of the Legislative Council shall expire at the end of twelve years from its commencement.

Term of service, etc.

(2)

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(2) One-fourth of the Members of the Legislative Council shall be elected every three years.

(3) The term of service of the Members elected under section 17D of this Act shall expire as follows:—

- (a) in the case of the fifteen who are elected at the first election under that section—at the end of twelve years from the commencement of such term;
- (b) in the case of the fifteen who are elected at the second election under that section—at the end of nine years from the commencement of such term;
- (c) in the case of the fifteen who are elected at the third election under that section—at the end of six years from the commencement of such term;
- (d) in the case of the fifteen who are elected at the fourth election under that section—at the end of three years from the commencement of such term;

(4) A Member of the Council whose term of service is about to expire shall, if not otherwise disqualified, be capable of being re-elected.

(5) An election to fill the seats of Members of the Council whose terms of service are about to expire shall be held during the period of six months immediately preceding the date of the expiration of such terms of service.

Casual
vacancies.

(6) Where the seat of a Member becomes vacant before the expiration of his term of service the term of service of the person elected to fill such casual vacancy shall expire at the date of the expiration of the term of service of the Member whose seat he is elected to fill.

(7) For the purposes of this section—

- (a) the term of service of a Member elected for the first constitution of the Legislative Council shall be taken to commence on the appointed day;

(b)

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(b) the term of service of a Member elected to fill a seat which becomes vacant by the expiry of the holder's term of service shall be taken to commence on such expiry. No. 2, 1933.

(4) The Principal Act is amended by omitting from subsection one of section thirteen the words "summoned or." Amendment of Act No. 32, 1902.
Sec. 13 (1).
(Consequential.)

(5) The Principal Act is amended by omitting from subsection one of section fourteen the words "summoned to the said Council, or elected and returned as a Member to serve in the said Assembly for any electoral district, such summons or" and by inserting in lieu thereof the words "elected and returned as a Member to serve in the said Council or the said Assembly, such." Amendment of Act No. 32, 1902, s. 14 (1).
(Consequential.)

(6) The Principal Act is amended by omitting section twenty and by inserting in lieu thereof the following section:— Amendment of Act No. 32, 1902, s. 20.

20. The law for the time being in force relating to the determination of any dispute or question respecting any election return or qualification of a Member of the Legislative Assembly, or respecting any vacancy therein shall, mutatis mutandis, and subject to such modifications, amendments, and additions as may be provided by law, apply to the determination of similar disputes or questions respecting the election, return, or qualification of a Member of the Legislative Council as reconstituted in pursuance of section 17A of this Act, or respecting any vacancy in the Legislative Council as so reconstituted. Determination of questions of elections, etc.

(7) The Principal Act is amended by omitting section twenty-one and by inserting in lieu thereof the following section:— Amendment of Act No. 32, 1902, s. 21.

21. (1) The Legislative Council shall, before proceeding to the despatch of any other business, choose one of their number to be President of the Legislative Council, and as often as the office of President becomes vacant the Legislative Council shall again choose one of their number to be the President. President.

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The proceedings of the Legislative Council in choosing the President shall be conducted in such manner as may be provided by law.

The President shall cease to hold office if he ceases to be a member of the Legislative Council. He may be removed from office by a vote of the Legislative Council or he may resign his office by writing under his hand addressed to the Governor.

(2) Before or during the absence of the President, the Legislative Council may choose one of their number to perform the duties of the President during his absence.

(3) The President or presiding Member may take part in any debate or discussion which may arise in the Legislative Council.

Amendment of
Act No. 32,
1902, s. 22.
(Casting vote.)

(8) The Principal Act is amended by inserting in subsection two of section twenty-two after the word "President" wherever occurring the words "or the presiding Member."

Consequen-
tial repeal
of Act No. 1,
1926.

(9) The Constitution (Amendment) Act, 1925, is hereby repealed.

Commencement
of section.

5. (1) This section shall commence upon the appointed day.

Amendment of
Act No. 32,
1902.
New ss. 5A, 5B,
5C.

(2) The Principal Act is amended by inserting next after section five the following new sections:—

Disagree-
ment
between the
two Houses—
Appropriation for
annual
services.

5A. (1) If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

(2)

(2) The Legislative Council shall be taken to have failed to pass any such Bill, if the Bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council and the Session continues during such period.

(3) If a Bill which appropriates revenue or moneys for the ordinary annual services of the Government becomes an Act under the provisions of this section, any provision in such Act dealing with any matter other than such appropriation shall be of no effect.

5B. (1) If the Legislative Assembly passes any Bill other than a Bill to which section 5A of this Act applies, and the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after an interval of three months the Legislative Assembly in the same Session or in the next Session again passes the Bill with or without any amendment which has been made or agreed to by the Legislative Council, and the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after a free conference between managers there is not agreement between the Legislative Council and the Legislative Assembly, the Governor may convene a joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly.

Disagree-
ments—
Referendum.

The Members present at the joint sitting may deliberate upon the Bill as last proposed by the Legislative Assembly and upon any amendments made by the Legislative Council with which the Legislative Assembly does not agree.

No vote shall be taken at the joint sitting.

(2) After the joint sitting and either after any further communication with the Legislative Council in order to bring about agreement, if possible, between the Legislative Council and the Legislative Assembly, or without any such communication the Legislative Assembly may by resolution direct that the Bill as last proposed by the Legislative Assembly
and

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and either with or without any amendment subsequently agreed to by the Legislative Council and the Legislative Assembly, shall, at any time during the life of the Parliament or at the next general election of Members of the Legislative Assembly, be submitted by way of referendum to the electors qualified to vote for the election of Members of the Legislative Assembly.

The referendum shall be held and conducted as may be provided by law, and if, at any time no such law exists, the law for the time being in force relating to the holding and conduct of a general election of Members of the Legislative Assembly shall, *mutatis mutandis*, apply to and in respect of the holding and conduct of the referendum, with such modifications, omissions, and additions as the Governor may by notification published in the Gazette declare to be necessary or convenient for the purposes of such application.

(3) If at the referendum a majority of the electors voting approve the Bill it shall be presented to the Governor for the signification of His Majesty's pleasure thereon and become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

(4) For the purposes of this section the Legislative Council shall be taken to have failed to pass a Bill if the Bill is not returned to the Legislative Assembly within two months after its transmission to the Legislative Council and the Session continues during such period.

(5) This section shall extend to any Bill whether it is a Bill to which section 7A of this Act applies or not.

And in the application of this section to a Bill to which section 7A of this Act applies—

- (a) the submission of the Bill to the electors by way of referendum in accordance with this section shall be a sufficient compliance with the provisions of section 7A of this Act which require the Bill to be submitted to the electors;
- (b)

- (b) the referendum under this section shall, notwithstanding anything contained in section 7A of this Act, be held upon a day which shall be appointed by the Governor in such manner as may be provided by law; and
- (c) the day so appointed shall, notwithstanding anything contained in subsection two of this section, be a day during the life of the Parliament and not sooner than two months after the Legislative Assembly has passed a resolution in accordance with that subsection for the purposes of such referendum.

(6) A joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly for the purposes of this section may be convened by the Governor by message to both Houses of the Parliament.

At such joint sitting the President of the Legislative Council or in his absence the Speaker of the Legislative Assembly shall preside, and until standing rules and orders governing the procedure at joint sittings have been passed by both Houses and approved by the Governor, the Standing Rules and Orders of the Legislative Council shall so far as practicable apply.

5c. (1) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5A of this Act, the words of enactment shall be as follows:—

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, in accordance with the provisions of section 5A of the Constitution Act, 1902, as amended by subsequent Acts, and by the authority of the same, as follows:—

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

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(2) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5B of this Act, the words of enactment shall be as follows:—

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors, in accordance with the provisions of section 5B of the Constitution Act, 1902, as amended by subsequent Acts, and by the authority of the same, as follows:—

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

Amendment of
Act No. 32,
1902.
New s. 38A.

(3) The Principal Act is amended by inserting in Part IV next after section thirty-eight the following new section:—

Powers of
Ministers
to speak in
Legislative
Council.

38A. (1) Notwithstanding anything contained in this Act, any executive councillor who is a Member of the Legislative Assembly may at any time, with the consent of the Legislative Council, sit in the Legislative Council for the purpose only of explaining the provisions of any Bill relating to or connected with any department administered by him, and may take part in any debate or discussion in the Legislative Council on such Bill, but he shall not vote in the Legislative Council.

(2) It shall not be lawful at any one time for more than one executive councillor under the authority of this section to sit in the Legislative Council.

Amendment
of Act No.
32, 1902.
Sec. 7A.

(4) The Principal Act is amended—

(a) by omitting from subsection six of section 7A all words following the words "but shall not apply to any Bill for" and by inserting in lieu thereof the following words:—

" (a) the repeal; or

(b) the amendment from time to time; or

(c)

- (c) the re-enactment from time to time with or without modifications of any of the following sections of this Act, namely, sections thirteen, fourteen, fifteen, 17b, 17c, eighteen, nineteen, twenty, twenty-one, twenty-two and 38A, or of any provision for the time being in force so far as it relates to the subject-matter dealt with in any of those sections”;
- (b) by inserting at the end of section 7A the following new subsection:—

(8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted in accordance with this Act.

6. The Standing Rules and Orders of the Legislative Council in force immediately before the appointed day shall, to the extent to which they are not inconsistent with the provisions of the Principal Act, as amended by this Act, continue in force until amended or repealed in accordance with section fifteen of the Principal Act.

Saving of
Standing
Rules and
Orders.
